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ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
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Auditing the improvement made by the post-2018 Legal Reