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ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

*THE ETHIOPIAN ANTI-TERRORISM LAW: CRITICAL EXAMINATION OF
THE LAW AND THE PRACTICE IN OROMIA NATIONAL REGIONAL
STATE.*

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Acronyms

ONRS- Oromia National Regional State

FDRE-Federal Democratic Republic of Ethiopia

CPC-Criminal Procedure code

CCE-Criminal Code of Ethiopia

FMJ-Federal Ministry of Justice

OLF-Oromo Liberation Front

OJB-Oromia Justice Bureau

UN-United Nations

IHL-International Humanitarian Law

IHRL-International Human Right Law

Declaration

This Research is my original work and it has not been presented for a degree in any other university and that all sources of materials used for the thesis have been dully acknowledged.

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Chapter One- Introduction

Background of the Study

“Upholding human rights is not at odds with battling terrorism: On the contrary, the moral vision of the deep respect for the dignity of each person is among our most powerful weapons against it.”

Former Secretary-General
Kofi Annan, September 2003

Terrorism has become serious global threat that requires prevention focused global response.¹ Terrorism threatens both the rule of law and fundamental rights and freedom of citizens and broader social groups. Inappropriate counter-terrorism response may undermine both the rule of law and fundamental human rights principles. This would mean, in any counter-terrorist measure respecting human rights is not only a matter of legal obligation but very crucial for the ultimate success of state’s counter-terrorism strategy.² For this reason, terrorism needs to be countered with all appropriate and the legitimate means at the disposal of the state.

Among the means states are currently using to combat terrorism and its threat, the first step is the enactment of anti-terrorism law which has become a common trend in most countries of the world. Therefore, launching counter terrorist activities that are grounded in an effective criminal justice process that respect the principle of rule of law and human rights, can offer a peaceful, accountable and legitimate response to terrorism. This kind of constructive criminal justice response to terrorism can help avoid an escalation of violence and abuse of the use of force outside the protective and procedural guarantees put in place by way of due process of law. This can reinforce the society’s commitment to the rule of law and human rights, even when under the condition of a terrorist threat.³

Based on the rational that threat of terrorism cannot be managed by the existing criminal law of the country, like many others Ethiopia enacted a new anti-terrorism law. Proclamation No. 652/2009, (here after called Anti-terrorism law)

¹ Dandurand.Y, *Criminal Justice Response to Terrorism*(2009),p,4

² “Ibid”,p.6

³ General Assembly resolution 2200 A (xxl)

It is this law that provides substantive law governing anti-terrorism and some aspects of procedural matters as to the mechanism of investigation, prosecution and the jurisdiction of the court to which the cases of terrorism is to be entertained. Procedurally, the Anti-terrorism law specifies the institutions and individual criteria to involve in the investigation and prosecution of terrorism cases. Regarding the courts having jurisdiction, Anti-terrorism law in its definitional part defined court as referring to the Federal High and Supreme Court to entertain cases of terrorism.⁴

This study, will critically examine the practical issues pertaining to the handling of cases of terrorism in Oromia National Regional State (here after, ONRS) particularly issues having to do with investigating terrorism cases without specific delegation from Federal Police Commission. The perceptions and understanding of ONRS investigating police officers who are actually participating in the investigation of suspected cases without fulfilling the criteria set under the Anti-terrorism law will also be dealt with. Concerning prosecution the Anti-terrorism law unlike it did in the case of police and judiciary it does not defined any office institutionally. Rather it sets individual criteria for public prosecutor those can follow terrorism cases. What is the source of authority for ONRS Justice Bureau to prosecute terrorism and how public prosecutors are participating in the prosecution of terrorism without the criterion set under the proclamation will be critically examined with relevant cases.

Regarding the jurisdiction of the courts over the cases of terrorism the Ethiopian anti-terrorism law gives clues as to which court should entertain the issues of terrorism, even if there is a problem of clarity as to whether courts stated by the proclamation should entertain all issues of terrorism including pretrial cases or not needs more explanation. Finally the clearly observable disparity between the law and the practice in the areas of investigation by police, prosecution by public prosecutors and jurisdiction of the courts to entertain the cases of terrorism in ONRS and even the disparity in practice among the above stated institutions in reasoned argument and interpretation is also examined based on the practical cases..

⁴ Proclamation, No. 652/2009, Anti-Terrorism Proclamation, 15th year, No. 57, *Neg. Gaz.* 28th August 2009

1. 1 Objective of the Study

The main objective of this study is to critically examine the disparities between the law and the practice in ONRS regarding Ethiopian anti-terrorism law in general and the issues of ONRS; police commission that is acting over terrorism cases without delegation and criminal investigating police officers those have been involving in the investigation of terrorism cases without delegation and without fulfilling the criteria set under the proclamation and its effects on the fundamental rights and freedoms guaranteed under the FDRE Constitution, Justice bureau and public prosecutors those have been involving in practice both in the investigation and prosecution of terrorism cases without authorization and without fulfilling the qualification set under the proclamation and the effect of this involvement on the constitutionally guaranteed fundamental rights and freedoms of the suspects and finally, courts jurisdiction to entertain terrorism cases both at pretrial and post charge levels which is complicated in practice in particular.

1.2 Statement of the Problem

What mostly necessitate this study is the huge inconsistency of the practice and the anti-terrorism law of Ethiopia in ONRS. In this regard the difference between the law and the practice concerning the investigation of the terrorism suspect cases by ONRS police commission as institution without any delegation from Federal police commission as per required by the anti-terrorism law and the involvement of the regional criminal investigating police officers with no qualification required to investigate cases of the terrorism nature is among the problems that necessitate this study.

On the other hand the complicated process of the prosecution of the terrorism suspected cases that under take both at regional and federal levels with no clear boundary in general and the involvement of the ONRS public prosecutors those are not qualified as per the requirement of the anti- terrorism law provides is another issue that necessitate this study. Last but not the list problem that necessitate this study is the practical problems those are clearly observable regarding the jurisdiction of the zonal and district courts of the ONRS over the pre-trial issues of terrorism cases. The worst of all concerning the jurisdiction of the court over the pre-trial issues of the terrorism suspect cases even courts of the same level

within the region have different stand and practice over the issues. This problem is critical in ONRS where there are timely detentions and an arrest of the suspects as terrorist is common but involving in its proceeding is fearful both by prosecutors and courts at the destination. By the mere interpretation of every cases of terrorism is the jurisdiction of Federal Supreme and High courts including remand and bail issues. In cases of involvements the practices are not in conformity with the concerning proclamation. Because of such flourishing problems the constitutional right of suspects to be brought to the nearby court and judge for demanding at the court of law the illegality of the detention and seeking for respect of their right to be released from illegal detention is at stake.

Therefore, the most important matter in this study is critically examining the difference between the Ethiopian anti-terrorism law and its practical application in ONRS in general and the problems relating to investigation, prosecution and jurisdiction of the courts over the cases those have the nature of terrorism in particular.

1.3 Research Questions

Keeping the general problems that are stated in the statement of the problem in mind, the study focuses on the following vital questions.

1. What is the source of authority for ONRS police commission to involve in the terrorism cases within the region? What about qualification required for investigating police officers and the practice at hand looks like?
2. What is the legal authority for ONRS public prosecutors to involve in the prosecution of the terrorism cases? And what about the issue of individual criteria needed to involve in the prosecution of terrorism cases?
3. What is the legal authority for regional high and woreda courts to entertain or refuse the pretrial issues of terrorism suspects?
4. What are the legal grounds to prosecute same terrorism suspects at Federal level while prosecuting others at regional level for the cases that are supposed to be happened in Oromia?

1.4 Significance of the study

Terrorism law and its practical proceeding in our criminal justice system both at Federal and Regional level are newly practicing issues. But, at the same time, we do have anti-terrorism law that is applicable in issues involving terrorism in pre-trial and full scale trial. Since the application of this law in our criminal justice system is no longer experienced and its conformity with basic and fundamental rights is not deeply checked, as well as all provisions of the proclamation are not practically tested problems with regard to its application is raising here and there through out of the regional states.

Therefore, this study will have great significance in addressing the issues of the law and the practice concerning investigation, prosecution and jurisdiction of courts to involve in the cases of terrorism crime under anti-terrorism law in ONRS. Accordingly this study will be a direct consumption for ONRS Police commission, Justice Bureau and Judiciary. May be even if I cannot say directly in one way or another way this study will also benefit other Regional states facing the same problem over the issue.

1.5 Scope of the Study

Anti-Terrorism law and its practical application in Ethiopia in general and the practical application in ONRS in particular is wide and newly introducing issue that needs huge resource and long time to undertake each and every aspect research in this regard. Unlikely based on resource, time and other factors this research is limited to looking the Ethiopian Anti-Terrorism Law (i.e. proclamation No. 652/2009) and its practical application in ONRS. Regarding the anti-terrorism law it is not about dealing with each and every provisions of the proclamation, rather a provisions those are related with investigation, prosecution and jurisdiction of the court over terrorism crime will be selectively considered. Regarding area since the geographic area of the regional state under consideration is wide and not easily accessible the practice of each and every district within the region is not going to be looked up. Rather based on the administrative convenience based division of the region in to sub-regions, that strategy will be in use by taking sample cases from each sub-region that can success fully show the practice within the region. Based on the sub regional division the Oromia supreme Court and Oromia Justice Bureau established benches those constantly seat in Adama to entertain cases from 4 eastern Oromia

zones, in Shashamane to entertain cases from 5 southern zones of Oromia and in Nakamte to entertain cases from 7 zones of western Oromia. The above sub divisions are excluding the central bench found in Finfinne with 4 central zones of Oromia.

1.6 Methodology

This research is both doctrinal and empirical. The research is doctrinal on the one hand because it looks up over the problems of Ethiopian Anti-terrorism law if any and on the other hand this research is empirical because it deals with the practical problems over the management of the terrorism issues in criminal justice system in ONRS.

The research will consume both primary and secondary sources of information's. Specifically, as far as primary sources are concerned, FDRE Constitution, Ethiopia's Anti-terrorism law (Proclamation 652/2009), FDRE Criminal Code and Criminal Procedure Code of Ethiopia (Proclamation No. 185/1961), cases and other related laws on the area. Besides there will be an interviews and discussions directly by the researcher with practicing criminal investigating police, public prosecutors, judges and lawyers in ONRS selectively particularly with those practitioners participated in the terrorism related cases at any level. So far as the secondary sources are concerned books, journals, legal instruments, articles and official reports will be taken as sources.

1.7 Organization of the Study

This study is organized in to four chapters. Chapter one contains introduction of the study that deal with over all flow of the paper. This description contains background of the study, objective of the study, statement of the problem, significance of the study, scope of the study and methodology that is followed. Under chapter two theoretical and conceptual issues on terrorism is dealt with. With theoretical and conceptual aspects of the terrorism issues like; problems related to definition of the terrorism and terrorist act, acts of terrorism, supposed reasons for terrorism, state terrorism, contemporary counter terrorism laws and related issues are deeply discussed. Under chapter three the issue of criminal justice administration in Ethiopia and the anti-terrorism law is dealt with. This chapter looks in deeps; police institutions and investigation of crime in Ethiopia, investigating terrorism, investigation of terrorism; the law and the practice in ONRS, Attorney General and prosecution of crimes in Ethiopia, prosecuting terrorism, prosecution of terrorism; the law and the practice in ONRS, criminal jurisdiction of courts in

Ethiopia, adjudication of terrorism and adjudicating terrorism; the law and the practice in ONRS. Finally chapter four ceases the paper with conclusion and recommendation.

Chapter Two: Theoretical and conceptual Framework

2. Definitional Problems of Terrorism and Terrorist Acts.

Terrorism became an issue on the international agenda in 1934, when the League of Nations took the first major step toward making terrorism highly illegal and punishable. In doing so, it drafted a convention for the prevention and punishment of terrorist acts.⁵ Since then throughout the years, various scholars have attempted to define terrorism. Yet, the term is so loaded with conceptual problems that a totally accepted definition of it still does not exist. The irony is that the recurrent theme of terrorism has become the daily part of the political drama of modern times.

Due to different reasons provided by numerous scholars and institutions there is no yet universally agreed-on definition of terrorism. As S.Andrew explains trying to define terrorism is like being in an Alice-in-Wonderland universe; it is a concept that no one can clearly define and even involves actors that no one can specifically identify.⁶ The problem also emerges while some definitions are precise; others lack important aspects of terrorism.

The problem of defining it is also compounded by the fact that terrorism has recently become a fad word used promiscuously and often applied to a variety of acts of violence which are not strictly terrorism by definition.⁷ Concerning governmental and political organization the problem of defining the term likely arises from divergence in interests. Some governments are prone to label as terrorism all violent acts committed by their political opponents, while anti government extremists frequently claim to be the victim of terror.

What is called terrorism thus seems to depend on one's point of view.⁸ What makes terrorism definition problematic is also once a group carries out a terrorist act, it acquires the label terrorist, a label that tends to stick; and from that point on, everything this group does, whether

⁵ Sinclair, Andrew. *An Anatomy of Terror: A History of Terrorism*. London: Macmillan(2003).

⁶ Andrew.S, cited above supra note 5, p. 12

⁷ Michael. J. *The study of terrorism: Definitional problem*.(the Rand Corporation, California, Nov. 1980), p. 5

⁸ Ibid

attended to produce terror or not, it also henceforth called terrorism.⁹ In this context terrorism can mean just what those who use the term (not the terrorist) want it to mean, almost any violent act by an opponent. The difficulty of defining terrorism has led to the cliché that one man's terrorist is another man's freedom fighter. The phrase implies that there can be no objective definition of terrorism, that there are no universal standard.¹⁰ But almost all agree on the issue that if strictly observed terrorism is different from ordinary murder, assault, arson, demolition of property, or the threat of the same; the reason is that the impact of terrorist violence and damage reaches more than the immediate target victims.¹¹ It is also directed at targets consisting of a larger spectrum of society like civilians or even society as a whole. The change is desired so desperately that the inability to achieve change is perceived as a worse consequence than the death of civilians.¹²

To see how commonly defining terrorism is problematic let us look at some definitions of terrorism by some of the most distinguished scholars, institutions and states on the matter and compare with Ethiopian definition if any:

Walter Laqueur: “define terrorism as the use or the threat of the use of violence, a method of combat, or a strategy to achieve certain targets it aims to induce a state of fear in the victim that is ruthless and does not conform to humanitarian rules publicity is an essential factor in the terrorist strategy.”¹³

Bruce Hoffman: “Defined terrorism as an ineluctably political in aims and motives, violent or, equally important, threatens violence, designed to have far-reaching psychological repercussions beyond the immediate victim or target, conducted by an organization with an identifiable chain of command or conspiratorial cell structure whose members wear no uniform or identifying insignia, and perpetrated by a sub national group or non-state entity.”¹⁴

⁹ Id, at, P. 6

¹⁰ Id, at, P. 7

¹¹ Jackson, Richard, *Writing the War on Terrorism: Language, Politics and Counter-Terrorism*, Manchester, England: Manchester University Press (2005).

¹² Rush, George E. *The Dictionary of Criminal Justice* (5th Ed.) Guildford, CT: McGraw-Hill, (2002), pp. 204–205.

¹³ Laqueur, Walter, *the Age of Terrorism* (2nd Ed.), Boston: Little & Brown, (1987). p. 143

¹⁴ Hoffman, Bruce, *Inside Terrorism* (2nd Ed.), New York: Columbia University Press, (2006). p. 43

One can clearly understand from the above stated definitions by different scholars differently that how the concept is not commonly understood even at scholars level. Similarly the disparity among the scholars definition of the term consolidates the problems of the states of the world facing to have common definition over the term. While different scholars individually define terrorism as stipulated above next let look how terrorism is defined by different organizations.

League of Nations Convention of 1937 defined terrorist acts as an “all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.”¹⁵

In, 2002, in response to the September 11 2001 terrorist attacks on the World Trade Centre and the Pentagon, the United States of America enacted the Homeland Security Act. Section 15 of the Act defines the term terrorism to mean:

“any activity that is dangerous to human life or potentially destructive of critical infrastructure or key resources, is a violation of the criminal laws of the United States or of any state or other subdivision of the United States and which appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by mass destruction, assassination or kidnapping.”¹⁶

When compared with the definition of terrorism act given under article 3 of the Ethiopian anti-terrorism law the above definition holds some similarity and huge deference. It seems similar with that of Ethiopia by using vague terms like potentially distractive which is measure is unknown like the Ethiopian synonym term stipulates “causes series damage to property” which is bottom level is unknown and open for interpretation.

Under United Kingdom Terrorism Act of 2000 which is closer in definition to Ethiopian Acts of Terrorism is defined Terrorism to mean:

“the threat or use of action where the action involves serious damage to property, serious violence against a person, endangers a person’s life other than that of the person committing the action, creates a serious risk to the health or safety of the public or a section of the public or is designed seriously to interfere with or disrupt an electronic system or is designed to influence the government or an international governmental organization or to intimidate the public or a section

¹⁵ League Convention *Convention for the Prevention and Punishment of Terrorism*, (1937), Article 1(2)

¹⁶ United States of America Homeland Security Act 2002, section 15.

of the public or where the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.”¹⁷

Even if it is difficult to find common and precise definition of terrorism, one can successfully extract from each definition commonly the terms violence, intimidation, fear and the likes. All definitions involve violence or the threat of violence, often coupled with specific demands. After all it is safely possible to conclude that terrorism has no common and single definition that every state or nation should abide.

2.1 Acts of Terrorism

Like the problem of universally defining the term terrorism, there is no commonly held view that international law does provide a binding definition of terrorist act that states should comply with. Because of the claimed lack of a definition of terrorism in general and in Security Council resolution 1373 in particular, there is no easy way of judging the dispute pertaining to the broadness or narrowness of the definition of a terrorist act of any state.¹⁸ Even if the Security Council Resolution 1373 mention terrorism and terrorism act repeatedly it does not explicitly provide for their meaning. Different scholars describe the lack of universal meaning to the act of terrorism in resolution 1373 as a gap.¹⁹

K. L. H. Samuel characterizes absence of universal definition of terrorism in general as the major gap in the rule of law framework of international counter-terrorism.²⁰ Thus, many have asserted that the Security Council has left the definition of terrorism acts to individual governments. Similarly, others observe that the imposition of an obligation on a state to criminalize a ‘terrorist’ act without providing a definition or guideline means authorizing a state to define terrorism according to its own history, objectives and concerns²¹ which permits a range of overbroad definitions. Guillaume upholds a similar view and argues that requiring

¹⁷ United Kingdom Terrorism Act of 2000

¹⁸ Wondwossen Demissie, (2014). “The scope of definition of a terrorist act under Ethiopian law”, Mizan law Review volume, 8, No, 2, p. 3

¹⁹ Ibid

²⁰ ibid

²¹ Id, at, p. 4

states to take measures against terrorism, without defining it, enables states to make unilateral interpretations geared towards their own interests.²²

What has to be clear in this regard is that the none expressly defining of a terrorist act by the Resolution, enforcement of which is on the justification for countering terrorism laws including the Ethiopian anti terrorism law makes its subject matter unclear.²³ However, it was not meant to give states a blank cheque to fight terrorism according to their own definitions. By requiring or calling upon states to take the several measures against a terrorist act, it would be logical to assume that the Security Council would not be using the term ‘terrorist act’ to mean everything or nothing. It must have been referring to something.²⁴ Logical consistency requires that terrorist acts, the financing of which states are obliged to criminalize under paragraph 1 of Resolution 1373, should not be different from terrorist acts that the International Convention for the Suppression of the Financing of Terrorism refers to.²⁵

The together reading of the United Nations resolutions and the conventions with respect to terrorism acts would give the definition of terrorism act as ‘the criminal acts, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.’²⁶

On the other hand as a regional instrument Organization of African Union as a means of countering terrorism regionally defines terrorist acts as ‘any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or

²² Ibid

²³ Wondwossen D Kassa (2013), “Examining some of the Raisons deter for the Ethiopian anti-terrorism law”, *Mizan law Review*, Vol. 7, No.1, pp. 49-66.

²⁴ UN, Security Council Resolution 1373

²⁵ Paul Szasz (2002), “The Security Council Starts Legislating” *American Journal of International Law*, Vol. 96, 901, 903.

²⁶ Wondwossen D. Kassa cited above at, supra note 5, p. 7

freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to: intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or create general insurrection in a State.²⁷

The government of Democratic Republic of Ethiopia based on the direction of the United Nation to have counter terrorism laws by the states and by the reason to protect the citizens from the threat of the terrorism which it thinks not covered by the existing criminal law. It proclaimed anti-terrorism law; a proclamation to counter terrorism under the frame work of the law. Under this Proclamation No 652/2009 (Anti-Terrorism Proclamation) of Ethiopia does not define the term terrorism too.

It, however, defines a terrorist organization as a group, association or organization which is composed of not less than two members with the objective of committing acts of terrorism or plans, prepares, executes or cause the execution of acts of terrorism or assists or incites others in any way to commit acts of terrorism. Section 3 which is under the heading terrorist acts, it enumerates a number of acts where if one is found culpable of committing any of them then they shall be subject to rigorous imprisonment from 15 years to life imprisonment or with death. The section specifically provides that: Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country: causes a person's death or serious bodily injury; creates serious risk to the safety or health of the public or section of the public; commits kidnapping or hostage taking; causes serious damage to property; causes damage to natural resource, environment, historical or cultural heritages; endangers, seizes or

²⁷ OAU convention on terrorism, article 1(3)(a)

puts under control, causes serious interference or disruption of any public service is punishable with rigorous imprisonment from 15 years to life or with death.²⁸

As Y. Dandurand explains despite the fact that world do not come together in defining the term terrorism and the acts of terrorism each and every part of the world have common understanding that; Terrorism is threat to world, threat to continent and threat to countries. This whole inclusiveness problem of terrorism agenda and the measures that states taking by enacting special law as a response to counter terrorism should comply with the obligation to clarity and accessibility to enhance speedy trial and to develop national and sub national counter terrorism strategies that seek to prevent terrorism and prosecute and punish those responsible for terrorist acts in a manner that is consistent with the promotion of and respect for human rights.²⁹ Thus developing the capacity of state's criminal justice system to respond to terrorism requires an approach that is integrated, coherent, sector wide, human rights friendly, constitutional supremacy based and sustainable.³⁰

2.2 State Terrorism

Many scholars argue that state terrorism has not been codified in international law as an illegal act. It nevertheless involves acts which violate international law, with the aim of terrorizing others through those illegal acts. A case of state terrorism, as such, was never put to the legal test, although acts that violated international law and were intended to terrorize were tried as war crimes. In this regard, state terrorism can be defined with reference to the illegality of the acts it involves, even though we cannot argue that state terrorism itself is illegal.³¹

State terrorism involves the deliberate targeting of individuals that the state has a duty to protect to invoke terror in a wider audience. The deliberate targeting of civilians, either in armed conflict or in peace-time, violates principles enshrined in the two bodies of international law that deal with the protection of human rights: international humanitarian law (IHL) and international human rights law (IHRL).³² Human rights are those rights which all citizens share under international law, both in peace-time and during armed conflict. The most fundamental of these

²⁸ Article 3 of the Anti-Terrorism Proclamation cited above at supra note 4

²⁹ Dandurand.Y, cited above at supra note 1 p.14

³⁰ Ibid

³¹ Igor Primoratz, *State Terrorism and Counter Terrorism*, center for applied philosophy and public ethics, (working paper No. 2002/3, University of Melbourne), p. 8

³² Id, p. 11

liberties are: the right to life; the prohibition of torture or degrading treatment or punishment; the prohibition of slavery and servitude; and the prohibition of retroactive criminal laws.³³

These prohibited acts include: killing prisoners of war; subjecting them to torture; and other degrading treatment or punishment. Many scholars even if not commonly but nearly holds an assertion that state terrorism to be the intentional use or threat of violence by state agents or their proxies against individuals or groups who are victimized for the purpose of intimidating or frightening a broader audience.³⁴ The direct victims of the violence are therefore not the main targets, but are instrumental to the primary goal of frightening the watching audience, who are intimidated through the communicative power of violence.³⁵

The intended effects of the violence are the achievement of specific political or political-economic, as opposed to religious or criminal, goals. R. Jackson and E. Murphy argue that terrorism is used by states internally and across state boundaries against their own populations as a means of maintaining order and quelling political opposition. This involves a range of activities, including disappearances, illegal detention, torture, and assassinations.³⁶ States also use terrorism externally in pursuit of specific foreign policy objectives, either by undertaking limited campaigns of terror against specific individuals or groups, often officials of that state, using acts such as assassinations and bombing campaigns, or by engaging in much more generalized campaigns of terror which are intended to destabilize whole societies.³⁷

Jackson also stipulates that by all accounts, state terrorism has been one of the greatest sources of human suffering and destruction of the past five centuries. Disturbingly, state terrorism remains as one of the single greatest threats to human and societal security and well-being today. Certainly, in comparison to the terrorism perpetrated by non-state insurgent groups, the few thousand deaths and injuries caused by terrorism from below every year pales into relative insignificance besides the hundreds of thousands of people killed, kidnapped, ‘disappeared’, injured, tortured, raped, abused, intimidated, and threatened by state agents and their proxies in dozens of countries across the globe.³⁸

³³ Ibid

³⁴ Richard Jackson and Eamon Murphy,(ed.) *Contemporary State Terrorism, Theory and practice*.(London and New York, 2010) p. 14.

³⁵ Ibid

³⁶ Id, p.32

³⁷ Ibid

³⁸ Id, 12

Even more disturbingly, government-directed campaigns of counter-terrorism in the past few decades have frequently descended into state terrorism by failing to distinguish between the innocent and the guilty, responding highly disproportionately to acts of insurgent violence, and aiming to terrify or intimidate the wider population or particular communities into submission. Consequently, the victims of state counter-terrorism have always vastly outnumbered the deaths caused by non-state or insurgent terrorism, including in the ongoing global war on terrorism.³⁹ Given that state terrorism is incontrovertibly far more prevalent and destructive than non-state or insurgent terrorism, it is surprising that it has not yet received the attention it deserves within the international relations.⁴⁰ States can never eliminate all of their opponents so they invariably target opponents randomly in order to intimidate both the wider opposition movement and the state's own supporters. Moreover, the state may have dual objectives to their terroristic violence: to eliminate opponents while simultaneously sending a message to other real or potential opponents.⁴¹

In our case also the issue of terrorizing by the state is observable under the veil of countering terrorism. In particular within the region under consideration by the reason of countering terrorism hundreds of thousands of opposition members and in many cases innocent people arrested, killed, 'disappeared', injured, tortured, abused, intimidated, and threatened by state agents and their proxies.

2.3 Reasons for Terrorism

Like the problem of lacking universally accepted definition of terrorism and terrorist acts; there is no also commonly agreed on reasons for which the acts of terrorism under taken. But among different reasons the following are the most commonly suspected once based on the organizations those take responsibility after the act and results of investigations. These reasons are: Religion, oppression, Historical grievances, Violations of international law, Relative deprivation, Hatred toward the global economic hegemony, Financial gain, Racism, Supporting sympathizers, Sensation-seeking and Communication and publicity. For more understandings let us briefly discuss these reasons.

³⁹ Igor Primoratz cited above at supra note 20 p. 13

⁴⁰ Ibid

⁴¹ Id, 7

2.3.1 Religion: religious fanaticism is an extreme sense of ideological zeal complemented by a focused and unrelenting set of activities that express the high dedication of one or more people to their own belief system(s). Radical religious Islamism has been identified as a root cause of terrorism. The Islamist attacks against civilians from Glasgow to Jakarta confirm that many Islamists are ideologically determined to engage in terrorism.⁴²

Mohammed Atta, a leader of the September 11, 2001 attacks, carried with him writings from the Holy Qur'an that urged him and others to stay firm in their desire to carry out the attacks and pursue the rewards of martyrdom.⁴³ As one Hamas fighter said, "Before I start shooting, I start to concentrate on reading verses of the Qur'an because the Qur'an gives me the courage to fight the Israelis."⁴⁴

2.3.2 Oppression: as Denny, Laurita M. explained terrorism can be the result of groups' portrayal of governments and their actors as oppressive. Terrorism, then, feeds on the desire to reduce the power of opponents.⁴⁵ In autocratic societies, military-occupied areas, or even in the international arena where political expression is limited, groups opposing the current state of affairs may engage in terrorism as a principal method of expression and not as a last resort.⁴⁶ Especially in the case of nationalist-separatist movements terrorists often invoke the unfairness of their treatment by governments that deprive them of identity, dignity, security, and freedom as the main reason for joining terrorist groups.⁴⁷ Chechen Black Widows are reported to retaliate against Russians for their own experience of rape by the Russian military or for the deaths of

⁴² Prus, Robert, *Terrorism, Tyranny, and Religious Extremism as Collective Activity: Beyond the Deviant, Psychological, and Power Mystiques*. *The American Sociologist*, (2005), 36(1), p. 47.

⁴³ Shahin, Wassim N. *Applying Economic Methodology to the War on Terrorism*, *Forum for Social Economics*, (2001). 31(1), 7-12

⁴⁴ Husain, Ed, *The Islamist: Why I Joined Radical Islam in Britain, What I Saw Inside and Why I Left*. New York: Penguin, (2007).

⁴⁵ Sprinzak, Ehud & Denny, Laurita M. *The Terrorists in Their Own Words: Interviews with 35 Incarcerated Middle Eastern Terrorists: Terrorism and Political Violence*, 15, (2003). 171–184;

⁴⁶ Ibid

⁴⁷ Ibid

their husbands and male family members and friends. Consequently, the Black Widows turn to terrorism as a way to reclaim their personal or family honor.⁴⁸

In the late 1800s, Andrei Zhelyabov, a leader of People's Will (a terrorist organization) and the architect of many political assassinations like the bombs that killed Czar Alexander II, resorted to terrorist activities as a promise to revenge the many crimes by the monarchist regime that he experienced directly. His favorite aunt was raped by her land master and it was ignored by the police; because he took part in a harmless protest against arbitrary grading practices, he was expelled from his university without right to reapply; and finally, he sat in jail for four months for sending a kindly note to an imprisoned friend. These feelings of oppression shaped and reinforced Zhelyabov's determination to use terrorism against the ruling elite.⁴⁹

2.3.3 Historical grievances: Tishkov Valery, explain that terrorists target governments and groups they view as responsible for historical injustices.⁵⁰ As Tishkov Valery argues that Chechen terrorists have defended their terrorist attacks by alluding to Russia's long-lasting rejections of Chechen desire for independence, and the old and cruel history of Russian invasion of Chechnya dating back to the 17th century.⁵¹ The Basque separatist movement ETA, Sikh extremists in India, the IRA, the ANC in South Africa, and pro-Palestinian terrorist groups have all looked for vengeance for historical grievances.⁵² Reports on Palestinian suicide bombers systematically refer to historical grievances, such as resentment, humiliation, sorrow, and the aspiration for vengeance and retaliation. Resentment and revenge are a major principle in the writings of the Shi'ite thinkers of jihad. Jihadists exploit collective narratives of humiliation and revenge to rationalize the need to kill themselves, civilians, and even fellow Muslims, as is the case in Iraq.⁵³

⁴⁸ McCauley, Clark, & Moskaleiko, Sophia, *Mechanisms of Political Radicalization: Pathways toward Terrorism. Terrorism and Political Violence*, 30(3), (2008), 415–433.

⁴⁹ Tessenorff, K. C. *Kill the Tzar! Youth and Terrorism in Old Russia*, New York: Atheneum, (1986).

⁵⁰ Tishkov, Valery, *Chechnya: Life in a War-Torn Society*. Berkeley: University of California Press, (2004).

⁵¹ Ibid

⁵² Clarke, Benjamin, *Responding to Terrorism*, Farnham, England: Ashgate, (2008).

⁵³ Moghaddam, Fathali, Mayhem, *Myths, and Martyrdom: The Shi'a Conception of Jihad. Terrorism and Political Violence*, (2007), 19(1), 125–143.

2.3.4 Violations of international law: according to this reasoning in some terrorist's mind, a wrong can be the violation of some basic right treasured by the terrorist. The right may have been infringed on by a historical incident, such as a war or multiple violations of international law like genocide and unlawful dispossession of local inhabitants.⁵⁴ The international rule of law is the standard by which all nations are subject to and bound by supranational legal covenants. Enduring conduct such as extended military occupation or foreign domination in violation of U.N. resolutions may be a major cause. According to Imre, Mooney, and Clarke, Palestinians demanded but were not granted justice through the U.N. and other legal channels.⁵⁵ Other examples of violations of international law include the failure of Britain to protect the rights of Palestinians after the Balfour Declaration of 1917, the failure of the Paris Peace Conference to grant Arab autonomy under the Treaty of Sèvres (1920), and the annexation of Palestinian territory by Jews in the 1940s and the resulting eviction of thousands of Palestinians from their land.⁵⁶

2.3.5 Racism: in this reasoning racism can be a powerful method for dehumanizing adversaries and accomplishing moral disengagement.⁵⁷ Gottschalk found that both Palestinian and Israeli terrorists draw on stereotypes and racism to dehumanize the other group. Similarly, the FBI-watched Aryan Brotherhood a group of devious bikers formed in U.S. prisons identifies with Nazi ideals as noticed with their Nazi symbols and has vowed to remove the Jewish and Black races out of the earth.⁵⁸

2.3.6 Supporting sympathizers: in accordance with this reasoning because terrorism is the weapon of the oppressed, an important goal is to push the stronger power into unleashing against the terrorists' perceived support base. Such acts of retaliation, cruelty, and counterterrorism often turn the stronger power into a support for sympathizers, like a recruiting driver for the terrorist

⁵⁴ Supra note 24 cited above

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Gottschalk, Michael, & Gottschalk, Susan, *Authoritarianism and Pathological Hatred: The Social Psychological Profile of the Middle Eastern Terrorist*. *American Sociologist*, (2004), 32, 38–59.

⁵⁸ Ibid

cause. For example, a chief Al Qaeda objective would have been to trigger U.S. retaliation so that the U.S. was seen as violently repressive.⁵⁹

2.3.7 Communication and publicity: as per this reasoning in essence, by killing adversaries or innocent civilians, terrorists seek to publicize their cause, communicate demands, air grievances to bulldoze authorities, sway the public policy agenda, or gain concessions. If publicity constrained or unsatisfactory to the group's tactical goals, the group's terrorist violence will probably escalate. After the British press and population reacted to the London terrorist bombings of July 7, 2005 and the failed attacks two weeks later with defiance and a stiff upper lip, Ayman al-Zawahiri, Al Qaeda's new No. 1 also called "the Egyptian doctor", felt compelled to issue additional threats through the Qatar-based Al Jazeera TV station.⁶⁰

2.4 Contemporary Counter Terrorism Laws.

The determination of States to take strong action against terrorism has raised a number of issues in relation to the need to strengthen procedural safeguards to protect individual rights.⁶¹ In deploying their counter-terrorism strategies, States must continue to adhere to the rule of law, including the basic principles, standards and obligations under criminal and constitutional law that define the boundaries of permissible and legitimate criminal justice activities against terrorism.⁶² Those boundaries tend to be articulated to a large extent in various aspects of criminal procedural law and laws regulating police powers.⁶³ Careful attention must therefore be paid when special counter-terrorism laws representing a departure from criminal law traditions are adopted.⁶⁴ It is necessary to be cautious when modifying

⁵⁹ Kelly, Michael J., & Mitchell, Thomas H, *Transnational Terrorism and the Western Elite Press: Political Communication and Persuasion*, (1981), 1(3), 269-296

⁶⁰ Oliver, Mark, Al-Qaeda Warns of More London Destruction. *The Guardian*, p. A1, (2005 August 4).

⁶¹ Dr. Scolastica, Omondi, "Balancing the constitutional rights and State Security in the context of terrorism threat and attack", *Quest Journal*, V. 3, issue 2, 2015, p. 22-44

⁶² K.J. Greenberg (ed.), "Prosecuting Terrorism: The legal challenge"; *The NYU review of law and security*, issue No. 7, (2006), p. 1-36.

⁶³ Ibid

⁶⁴ Dandurand, Y, cited above at supra note 1, p.23

normally applicable procedures in order to adapt them to the unique characteristics of terrorist crimes.⁶⁵

Any substantial modification of criminal procedure is likely to raise fundamental questions about the protection of constitutionally guaranteed individual rights, the safeguarding of the rule of law and the integrity and the fairness of the criminal justice process.⁶⁶ When national laws adopt special procedures to fight terrorism, particularly procedures that may potentially infringe on fundamental rights and freedoms, it is important to design safeguards to prevent any potential abuses.⁶⁷

Legislation is necessary to make police powers more flexible and useful while simultaneously setting boundaries to minimize overuse or abuse.⁶⁸ Y.Dandurand, in his book titled “Criminal Justice Response to Terrorism” explains that terrorism threatens both the rule of law and the fundamental freedoms of citizens and entire societies. At the same time, inappropriate counter-terrorism responses may also undermine important rule of law and human rights principles respecting human rights while countering terrorism is not only a matter of legal obligation but also essential to the ultimate success of any counter-terrorism strategy.⁶⁹ By the same sense United Nations in its treaty series explain its concern regarding human rights respect in countering terrorism as terrorism has a serious impact on human rights, with grave consequences for the enjoyment of the right to life, liberty and the physical integrity of victims and their families.⁷⁰ It can also weaken social institutions, threaten economic development, fuel conflicts and thus affect the rights of all citizens in countless ways.⁷¹

Yet, counter-terrorism measures that ignore or damage constitutional supremacy and human rights are self-defeating and unacceptable in a society guided by the rule of law and

⁶⁵ Ibid

⁶⁶ Dr, Scolastica Omondi cited above at supra note 61, p. 15

⁶⁷ Ibid

⁶⁸ Dandurand.Y, cited above at supra note 1, p. 24

⁶⁹ United Nations treaty series, vol. 660, No. 9464

⁷⁰ Ibid

⁷¹ Ibid

democratic values.⁷² Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions, caused primarily by State action, that interfere with fundamental freedoms, entitlements and human dignity. Human rights are universal, interdependent and indivisible.⁷³ Therefore; counter-terrorism efforts and enforceable human rights standards are not only compatible; they are mutually reinforcing.⁷⁴

Dr. Scollstica advice the states to provide an effective criminal justice response to terrorism, they need to have adequately functioning counter-terrorism legal regimes and criminal justice systems, as well as the related capacity to deal with potentially complex criminal cases and engage effectively in international criminal justice cooperation.⁷⁵ This requires a firm commitment by States to pursue common objectives at the national, sub regional and regional levels.⁷⁶

Developing the capacity of a State's criminal justice system to respond to terrorism requires an approach that is integrated, coherent, sector-wide, human rights-based and sustainable.⁷⁷ It is clear that an effective response to terrorism requires a justice system capable of functioning in an integrated fashion and relying on the strong contribution of all of its components, from the police, to the prosecution and defense bar, to the judiciary and the correctional system.⁷⁸ Effective coordination horizontally and in federal system vertically, across the system, remains one of the essential preconditions to the success of any such initiative. The rule of law requires that the laws of a State should be comprehensive, clear, certain, practical and accessible; they must be legitimate legislatively and politically, as well as in their application, and they must balance stability and flexibility.⁷⁹

⁷² Criminal justice through the prism of capital punishment and the fight against terrorism, (Bangladesh, 2010)

⁷³ Ibid

⁷⁴ Dandurand. Y, cited above at supra note 1, p.31

⁷⁵ Dr, Scolastica Omondi cited above at supra note 61, p. 17

⁷⁶ Ibid

⁷⁷ Dandurand. Y, cited above at supra note 1, p.33

⁷⁸ Ibid

⁷⁹ Dr, Scolastica Omondi cited above at supra note 61, p. 19

Chapter Three: Administration of Criminal Justice in Ethiopia

3. Administration of Criminal Justice in Ethiopia and the Anti-Terrorism law

Time brings various changes to the world which each nation-state could cope up itself to the impacts of the technological and political developments. These, economic, political, social and cultural circumstances, among others, have become compelling reasons that led many nation-states towards the federal form of government. Unlike a unitary state government, in which the legal relationship between the center and the local governments is regulated by a statutory law, in the federal form of government, however, the relationship between the federal government and the states is regulated by a written constitution.

The presence of a written constitution between the federal government and the states presupposes, among other things, the institutional structures within which the federation operate, separation of powers between and among the three branches of government: the legislative, executive and the judiciary, the guiding principles of the constitution that regulates the relationship between the people and the government. The federal arrangement presupposes the existence of a supreme federal constitution from which the federal government and the states derive their authority.⁸⁰

The 1995 FDRE Constitution, like any other federal constitution, provides for a federal state structure with nine member states making up the federation.⁸¹ It has thus, brought in to being two layers of administration i.e. the Federal Government on the one hand and self-governing Regional States on the other hand. The regional units are formally designated as National Regional States. The FDRE Constitution provides mechanism for the distribution of powers between the Federal Government and the Regional States. The distribution of powers stipulated by the Constitution pertains to the legislative, executive and judicial authority as purported to be divided between the Federal Government and the Regional States.⁸² The three branches (organs) of the government (i.e. legislative, executive and judiciary) are established at both levels of the government having their own powers and responsibilities defined by the constitution.⁸³ It is those constitutional principles which are the base for both federal and regional state institutions to

⁸⁰ George Anderson, (2008). *Federalism: an introduction*, Forum of Federation, Oxford University Press. P 55

⁸¹ Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1st year, No.1, *Neg. Gaz*, 21st August 1995, Article 47.

⁸² FDRE constitution cited above at supra note 82, Art. 50(2)

⁸³ *Id*, article 47

perform their duties. Among these institutions which are always supposed to perform their duties in line with constitutional principles justices sectors which are in contact with the daily life of the society are at forefront. In administering justice system, criminal justice administration should be considered in special manner due to the mal-administration of criminal justice system in most cases result in a direct clash with fundamental rights and freedoms enshrined in chapter three of the FDRE constitution, which is supreme law of the land.⁸⁴ Despite the fact that the matter of respecting fundamental human rights and freedoms stipulated under chapter three of FDRE Constitution is the mandate of all institutions; the responsibility of criminal justice administration sectors is more decisive as they stand in a nearby distances to the most stated rights under chapter three of FDRE Constitution. Among the criminal justice administration sectors those are decisive to insure the constitutionally guaranteed fundamental rights and freedoms, police institutions are those can be called at first place because of the access they have to the holders of the rights. One of the mechanism through which police institutions insure the protection of these rights is, by abiding to the procedural rights of suspects enshrined in the constitution during investigation. In the upcoming session police institutions and investigation of crimes in Ethiopia will be dealt with.

3.1 Police Institutions and Investigation of Crimes in Ethiopia.

The police have the general function of maintaining peace, security, orders of the state and the people as a whole. The cumulative reading of the purposes of police institutions establishment proclamations shows that, the Federal Police Commission at federal level and the regional police commissions at regional levels are established for the purpose of serving the public, by respecting, ensuring the observance of human and democratic rights, and maintaining peace and welfare of the public at large. For instance, one of the objectives of the Federal police commission as stated in the establishment proclamation No. 313/2003 is to maintain peace and security of the public by complying to and enforcing the Constitution and other laws of the country, and by preventing crime through participation of the people.⁸⁵

Based on the federal structure of the Ethiopian government, like other governmental sectors the Ethiopian criminal enforcement jurisdiction is dual in principle. These are the Federal Criminal Enforcement Jurisdiction and Regional Criminal Enforcement Jurisdiction. As clearly mentioned

⁸⁴ Chapter three of the FDRE constitution deals with Fundamental Rights and Freedoms and Federal and Regional Legislative, Executive and Judiciary are at duty to respect and enforce these rights.

⁸⁵ Proclamation No. 313/2003, Federal Police Commission Proclamation, 9th year, No.30, *Neg.Gaz.*, 4th January, 2003, Art.6

in the Federal police establishment proclamation, the Federal Police Commission is in duty to prevent and investigate crimes that fall under the jurisdiction of Federal Courts, prevent crimes against the interests and institutions of the Federal Government and prevent violence against public peace, hooliganism, Terrorism, trafficking in and transferring of drugs as exclusive jurisdiction.⁸⁶ On the other hand the Regional Police Commissions are exercising the criminal enforcement jurisdiction both those criminal legislative jurisdictions are belongs to the Federal Government and Regional States.

From the above description of the criminal enforcement jurisdiction of the Federal Police Commission establishment proclamation, we can easily consider that by enforcement not all crimes enumerated in the Criminal Code fall under the Federal Police Commission in the area of the criminal execution jurisdiction.⁸⁷ Thus, the principle follows the duality of criminal enforcement jurisdiction, because the Federal Government and the Regional States have their own criminal law-making Organs, and criminal law-enforcing Organs.

As ONRS is one of the regional states make up the federation in accordance with article 47(1) of the FDRE constitution, ONRS police commission is also one of the criminal justice actors at regional level. Accordingly, the Oromia Regional State Police Commission has many powers and duties in relation to criminal enforcement jurisdiction. In accordance with Regional proclamation No.163/2011 that stipulates the power and duty of ONRS police commission as one of the executive organs. Among the powers and duties of the commission; it prevents occurrence of criminal act and traffic accidents; causes the criminal investigation to be conducted in accordance with the constitutional and legal rights of the suspected and detained persons; prevents criminal acts against the interest of government and its organizations; analyses cause of crime and devises means of prevention, educates the community to protect themselves from criminal acts, publicizes selected criminal investigation cases to the community; investigates crimes which fall under the jurisdiction of the Regional Courts in collaboration with public prosecutor; causes proper handling of criminal investigation, and traffic accident files and various documents in collaboration with the public prosecutor and concerned bodies; collects and

⁸⁶ Id, art. 7(2,3 & 4)

⁸⁷ Ibid

examines information and statistics regarding crime, transfers to concerned body as it is necessary.⁸⁸

As clearly stipulated under Proclamation No. 163/2011 one of the duty and responsibility of Oromia Police Commission is investigating crimes which fall under the jurisdiction of the Regional Courts in collaboration with public prosecutor and causes proper handling of criminal investigation. But, according to article 2(11) of Anti-terrorism law police refers to Federal police or regional police that is delegated by Federal police for the execution of the crimes stated under Anti-terrorism law and under article 28(1) of the same law, it attaches a preconditions those terrorism cases investigating police officers have to fulfill. Taking the clearly observable disparities between the Anti-terrorism law and its practice in ONRS police as a reason, the critical examination of the law and practice will be dealt bellow.

3.2 Investigation of Terrorism; the Law and the Practice in ONRS

The police and other law enforcement officials face particular challenges in responding to terrorism within a rule of law, under umbrella of constitution and human rights framework.⁸⁹ Capacity limitations often emerge when the police face a terrorist conspiracy, particularly one that is inter-national in nature.⁹⁰ Regarding its investigation, terrorism investigations are resource intensive; often require fully equipped and well trained officers.⁹¹ Additionally, investigations of terrorist acts are usually very complicated and it is difficult to gather evidence and apply laws.

Much of the relevant evidence may have been destroyed or simply be unavailable, and errors may occur in the investigation and prosecution. To minimize the problems countries device different mechanisms, to take as example, in the United Kingdom all terrorism cases have a Mandatory Preparatory Hearing. These hearings allow an early decision and an immediate appeal on disputed points of law and resolve questions concerning the continued detention of

⁸⁸ Proclamation No.163/2011, Reorganization and Redefinition of the Powers and Duties of the Executive Organs of the Oromia National Regional State, *Megeleta Oromia*, Finfinnee, April 9, 2011, Art.34(1-23)

⁸⁹ Prevention, Detection, Investigation and prosecution of Terrorism Acts: Resource Material series No.71 (2006)

⁹⁰ Ibid

⁹¹ Ibid

the defendants.⁹² It is supposed to meet these purposes that in some cases, the Ethiopian Anti-terrorism law gives special attention to the mechanism of its investigation by deviating from ordinary criminal investigation. The Ethiopian Anti-terrorism law provides in a first place the definition of the police institution. According to the proclamation, police refers to Federal Police or a Regional Police that is delegated by Federal Police to execute or enforce crimes stipulated under this Anti-terrorism law.⁹³ Additionally, the Anti-terrorism law obliges the Federal Police Commission to organize separate and specialized department that follow up terrorism cases and as the same time mandated the Federal Police Commission to certify individual police officers those fulfill the criteria set to involve in the investigation of terrorism cases.⁹⁴

Article 28(1) of the Anti- terrorism law has provided a criterion for an individual police officer who could involve in the task of investigating a crime of terrorism. Accordingly, for an investigating police officer to involve in the investigation of the crime of terrorism, he has to fulfill the following preconditions. These are: should have more than five years of relevant work experience, took appropriate training, be hard working and have obtained testimonials from senior officials of the Federal Police as to his professional competency and ethics.⁹⁵

Based on the delegation scope to the regional police and the criteria set by the Anti-terrorism law to individual investigating police officers, many of practicing professionals and intellectuals raise questions on the un-clarity of the law. Some of these questions are: what is the scope of delegation from Federal police to regional police? And, what is the legal and practical relevance to attach the issuance of the qualification certificate of investigating officer to Federal Attorney General?

Regarding the first question that concerns the scope of delegation to regional police, two principally the same but, with slight difference arguments emanate from the un-clarity of the law competes. One of the argument says that, according to the reading of article 2(11) of the Anti-terrorism law, the regional state police commissions are institutionally excluded from any

⁹² Ibid

⁹³ Ethiopian anti-terrorism proclamation, cited above at supra note 4, article 2(11).

⁹⁴ Id, article 28(3)

⁹⁵ Id, article 28(1)

involvement concerning terrorism crime unless they are duly delegated by Federal Police Commission.

While other argument says that, the delegation needed for regional police under article 2(11) of the Anti-terrorism law is the delegation to investigate terrorism cases, so that, it is a regional police commissions department of crime investigation those have to be delegated with the power of investigating terrorism not the whole regional states police institutions and officers. A group with the second line of argument substantiates their arguments by the reason that, as maintaining peace, security, orders of the state and the people as a whole is the main and crucial objectives of the establishment of the police institutions both at Federal and Regional levels. It is quite clear that, crime of terrorism endangers this crucial objective of the police institutions, refraining from involvement by the reason of not delegated defeats this very purpose.

What has to be the base for negotiating the above raised competing arguments based on the scope of delegation is, the critical reading of the article 2(11) of the Anti-terrorism law itself. Accordingly, police is defined as Federal police or Regional police delegated by Federal police. Therefore, it is not controversial to deduce from the plain reading of this article; a police that is empowered to enforce Anti-terrorism law institutionally is Federal police commission and the Regional police commissions if delegated only.⁹⁶

Here, what has to be clearly understood from the reading of article 2(11) of Anti-terrorism law, the term ‘police’ refers to institution not individual, the institution holds individual police officers within it. Since the delegation provided for Regional police commissions would automatically empower the departments within it and individual officers accordingly, so that, it is safely possible to conclude that, the delegation required in this context is all inclusive delegation for regional states police commissions.

Regarding individual criteria required to investigate crime of terrorism, article 28(1) (a) and (b) of Anti-terrorism law provides four cumulative criterions to participate in the investigation of terrorism cases. These criterions are: (a) having more than five years of relevant work experience, (b) taking appropriate training, (c) being hard worker and (d) getting obtained testimony from senior officials of the Federal Police Commission that show he/she is professionally competent and ethical. The necessity for setting these criterions under Ethiopian Anti-terrorism law emanates from its purposes of enactment. As clearly stipulated under the

⁹⁶ Article 2(11) of proclamation No. 652/2009, cited above at supra note 4

preamble part of the proclamation, one of the purpose for which this law is enacted is, to have adequate legal provisions those are lacked by existing law and to set up enhanced investigation and prosecution system. One of the mechanism through which setting up enhanced investigation system is by selectively assigning: experienced, well trained, diligent and ethical officers. Therefore, investigating terrorism with officers those can fulfill the criteria set, enhances the success of countering terrorism in civilized manner and minimize the risk of violating the fundamental rights and freedoms of the society under the guise of countering terrorism.

Taking the criterion set under article 28(1) (a) and (b) of Anti-terrorism law in to consideration let us examine the practical cases in the ONRS whether or not investigation officers have been involving in the investigation of terrorism are qualified as per the requirement of the proclamation. In this regard the first practical case in ONRS that is investigated as terrorism case is the case known by the file name Muhamedamen Abba Dura et.al. This case is happened in Jima Zone in the year 2011 two years after the enactment of the Anti-terrorism law of Ethiopia. The case was investigated as a terrorist case in which the defendants were charged under Anti-terrorism law and convicted under the same law.⁹⁷ The police investigation file of this case shows that, the investigation was under taken by the collected criminal investigation police officers and public prosecutors from Woredas, Zones and Regional level of ONRS.

Actually, the reason and the criteria for collection of crime investigation police officers and public prosecutors from different levels of the Region is not to fit the criteria set under Anti-terrorism law, rather, it was to manage the vast case of the time and the criteria of selecting officers were previous performance quality and experience based.⁹⁸ Regardless this and others massive terrorism filed cases handled by ONRS crime investigation police officers there is no even a single officer who has been qualified as per the requirement of the proclamation. This means, Oromia Regional State crime investigation police officers at all levels are massively involved in the investigation of terrorism cases without fulfilling the needed qualifications.

Having this in mind, the writer has interviewed investigating police officers who in various occasions participated in investigating a crime of terrorism whether they are qualified to involve in the investigation as per the requirement of the proclamation.

⁹⁷ Muhamedamen Abba Dura et.al Vs ONRS public prosecutor western bench, file No. 127012,

⁹⁸ An interview with chief commander Assefa Genet, criminal investigation process owner at Oromia police commission, 13/07/2016, at, 10:40 am.

Being doubtful about the cumulateness of the criteria, one of the officers who have been participated in the investigation of terrorism case of Jima Zone I have mentioned above respond that, at a time he is not fully aware of this criterion and also, he did not understand in a manner they are cumulative. He respond that, he have been participated in the investigation of terrorism case by the understanding that with the exception of taking appropriate training he can fulfill all other criterion set per the proclamation he has a thought that lack of single criteria and not having qualifying certificate could not prevent him from involving in the investigation.⁹⁹

Another interviewee who took part in the investigation of terrorism charged file of Sheik Sudi Ahmed et.al. Vs Oromia Public Prosecutors responds that during investigation time he was not aware of the mandatory criterions those restrict investigation officer from involvement totally. He explains that as he has been observed these mandatory criterions, he regrets that had it been he has known the need for such criterion in advance, he would have not participate in the investigation.¹⁰⁰

Another crime investigation police officer whom I have interviewed responds that he is fit to investigate terrorism cases because he can fulfill the criteria set under the Proclamation including taking of appropriate training stating that as he has taken four months of training on the title ‘investigation of international crimes’ including terrorism by Federal Police Commission.¹⁰¹ He shows me the certificate he has taken for the successful completion of the training but not requesting the necessary delegation from federal police commission and not certifying him with the certificate that is required as per the Anti-terrorism law to involve in the investigation of terrorism cases is the problem of cooperatively working over terrorism cases by Federal Police Commission and ONRS Police Commission he said.¹⁰²

All investigation police officers whom I selectively interviewed basing on their participation in the investigation of terrorism charged files commonly argue that there is no any department organized in a special manner to follow terrorism matters in accordance with article 28(3) of the Proclamation within the Region. This shows that there is no special consideration given for the investigation of terrorism cases as the proclamation requires so. The lack of clarity of the Anti-terrorism law concerning delegation, sufficient training and absence of cooperation between

⁹⁹ An interview with Commander Merga Gerbi, criminal investigation work process owner at East Wellaga Zone, 01/06/2016, at, 10:50 am.

¹⁰⁰ An interview with Inspector Abdulkedir Aman, on 16/06/2016, at, 11:10 am

¹⁰¹ An interview with Sajin Birhanu Tedesse, on 13/06/2016, at, 5:10 pm

¹⁰² Ibid

Federal Police Commission and Oromia Regional State Police Commission on the issuance of certificate of competence for those who qualify to investigate terrorism crime on the other hand violating the constitutionally guaranteed rights of suspects in particular, the right to be brought before the court within 48 hours.¹⁰³

A person who asked me not to explain his name in this research paper for the fear that they may arrest him again for speaking this say that, he was detained for a month and eleven days without consulting any court for the mere suspicion of having relation with terrorist organization OLF but finally, he has been released by police because the investigators have no evidence to prove that. One of the advocates sadly says that there are many circumstances in which defense lawyers are not allowed to visit and consult the clients those suspected of terrorism during investigation for 20-30 days of their arrest.¹⁰⁴ He added that, the investigating officers were not volunteers to respond for any legal questions during investigation by the mere reason that the case is terrorism. He solely explains the fear that, unless any corrective measure is taken and these investigation officers trained well the violation of the fundamental rights and freedoms of not only the potential suspects but also that of innocent citizens is at risk.¹⁰⁵ Another private lawyer argue that what has been happening in Oromia concerning persons suspected with terrorism and a fashion of arresting people in mass here and there is beyond the object of enactment of the Anti-terrorism law in general and the lack of sufficient training and ignorance of investigating police officers the constitutionally guaranteed fundamental rights of the persons suspected in particular.¹⁰⁶

From the above discussion of the Anti-terrorism law and the practice in Oromia Region regarding investigation of the crime of terrorism, we can conclude that the constitutionally guaranteed human rights of the suspected persons are violated due to the disparity between the law and the practice. This disparity is clearly risking and equivocally violating the constitutionally guaranteed rights of the persons suspected of terrorism by: detaining them illegally, blocking the right to speedy trails, undermining their right to be brought before the court of law within 48 hours and denying in an irreversible manner the right to bail during investigation using their lawless authority.

¹⁰³ Article 19(2 & 3) of FDRE constitution cited above at supra note 82.

¹⁰⁴ This advocate refused my interview because of the fear that if by any means his name found after this idea he may snatched his license and risked for that matter I do promise not to explain his name but the case only.

¹⁰⁵ Ibid

¹⁰⁶ An interview with obbo Kemal Kurkura attorney at law on 21/07/2016 at, 4:10 pm

3.3 Power of Prosecution in Ethiopia

The Federal Attorney General is one of the Federal institutions that take part in criminal enforcement task at Federal level representing Federal Government in criminal matters. Thus, it's the function of the General Attorney to prosecute all cases that fall within the jurisdiction of federal courts.¹⁰⁷ In addition to prosecute criminal matters that fall within the jurisdiction of Federal courts the General Attorney may order The Federal police to undertake investigation where it believes a crime has been committed, give the necessary instruction regarding investigation, or order discontinues of the investigation.¹⁰⁸

Parallel to the Federal Government, the States have their respective criminal enforcement actors. The Regional criminal justice enforcement agencies are supposed to carry out their functions in accordance with the power conferred on them by their respective Region constitutions. Despite the fact that, the FDRE constitution does not separate between the Federal and states criminal enforcement jurisdiction, there are some proclamations enacted by the Federal government which retain an exclusive power of enforcement to the federal government on certain criminal matters. Thus Regional states and their criminal justice administration sectors are devoid of enforcing these criminal matters unless empowered through delegation. The Anti-terrorism law is one example of that federal government's proclamation which denies regional states to exercise enforcement power on crimes related with terrorism unless delegated.¹⁰⁹

Based on the relevant regional law on which their duties are stipulated specifically, the Regional Justice Bureau has many powers and functions. To take the ONRS as example, Proclamation No. 132/2007, A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of Oromia Regional State, Art.16 enumerates the powers and duties of the Oromia Justice Bureau. The powers and function conferred on the Oromia Justice Bureau by this proclamation, among others include: guardianship of the constitutional system and the rule of law, protection of human rights and fundamental freedoms, delivery of legal advice and legal education, drafting of laws and comment upon the draft laws, consolidation and codification of the regional laws.

¹⁰⁷ Proclamation No. 943/2016, Federal Attorney General Establishment Proclamation, 22nd year, No.62, *Negarit Gazeta*, 2nd May, 2016, article 6(3).

¹⁰⁸ *Ibid*

¹⁰⁹ *Id*, article, 7

The parallel existence of the Attorney General at the federal level and Justice Bureau at the States level indicates the duality of criminal enforcement jurisdiction of the Criminal Code and other federal criminal legislations on one hand and the ostensible state criminal laws on the other hand. The State Justice Bureaus enforce the Federal criminal laws concerning crimes committed within their respective jurisdictions. In such cases, delegation becomes necessitated if the relevant laws require so. As the Federal Attorney General represents federal government on criminal issues and as far as Anti-terrorism law is federally legislated law the Federal Attorney General is provided with a duty to organize a special department that can follow terrorism cases under proclamation No.652/2009.

In accordance with this proclamation, the roles of public prosecutors in prosecuting terrorism cases under the Anti-terrorism law of Ethiopia and its practical application in the ONRS is the subject of critical examination in the upcoming session.

3.4 Prosecuting Terrorism; the Law and the Practice in ONRS

The Ethiopian Anti-terrorism law doesn't define the prosecution office as an institution like it did in the cases of judiciary and police institutions. This lack of definition as to which prosecution office under take the prosecution of terrorism concerned cases by the Anti-terrorism law is playing negative role for the inconformity between the law and the practice. Remaining silent about the issue of office of prosecution the Ethiopian Anti-terrorism law sets criteria for individual public prosecutor to involve in the prosecution of terrorism cases.

The Anti-terrorism law clearly under article 28 provides for the criteria that individual prosecutor has to fulfill to involve in the prosecution of terrorism cases. This criteria set for the prosecutor are principally the same with the criteria provided for the individual investigating police officers with the exception of the source of authority from which testimonial certificate is provided. Accordingly, the individual prosecutor to involve in the prosecution of terrorism cases has to have; more than five years of relevant work experience and the appropriate training and be hard working; and obtained testimonials from the relevant senior officials of the Attorney General as to his professional competency and ethics.¹¹⁰

From the above criteria one can clearly understand that an individual prosecutor to involve in the prosecution of terrorism has to qualify with four criteria which are cumulative. One of the

¹¹⁰Article 28 of Ethiopia anti-terrorism law, Proclamation No. 652/2009

qualifications needed is having more than five years of relevant work experience. Under this criterion two issues are subject to debate among the professionals. These are whether a five year work experience is included or not and the other issue is regarding the term relevant work experience in which some professionals argue that relevant work experience means being in the prosecution institutions¹¹¹ while others argue that relevant work experience should mean all working experience in legal profession.

The other qualification needed for public prosecutor to involve in the prosecution of terrorism under Ethiopian Anti-terrorism law is having appropriate training over the issue. Here also a question of clarity rise by different lawyers as to the length and institutions those are supposed to give the so called appropriate training. Most lawyers argue that at least minimum hour of training has to be set and a body or institutions that provide the training have to be organized separately. The third mandatory qualification that public prosecutor has to fulfill to involve in the prosecution of terrorism cases is he/she has to be hard working. As this criterion is objective and can be clearly measurable it is not subject to debate.

The fourth and the last quality that public prosecutor has to fulfill to participate in the prosecution of terrorism cases is obtaining testimony as to his professional competency and ethics from relevant senior officials of the Federal Attorney General. On the fourth criterion most public prosecutors (i.e. public prosecutors of ONRS) question that the attachment of professional competency and ethical testimony certification to Federal Attorney General only excluding regional justice bureaus is not rational and do not take into consideration the Federal system of the country with self governing regional states. Taking the above stated criteria of the law with all its clarity and complexity issues now let us consider the practice in the ONRS in this regard.

Before discussing the practical aspect of the prosecution of terrorism in ONRS, it is better for clarity to see some legal issues that revolves around the source of authority to prosecute terrorism crimes in the regional states and whether the anti-terrorism law authorizes the General attorney with power of delegation to prosecute terrorism to regional justice bureaus and regional public prosecutors. Regarding the source of authority to prosecute terrorism as I have previously mentioned the Anti-terrorism law does define neither Federal nor Regional prosecution institutions. Rather the Anti-terrorism law under article 28 lists cumulative criteria that

¹¹¹ An interview with public prosecutor Obbo Ayano Warsamo, 15/06/2016, at 2:35 pm, obbo Ayano argue that since the proclamation intention is to select best prosecutors with the experience from among prosecutors it doesn't include lawyers from outside prosecution institutions.

individual prosecutors have to qualify with to participate in the prosecution of terrorism cases. And under the same article Federal Attorney General is authorized to give testimonial certification and organize a separate specialized department which follows up terrorism cases.

The disagreement comes here; some practicing professionals argue that the authorization of the Anti-terrorism law for the Federal Attorney General to give testimonial certificate of professional competency and ethics to public prosecutors and the mandate to organize separate department that follow up terrorism cases means the Ministry is conferred with all powers regarding the prosecution of terrorism throughout the country. Therefore, regional states justice bureaus have to have delegation from Federal Attorney General to involve in the prosecution of terrorism cases.¹¹²

On the other hand some practicing prosecutors argue that the Anti-terrorism law does not define prosecution office institutionally means no institution solely mandated to follow its prosecution alone both at Federal and State levels rather any prosecutor at any level that can fulfill the criterion set under the Anti-terrorism law can prosecute terrorism cases without any delegation from Federal Attorney General.¹¹³ The existing prevalent practices tend to incline to the first line of argument. Nearly in all of the above discussed practical cases the Oromia Justice Bureau has requested the Ministry of Justice for delegation in a written letter and the Ministry has delegated its power of prosecuting terrorism either by specifically stating the name of individual prosecutors or by referring to the Justice Bureau of the Region in a general manner. See appendix number one.¹¹⁴

Regarding its particular, all delegation letters from Federal Attorney General to Oromia Justice Bureau over the cases of terrorism have a restrictive clause that the delegation is only for the case(s) the delegation of which is requested and attach a duty to report the final decision over the case(s). In the case known by file name Sheik Sudi Ahmed et.al Vs ONRS Public Prosecutor Southern Bench in which the suspects were charged by terrorism under article 3(4 & 6) of the Anti-terrorism law 4 Southern Bench Regional Prosecutors where delegated to follow the case by name from Federal Attorney General.¹¹⁵

¹¹² An interview with obbo Afawork Tefesa, Regional public prosecutor at western Oromia bench, on 02/06/2016, at, 10:30 am

¹¹³ An interview with obbo Mulisa Abdisa, the acting process owner of investigation and prosecution work process at Oromia Justice Bureau, on, 25/05/2016, at, 2:10 pm.

¹¹⁴ For more understanding I have attached the sample of the Amharic written letters of delegation request from Oromia Justice Bureau and the delegating letters from Federal Ministry of Justice as an appendix.

¹¹⁵ Letter No.02/ds-775/2004 written on sene 28, 2004 E.C, from Federal Attorney General to Oromia Justice Bureau listing the prosecutors name, Kedir Kerant, Safayo Guye, Habib Amano and Abdush Hussein.

In the case named by Nabel Omer et.al Vs ONRS Public Prosecutor in which the defendants were charged under article 4 of Anti-terrorism law for the alleged incitement of terrorism with the intent to advance religious purpose, the Ministry of Justice has delegated its power by specifically mentioning the name of the public prosecutors who have to follow the case.¹¹⁶ On the other hand, in the case of kenea Chucho et.al¹¹⁷ and Bikila Tekle et.al¹¹⁸ Vs ONRS Public Prosecutor the delegation has been given to the justice bureau without mentioning any individual prosecutors' name.

Another unique issue in the prosecution of the terrorism case in Oromia is a prosecution under gone by the ONRS public prosecutors without any delegation from Federal Attorney General. In the case known by Muhamedamen Abba Dura et.al Vs ONRS Public Prosecutor in which the defendants were charged under article 3(2, 4 & 6) of the Anti-terrorism law neither the Oromia Justice Bureau nor an individual public prosecutors was delegated.

Regarding delegation, there are different arguments among practitioners. One of the arguments is that, the existing practice of requesting and giving delegation between the Oromia Justice Bureau and attorney General has no legal bases.¹¹⁹ They strongly argue that the spirit of the provision is not all about delegation; rather it is all about setting the preconditions required for an individual public prosecutor to involve in the prosecution of terrorism cases.¹²⁰ They added that the Federal Attorney General is authorized under article 28 of the Anti-terrorism law to certify public prosecutors based on the criteria provided therein.¹²¹

Having this disparity between the law and the practice in mind, the researcher has interviewed the Oromia Justice Bureau prosecutors who in various occasions involved in prosecuting terrorism cases as to whether they are qualified under the law to entertain terrorism cases.

The responses are different. Regarding certification all prosecutors commonly agree that no one is certified yet but they do give different reasons why they follow the cases without fulfilling the criteria set under the proclamation concerned. Some of them respond as they have ordered by the officials of the Office with a promise that the office would provide him/her with required

¹¹⁶ Letter No. 02/83/2005 written on Tikimti 14, 2005 E.C, from Federal Attorney General to Oromia Justice Bureau listing the eastern bench prosecutors of the time, ato Wakushe Dule, ato Muhammed Ziyad, ato Adugna Debela and ato Dereje Lagesa.

¹¹⁷ Letter No.07/dh-1530 written on hamle 07, 2006 E.C, from Federal Attorney General to Oromia Justice Bureau.

¹¹⁸ Letter No.07/ds-1479/2006 written on sene 24, 2006 E.C from Federal Attorney General

¹¹⁹ Obbo Mulisa Abdisa, supra note 123 cited above.

¹²⁰ An interview with obbo Guyo Huka Regional public prosecutor at southern bench of Oromia, on 15/05/2016, at, 2:00 pm

¹²¹ Ibid

certificate by dealing with Federal concerned authority if requested.¹²² Truly speaking this reasoning is not supported by any legal provision, not logical and it cannot be immune the prosecutor from responsibilities that can follow. Others consider the letters of delegation written from Federal Attorney General in which his/her name is listed as the certificate that authorizes them to follow the cases of terrorism.¹²³ Concerning this reasoning as far as the Regional Justice Bureau that is requesting delegation and the Federal Attorney General providing delegation have no legal ground and it is an appeal made to authority less authority.

Still the worst reasoning is some of the prosecutors respond that they followed the cases of terrorism without fulfilling the criteria set by law by orders of the officials the refusal of such order may result to risk of losing their job.¹²⁴ All prosecutors commonly argue that they are following terrorism cases without sufficient training and necessary certification that in doing so there might be violation of basic rights of the suspects and if continued by the same way they do have a potential fear that the purpose for which the Anti-terrorism law is enacted would not be hit its targets.

There are indications that the counter terrorism law is being used beyond the purpose for which it is enacted and the trend of involving in the prosecution of terrorism cases by ONRS prosecutors by whatever reasons without fulfilling the criteria set by the concerned law is ruthlessly violating the fundamental rights of the suspect those are constitutionally guaranteed.

The indication is that a very surprising numbers of suspects from a single Woreda or Zone are charged under Anti-terrorism law as terrorist. Leaving other cases which are not considered by this research, the number of cases and suspects over which the delegation is requested by Oromia Justice Bureau and provided by Federal Attorney General and accordingly sued as terrorist are fear full. To support this argument by the practical cases, by the single letter of delegation for the case known by file name Sheik Sudi Ahmed et.al Oromia Justice Bureau is delegated to sue 90 suspects in two files from single woreda Of Gedeb Hasasa as terrorist. The letter of delegation known by file name Marema Sakedu et.al holds 10 files and 137 suspects from West Wallega Zone only at single moment to be sued as terrorist.

¹²² An interview with obbo Afawork Tefesa cited at supra note 122, who institute a charge under anti-terrorism law in the case of Muhamedamen Abba Dura et.al. Vs ONRS public prosecutor western bench

¹²³ An interview with obbo Kedir Kerant, on 25 of May 2016 at, 9:35 am ,obbo Kedir Kerant is one who institute charge of terrorism on the case of Sheik Sudi Ahmed et.al Vs ONRS Public Prosecutor Southern bench

¹²⁴ An interview with obbo Safayo Guye, Regional public prosecutor at southern bench, 15/06/2016,2:35 pm

Another letter of delegation known by file name Kanea Chucho et.al holds two files and 85 suspects from two Woredas of West Shewa Zone to be sued as terrorist. Accordingly Oromia Justice Bureau charged all suspects under Anti-terrorism law. What is more surprising in the above cases is only one person convicted under Anti-terrorism law out of 312 suspects charged under Anti-terrorism law. More than half of the defendants were acquitted due to lack of evidence that proves they have committed any crime and others are convicted under the criminal code for ordinary crimes.

One of the negative impacts of this prosecution is, these all suspects were denied their bail right by the reason that they were charged under Anti-terrorism law. However, most of the accused convicted under the criminal code were convicted under bail able crimes. For the sole reason they were charged under terrorism law, while their cases fall under the ordinary criminal code, they were denied their constitutionally guaranteed bail right and incarcerated for up to a year.

On the other hand the issue of none uniformity in the prosecution of terrorism cases at Regional and Federal levels is subject of dialogue. A number of prosecutors question why some terrorism cases without any ground and reasoning taken to Federal level while the prosecution of other terrorism cases under going massively in the Region by Regional prosecutors at Oromia Regional State Supreme Court by the authorization of Attorney General.

Having in mind, the responses of the ONRS prosecutors those have been participating in prosecution of terrorism cases, the writer interviewed Oromia Justice Bureau Officials regarding, the source of authority to prosecute terrorism and if there are Regional prosecutors who are made ready with necessary qualification as required by the Anti-terrorism law by the Bureau? In answering the question of authority to prosecute terrorism within the Region two competing arguments raised.

The first argument is requesting delegation from Federal Attorney General for each case as the source of authority.¹²⁵ In fact this argument is criticized by many professional and practicing lawyers' for its shortcomings of legality. The second argument regarding source of authority to prosecute terrorism is Regional proclamation No. 163/2011 a Proclamation to Provide Reorganization and Redefinition of the Powers and Duties of the Executive Organs of the ONRS. Under this proclamation Oromia Justice Bureau is one of the Executive Bureau whose

¹²⁵ An interview with Obbo Kasim Galgelu the actual process owner at Oromia Justice Bureau in the department of criminal investigation and prosecution, on 12/07/2016, at, 2:10 pm.

power and duty is determined. One of the duties of the Oromia Justice Bureau provided under the proclamation is the prosecution of crimes falling under the jurisdiction of the Regional courts. Therefore, the source of authority to prosecute terrorism emanate from this proclamation according to this argument.

Under article 22(19) of the Proclamation No.163/2011 one of the powers of the Oromia Justice Bureau provided with is the prosecution of criminal cases fall under the jurisdiction of ONRS Courts. Since Oromia Supreme Court have constitutionally delegated jurisdiction to entertain terrorism cases this jurisdiction of the court automatically confer the Regional prosecutors the power to prosecute terrorism at the same level.¹²⁶ Even if this argument and reasoning have legal base and logical in comparison with the practical first argument it is not in practice in the Region the prosecution is undergoing either by delegation or without any delegation as explained above based on the cases.

Finally from the above discussions and practical cases one can easily understand that; the trend of centralizing terrorism crime in to Federal level, the lack of clarity of the Anti-terrorism law in the areas of institution to prosecute terrorism, the sort of experience needed that qualify to prosecute terrorism and unidentified types of training and length of time needed to complete such a training is complicating the issues of prosecuting terrorism in ONRS. The worst of the entire practical scenario discussed above undergoing within the Region disregarding the legal authority and going out of the criteria set by the law is critically violating the fundamental rights and freedoms of the suspects and in a direct clash with their constitutional rights of bail during lengthy litigation.

Hence, the Oromia Justice Bureau is provided with authority to prosecute all crimes those falls under the jurisdiction of the Regional Courts according to proclamation No. 163/2011 article 22(19) there is no exception for the crime of terrorism to request delegation from Federal Attorney General. Rather it is better and legal for Oromia Justice Bureau to request qualifying certificate for its prosecutors those can fulfill the needed criteria from Federal Attorney General in advance in accordance with article 28(1) of the Anti-terrorism law.

¹²⁶Obbo Mulisa Abdisa, cited at supra note 123 above.

3.5 Criminal Jurisdiction of Courts in Ethiopia.

As a general principle the FDRE Constitution under article 78 stipulates the establishment of three layered courts both at Federal and Regional State levels. Under this constitutional provision and the followings the issue of jurisdictional apportionment between Federal and Regional courts as well as among Federal Courts do not stated.

The issues of apportionment of court's jurisdiction over cases in Ethiopia both at Federal and States level is dependant up on some factors. From among the factors, the determining once for Courts to have jurisdiction over criminal offences is: law, Parties to the case, and Places of commission.¹²⁷ Thus, whether a particular case is within the jurisdiction of Federal courts or not is to be determined by first, ascertaining that it arises under the Federal Laws and international treaties or that parties are those specified in the Federal laws to be subject to the jurisdiction of the federal courts or in other federal laws.¹²⁸

On the other hand, the relevant and specific law like proclamation No. 25/1996 lists down specific cases which fall within the exclusive jurisdiction of federal courts. In doing so it would be obvious that for those cases specifically stipulated as federal court jurisdiction state courts have to have delegation to involve either constitutionally or based on the specific law. Apart from these apportionments of jurisdiction among the federal and state courts, there is a delegation of power because of the fact that there are no yet established federal courts all over the country. Hence, matters which in principle fall within the jurisdiction of Federal First Instance and Federal High Courts may come within the jurisdiction of state high court and state supreme courts respectively¹²⁹, if they are committed in regions or there is any other ground justifying delegation. It is designed for the purpose of convenience, both for the parties and the court as well. As Anti-terrorism Proclamation is one of the federal legislated laws how the jurisdiction of its adjudication is apportioned in Federal courts and its practical application in ONRS will be examined bellow.

¹²⁷ The cumulative reading of Ethiopian CPC and Proclamation No. 25/1996

¹²⁸ Ibid

¹²⁹ Article 80(4, 5 & 6) of FDRE constitution cited above at supra note 82.

3.6 Adjudicating Terrorism; the Law and the Practice in ONRS

In recent years in the context of counter-terrorism measures, United Nations human rights mechanisms have reflected deep concern over the use of military and other special tribunals.¹³⁰ The mechanisms underscore that, even under state of emergency, the right to fair trial must be respected. It is sometimes argued that it is necessary to establish courts with special jurisdictions, especially to hear terrorist cases.¹³¹

Like many other countries, in Ethiopia the court at which terrorism cases entertained is regular courts with an indication to centralize it to Federal Supreme and High Courts. This indicates that, the possible ways through which the regional courts entertain the terrorism cases stipulated under the Proclamation is by constitutional based delegation. According to article 80(2) of the FDRE constitution the regional states supreme courts exercise the Federal High Court jurisdiction by delegation in addition to its original jurisdictions over state matters.

Concerning jurisdiction the Ethiopian Anti-terrorism law under article 2(10) define courts as it refers to Federal Supreme and High Courts as the case may be.¹³² Here two things need clarity; - first, how are cases of terrorism entertained at Federal high court and Supreme Court to be identified? Second what does the phrase 'as the case may be' mean? Having these two questions in mind, it is better to look at other provisions of the proclamation that may explain the jurisdiction issues, if any.

In this regard, article 31 of the Anti-terrorism law that stipulates about jurisdiction of the court mentions the following. It indicates three situations over which the Federal High Court and Supreme Court have jurisdiction over terrorism and terrorism related cases. The first situation in which the courts have jurisdiction to entertain terrorism cases is when crimes mentioned under the Anti-terrorism law are committed. The second situation is when other crimes committed together with crimes stipulated under Anti-terrorism law. And the third situation in which these courts entertain terrorism cases is when criminal charges presented in accordance with Anti-terrorism law but the courts change the article of the charge.¹³³

¹³⁰ <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

¹³¹ Ibid

¹³² Article 2(10) of proclamation No. 652/2009 cited above at supra note 4

¹³³ Article 31(1) of Proclamation No. 652/2009 cited above at supra note 4

The plain reading of article 31 of Anti-terrorism law regarding jurisdiction over terrorism cases might seem easily understandable but the difficulty comes over the scope of application. Concerning jurisdiction as the Anti-terrorism law is both substantive and procedural it's supposed to provide clear scope within which the jurisdiction of the courts over terrorism works, particularly, pretrial jurisdiction. The cumulative reading of Anti-terrorism law's article 2(10) that define court means, article 31(1) stipulates court jurisdiction and article 19(2) that opts police to bring the suspects to the court within 48 hours without mentioning the court; leads to the difficulty of understanding the jurisdiction of courts particularly court related pretrial issues of terrorism cases.

What is stipulated under article 31(1) of Anti-terrorism law regarding jurisdiction of the courts over terrorism cases seems only concerns post charge issues. To the contrary court is defined as Federal High and Supreme Courts only. On the one hand the issues of pretrial are also stipulated under the Anti-terrorism law particularly article 19(2) orders the presentation of suspects to the court within 48 hours. Which level of court is this court? If this court is the one defined under the Anti-terrorism law article 2(10) Federal High and Supreme Courts only could this fit the scenario of federalist Ethiopia? How constitutionally guaranteed right of a person arrested at Ethio-Kenya boarder or somewhere in a very remote part of the country suspected of terrorist to be brought before the court within 48 hours?

Under article 20 of the Anti-terrorism law a lot of pretrial issues that are related with courts are stipulated but still no clear provision that indicates which level of court manage these pretrial cases of terrorism in particular issues like remand that make the suspect remain in detention or released on bail. Because a pretrial detention should be a measure of last resort implemented only to protect society or ensure that a serious offender attends trial at a future date the constitutional right to bail of the suspect should be the concern of the court at destination. As mentioned above, persons suspected of terrorist activities who are detained pending trial are entitled to regular reviews of the lawfulness of their detention by a court, and access to legal counsel can help them enforce that right.¹³⁴

¹³⁴ Human Rights Committee, General Comment No.13 on equality before the courts and the right to a fair and public hearing by an independent court established by law (art. 14).

The right to be brought promptly before a judge for a determination of the legality of the detention and whether it may continue or released should be decided by the court of law.¹³⁵ A court at which level should entertain such cases is the complex issue that is resulting in different practice in ONRS. Practical cases in ONRS concerning court jurisdiction over pretrial issues of terrorism and terrorism related cases shows at least three scenarios. The first, scenario is every cases of terrorism concern including court related pretrial issues should be seen at Oromia Supreme Court as far as the Oromia Supreme Court has constitutional delegation over the criminal jurisdiction of Federal High Court within the Region and since the Federal High Court is not established in the Region to entertain terrorism cases according to Anti-terrorism law.¹³⁶

The practicing judges in woredas and zonal courts of Oromia Region with this line of argument refuse even the reception of the application that concerns any terrorism issues. In the terrorist suspect case known by file name Bikila Tekle et.al the Gimbi Woreda Court and the West Wallega Zone High Court refuses even to open the application file in which the investigating police officers and prosecutors apply to get remand order over the suspects.¹³⁷ Therefore, they have strong perception that all cases that sense terrorism should be seen at Oromia Supreme Courts only including every pretrial issue.¹³⁸ In this regard there are lots of cases whose pretrial issues in particular remand cases entertained at Oromia Supreme Courts at different benches taking many days in cases even months from the date of arrest.

The second, scenario is a practice and a line of argument that in case of the silence of law or when there is a need for interpretation particularly for criminal cases it should be in line that benefits the accused. In that cases, the lack of clarity of the phrase ‘cases’ stated under article 31(1) shall be interpreted in a manner not include the pretrial court related cases of terrorism.¹³⁹ Therefore, pretrial issues related with terrorism cases should be seen at a court closest to the suspect regardless of the level of that court to realize the constitutional right of the suspect(s) under detention. Particularly, matters relating to remand, bail, search warrant, arrest warrant and statement of confession should be provided by the nearest court at destination.¹⁴⁰

¹³⁵ Ibid

¹³⁶ Article 80(2) of the 1995 FDRE constitution

¹³⁷ Oromia Supreme Court Western bench file No. 190259

¹³⁸ An interview with Obbo Hafiz A/Fita coordinating judge at Oromia Supreme court Eastern bench, on 14/07/2016, at, 4:45 pm

¹³⁹ An interview with Obbo Habte W/Sanbet coordinating judge at Oromia Supreme court Southern bench, on 20/07/2016, at, 3:10 pm

¹⁴⁰ Ibid

A woreda judge who gives twice a remand order in the case of Sheik Sudi Ahmed et.al Vs Southern bench Oromia public prosecutor according to article 20(3) of the Anti-terrorism law is comfortable with the above scenario. He consolidate his argument by stating that if the court at destination refrain from entertaining pretrial issues in case of terrorism the constitutional rights of the suspects to get speedy trial and apply to the nearest court for his/her release by bail bond would be at stake. In such a case since the investigation would take a long time, justice would be delayed and the constitutionally guaranteed rights of arrested person to speedy trial and access to justice would be violated.¹⁴¹

The third, scenario is mixing scenario. Even if my attempt to interview that judge has failed, in the case of terrorist suspect known by the file name Tilahun Lami et.al the Woreda court remanded the suspect in accordance with Anti-terrorism law article 20(3) for 28 days but refused the application for bail of arrestee by the reason that it is not the jurisdiction of woreda court.¹⁴²

The other issue over which the courts in the woreda and zonal level of Oromia Region are indifferent is the issue of bail right during investigation in the terrorist related cases.

The issue of the bail right of the terrorism related cases is stipulated under article 20(5) of the Anti-terrorism law stating that “If a terrorism charge is filed in accordance with this Proclamation (i.e. it is to mean Anti-terrorism law), the court shall order the suspect to be remanded for trial until the court hears and gives decision on the case.”The reading of article 20(5) is quite clear that the total denial of the bail right of terrorism suspect person is after he/she is charged under Anti-terrorism law. Taking that sense of the Anti-terrorism law provision some woreda and zonal courts in Oromia those entertain pretrial cases of terrorism refuse from very beginning the application for bail by the reasoning that bail right is not allowed in the terrorism suspected cases.¹⁴³

In most terrorism suspect cases the application for bail during investigation were denied. What is surprising is not total denial of bail because it is not expected from the court that remanded the suspect to accept bail application while the remand is in effect but, the reasoning for denial of bail right is as if the Anti-terrorism law in a clean sheet denies every terrorism related cases and

¹⁴¹ An interview with Obbo Abdulkedir Hasan a woreda judge that order the remand case known by Sheik Sudi Ahmed et.al. On 15/06/2016, at, 10:45 am.

¹⁴² Oromia Supreme court case, file No. 234450, in which the superme court reversed the decision of the lower court

¹⁴³ Criminal investigation case known by file name Negesh Eshetu begins from Kuyu Woreda of north Shewa and finally decided at Oromia Supreme court cassation division by file No. 133889.

the provision they call as an authority to deny bail application is article 20(5) of Anti-terrorism law that clearly stipulates the denial of bail right once the charge of terrorism is filed.¹⁴⁴

On the other hand there is an indicative provision that can be read contrary to article 20(5) for the benefit of the suspect to accept the application for bail during investigation. Article 20(4) of the Anti-terrorism law says “Public prosecutor may appeal on bail cases”. There are two competing interpretations on the above provision. Some practicing private lawyers strongly argue that even article 20(5) shouldn’t be read as total denial of bail; court can see the application for bail case by case even if a charge of terrorism is filed.¹⁴⁵ Others argue that the reading of article 20(5) of Anti-terrorism law is not subject for confusion it is quite clear that once a charge of terrorism is filed in accordance with Anti-terrorism law no bail right, rather the reading of article 20(4) of Anti-terrorism law shall fit for the bail case during investigation. Therefore, someone can understand from the reading of article 20(4) of Anti-terrorism law that bail right of terrorism suspect during investigation of the case is not denied.¹⁴⁶

The practice of entertaining terrorism cases and jurisdiction of the court over terrorist related cases is very much in different and complex in Oromia Regional State. The complexity is highly visible in pretrial stage jurisdiction in which courts within the Region interpret and understand the same provision very apparently (i.e. the phrase ‘cases’ under article 31(1, a) of Anti-terrorism law). These differences in practice are visible not only at the Region’s high courts and woreda courts. It is differently practiced among the Supreme Court benches of the Region.

To supplement this argument by practical cases, the Oromia Supreme Court Western Bench and Central Bench back the interpretation that the phrase ‘cases’ stated under article 31(1, a) of the Anti-terrorism law means cases post charge not pretrial cases that courts of any level at destination shall entertain.¹⁴⁷ In this regard they criticize the refusal of none involvement of woreda and zonal courts of the Region in the pretrial cases of terrorism. In the case known by file name Bikila Takle et.al in which the West Wallega Zone high court and Gimbi woreda court refuse the remand application by the reason of jurisdiction but, Oromia Supreme Court Western Bench reversed the decision based on the appeal made by the investigating police officers and public prosecutors.

¹⁴⁴Criminal investigation case known by file name Negesh Eshetu North Shoa zone high court file No. 40507.

¹⁴⁵ An interview with obbo Muhammedamen Haji attorney at law on 21/07/2016, at, 9:50 am

¹⁴⁶ An interview with obbo Kemal Kurkura attorney at law on 21/07/2016 at, 4:10 pm

¹⁴⁷ An interview with obbo Urga Getahun coordinating judge at Western Oromia Supreme Court bench and obbo Tuli Beyisa judge at cassation division in the central Oromia bench, on 02/06/2016, at, 9:10 am and 28/07/2016, at, 11:00 am respectively.

To the contrary the practice and line of argument of the Oromia supreme Courts Eastern and Southern Benches stand with an interpretation of the term ‘cases’ stated under article 31(1, a) of Anti-terrorism law stands for every cases of terrorist related including pretrial issues; so that courts at woreda and zonal level of the Region should not involve in the cases of terrorist related by any means.¹⁴⁸ Accordingly they criticize the involvement of woreda and zonal courts of the Region in the pretrial issues of terrorism and terrorist related cases and these courts reverse all terrorism related decisions of lower courts when appealed by the reasoning of lower courts have no jurisdiction over all terrorism related cases.¹⁴⁹

Finally, the issue of adjudicating terrorism cases in general and the practice of pre-trial jurisdiction of terrorism cases in particular are so complicated in Oromia Regional State courts. The complication and practical difference emanates from the doubt and line of interpreting the cumulative reading of the articles 2(10) that define court and the phrase “cases” under article 31(1) of the Anti-terrorism law.

Taking the scenario in Oromia as spring board, there is a need for whole inclusive and binding interpretation by Federal Cassation division to apply this law uniformly throughout of the country to be a solution for other regional states those might facing the same problem too. Having these two big but, contradicting practice at hand, it is so early, to back one line of interpretation and criticizes the other line of interpretation that is given to the phrase “cases” stipulated under article 31(1) of Anti-terrorism law by Oromia Courts to entertain pre-trial issues of terrorism cases before having the binding interpretation from Federal Cassation Bench.

But, taking in to consideration, the practically violating constitutionally guaranteed fundamental rights and freedoms of the person arrested; the right to be brought before the court within 48 hours, the right to speedy trial and the right to access to justice resulting from the practice of courts those interpret the phrase “cases” under article 31(1) of the Anti-terrorism law should include ‘pre-trial cases’ this line of interpretation and its practice have constitutional no back up too. Rather, the other line of practice is in harmony with constitutionally guaranteed fundamental rights and freedoms of arrestee.

¹⁴⁸ An interview with obbo Hafiz A/Fita, coordinating judge at Eastern Oromia Supreme Court bench and obbo Habte W/Sanbet coordinating judge at southern Oromia Supreme Court bench, on 14/07/2016, at, 4:45 pm and 20/07/2016, at, 3:10 pm respectively.

¹⁴⁹ Ibid

Chapter Four: Conclusion and Recommendations

4.1 Conclusion

The difficulty of defining terrorism has led to the cliché that one man's terrorist is another man's freedom fighter. Despite the fact that, there is no universally agreed on definition of terrorism and terrorist acts, recently as a mechanism of countering it and based on its threat, countries are engaged in the tasks of launching counter terrorism laws. In taking counter terrorism measures particularly through adopting special law would require a workable criminal justice to terrorism that balances the State security in one side and fundamental human rights and freedoms in another side.

Based on the rational that threat of terrorism acts cannot be managed by existing criminal law, like many others Ethiopia also enacted new Anti-terrorism law (Proclamation No. 652/2009 a Proclamation on Anti-terrorism in Ethiopia). This Law provides substantive law governing terrorism and some procedural rules as to the mechanism of investigation, prosecution and the jurisdiction of the courts to which the cases of terrorism are to be entertained.

Regarding its investigation, terrorism investigations are: resource intensive, often require fully equipped and well trained officers. It is suppose to meet these purposes that the Ethiopian Anti-terrorism law gives special attention to the mechanism of its investigation by deviating from ordinary criminal investigation in many ways. Among the ways of its deviation this Law authorizes Federal Police Commission and only delegated regional Police Commissions institutionally and well trained and certified criminal investigating police officers only individually, to involve in the investigation of terrorism cases. As clearly stipulated under article 2(11) of the Anti-terrorism law the regional states police have to have delegation from Federal Police Commission to involve in the issues concerning terrorism.

Based on the scope of delegation there are two computing arguments rise by Oromia Regional police officers. The first, argument is that according to the reading of article 2(11) of the Anti-terrorism law regional states police commissions are institutionally excluded from any involvement concerning terrorism unless they are duly delegated by Federal Police Commission. The second, argument is the delegation needed for regional states police stipulated under article 2(11) of the anti-terrorism law is the delegation to investigate terrorism cases therefore, it is a regional states police commission department of criminal investigation that has to be delegated

with the power of investigating, not the whole regional states police institutions and officers. Regardless of the above raised competing arguments based on the extent of the delegation what is not contested by both groups is at least there is the need for delegation to Regional States police department of criminal investigation that have a direct involvement in the technical and professional investigation of terrorism cases with an investigation officers those certified as per the requirement of article 28(1) of the Anti-terrorism law.

Despite the fact that, the Anti-terrorism law under article 2(11) expects delegation for regional police institution to involve in the countering of terrorism and under article 28(1) sets criteria for individual terrorism crime investigation police officers to involve in the investigation of terrorism, the response of the interview made with officials of Oromia police commissions and involved criminal investigation police officers reveals that there is no yet any delegation from Federal police to Oromia police and no even single certified police officer in accordance with the requirements of the anti-terrorism law. But, in practice there are massive involvement of the ONRS's police both in countering and investigation of terrorism charged files within the Region.

It is safely possible to conclude from the law and practice undertaking in ONRS concerning investigation of terrorism that, the practice of involving in the investigation of terrorism suspected persons cases without fulfilling the criteria set to do so by Oromia crime investigation police officers is, clearly risking and equivocally violating the constitutionally guaranteed rights of the suspected persons by detaining them illegally, blocking the right to speedy trials, undermining their right to be bright before the court of law within 48 hours and denying in an irreversible manner the right to bail during investigation using lawless authority.

Prosecution wise the Federal Attorney General is one of the Federal institutions that take part in criminal enforcement task at Federal level representing Federal Government in criminal matters. Parallel to the Federal Government, the States have their respective criminal enforcement actors. The Regional criminal justice enforcement agencies are supposed to carry out their functions in accordance with the power conferred on them by their respective Region constitutions. Despite the fact that, the FDRE constitution does not separate between the Federal and states criminal enforcement jurisdiction, there are some proclamations enacted by the Federal government which retain an exclusive power of enforcement to the federal government on certain criminal matters. Thus Regional states and their criminal justice administration sectors are devoid of

enforcing these criminal matters unless empowered through delegation. The Anti-terrorism law is one example of that federal government's proclamation which denies regional states to exercise enforcement power on crimes related with terrorism unless delegated.

But, the lack of definition as to which prosecution office under take the prosecution of terrorism concerned cases by the Anti-terrorism law like it did in the cases police and courts is playing negative role for the inconformity between the law and the practice in Oromia Regional State. Without defining the institution of prosecution, the Anti-terrorism law clearly under article 28 provides for the criteria that individual prosecutor has to fulfill to involve in the prosecution of terrorism cases. Accordingly, the individual prosecutor to involve in the prosecution of the terrorism cases has to have: more than five years of relevant work experience, the appropriate training, is hard working and obtained testimonials from the relevant senior officials of the Attorney General as to his professional competency and ethics.

While the law provides so, the practice demonstrates otherwise. The practical files and an interview made with practicing prosecutors of ONRS shows that prosecution of terrorism is massively being handled within the Region by the public prosecutors of Oromia Justice Bureau with the prosecutors having no certification in accordance with the requirement of the Anti-terrorism law. There are two main mechanisms through which Oromia Justice Bureau is involving in prosecution of terrorism cases. The first mechanism, is using delegation from Federal Attorney General which is case oriented and the second, mechanism is using Regional Proclamation as a source of authority.

The response of practicing ONRS public prosecutors involving in the prosecution of terrorism concerned cases without qualification as per the requirement of the Anti-terrorism law indicates three main scenarios. The first, scenario is involving in the prosecution of terrorism cases based on the promise of the officials to provide them with necessary certificate if requested. The second, scenario is involving in the prosecution of terrorism cases taking the letter of delegation from Federal Attorney General to ONRS Justice Bureau in which his/her name is listed as a qualifying certificate.

The third and final scenario is involving in the prosecution of terrorism cases by the order of officials the refusal of which may result in firing from the job. When observed from the angle of

the requirements of the Anti-terrorism law the objective for which these criteria are necessitated, all the scenarios do not fit the legal requirement that article 28(1) requires from individual prosecutor to involve in the prosecution of terrorism cases. This involvement of the prosecutors without fulfilling legally required criteria is resulting in the violation of the constitutionally guaranteed rights of the suspects to bail by blindly charging under the Anti-terrorism law that deny bail right for the only reason that he/she is charged under the Anti-terrorism law. This is the worst scenario practicing in ONRS.

Concerning courts and its jurisdictions the Ethiopian Anti-terrorism law under article 2(10) predicates the terrorist cases to regular courts with special jurisdiction to Federal Supreme and High Courts. Jurisdictional wise, as the Anti-terrorism law is both substantive and procedural it's supposed to provide clear scope within which the jurisdiction of the courts over terrorism works particularly its pretrial jurisdiction. The cumulative reading of Anti-terrorism law's article 2(10) that define court means, article 31(1) that stipulates court jurisdiction and article 19(2) that obliges police to bring the suspects to the court within 48 hours without mentioning the court; leads to the difficulty of understanding the court with jurisdiction of entertaining pretrial cases of terrorism.

What is more complicating the jurisdiction of courts to adjudicate terrorism related cases at pretrial level in practice in ONRS emanates from the line of interpreting the definition given to the courts under article 2(10) and the phrase "cases" under article 31(1) of Anti-terrorism law. Based on this interpretational difference three situations are in practice. The first, line of interpretation is every cases of terrorism concern including court related pretrial issues should be seen at Ormia Supreme Court as far as the Oromia Supreme Court has constitutional delegation over the criminal jurisdiction of Federal High Court within the Region since Federal high court is not established in the Region yet.

The second, line of interpretation and argument is that in case of the silence of law or when there is a need for interpretation particularly for criminal cases it should be in a line that benefits the accused better. So that because the phrasing of article 31 of Anti-terrorism law that stipulate "cases" is not clear as to what are the cases means that; it shouldn't be include pretrial issues for the benefit of the suspects. The third, situation is mixed interpretation. According to this practice

courts at woreda and zonal level of the Region entertain some issues of pretrial and refuse others by the reason of jurisdiction.

Because of this line of interpretational difference, particularly following the first and third line of interpreting the phrases ‘High and Supreme Courts’ and the phrase “cases” stipulated under article 2(10) and article 31(1) of the Anti-terrorism law respectively, the practical cases show that, there are a clear violation of constitutionally guaranteed rights of the person arrested; the right to be brought before the court within 48 hours, the right to speedy trial and the right to access to justice to the minimum.

The other issue over which the courts at woreda and zonal level of the Oromia Region are indifferent is the issue of bail right during investigation in the terrorist related cases. The police investigation files show that in most terrorism suspect cases the applications for bail during investigation are denied. What is surprising is not total denial of bail because it is not expected from the court that remanded the suspect to accept at the same time the bail application while the remand is in effect but, the reasoning for denial of bail right is as if the Anti-terrorism law in a clean sheet denies every terrorism related cases and the provision they call as an authority to deny bail application during investigation is article 20(5) of Anti-terrorism law that clearly stipulates the denial of bail right once the charge of terrorism is filed.

4.2 Recommendations

4.2.1 Concerning Investigation of Terrorism

1. Since the implication of article 2(11) of Anti-terrorism law is clear regarding delegation, ONRS Police Commission should refrain from involving in the cases of terrorism without having delegation from Federal Police Commission.
2. For the purpose of more clarity and to avoid confusion observable in practice, emanating from the reading of article 28(1) of Anti-terrorism law regarding training, it is better to clarify: the types of training, its length and institution in charge of providing this training because taking this training is one of the mandatory criteria to involve in the investigation of terrorism cases.
3. Because of the violation of constitutionally guaranteed fundamental rights of the suspects of terrorism resulting from involvement of unqualified investigating police officers in practice, it's advisable for Oromia Police Commission to involve in the investigation of terrorism cases by the officers those qualified in accordance with article 28 (1)of Anti-terrorism law unless it should restrict its officers from involving.
4. To put the requirement of article 28(1) of the Anti-terrorism law in practice regarding qualification of officers, Oromia Police Commission need to work on the production of the officers with legally required criteria. Up on having officers with required qualification ONRS Police Commission and Federal Police Commission should cooperatively work on the certification of these officers in accordance with article 28(1) (b) of Anti-terrorism law.

4.2.2 Concerning Prosecution of Terrorism

1. The lack of definition of the office in charge of prosecuting terrorism by the Anti-terrorism law like it did in the cases of institutions of police and judiciary is resulting in different computing arguments and practice, to avoid such a problem with all its consequences, it is better to amend this law in a manners that clearly authorizes the institution in charge of prosecuting terrorism both at Federal and Regional level.
2. Regarding the source of authority to prosecute terrorism, it is lawful for Oromia Justice Bureau to base its source of authority on Regional proclamation No. 163/2011, article 22(19) that gives Bureau the authority to prosecute crimes parallel to Regional court's

jurisdiction, than requesting delegation from Federal Attorney General without any legal bases.

3. It is better to refrain for Oromia Regional State public prosecutors from the practice of involving in the prosecution of terrorism cases using different reasons those have no legal ground.
4. For effective prosecution of terrorism cases within the Region in harmony with suspects fundamental rights and freedoms guaranteed under the FDRE Constitution, Oromia Regional State's Justice bureau in collaboration with Federal Attorney General have to prepare certified public prosecutors in accordance with article 28(1) of the Anti-terrorism law and use those certified public prosecutors only to prosecute terrorism cases within the Region.
5. Federal Attorney General shall refrain from the practice of delegating ONRS Justice Bureau and public prosecutors to prosecute terrorism cases with no indicating the legal authority to do so.

4.2.3 Concerning Court Jurisdiction

1. In order to minimize the complication and practical difference emanates from the doubt and line of interpreting the cumulative reading of articles 2(10) that define court and the phrase "cases" under article 31(1) of the Anti-terrorism law regarding the pre-trial jurisdictions of ONRS's wareda and zonal courts, it is better this law is either interpreted by the Federal Cassation Bench to have binding effects over all court's interpretation in this regard or the law shall amended in a manner that clarify this issue, particularly the phrase "cases" whether or not it include pre-trial cases.
2. In entertaining the bail issues of the suspects during investigation courts shall better to read articles 20(4) which allow the public prosecutor to appeal on bail issue and article 20(5) that deny the bail right of the person charged under Anti-terrorism law cumulatively, to decide on the bail rights of the suspects at pre-trial level.
3. Courts those provide for remand in accordance with Anti-terrorism law because of the length of even a minimum first round 28 days, that is going to be remanded, it is legal and logical to give additional remand after critical supervision of the investigation file than simply remanding the suspect by the request of the investigating body for another 28 days.

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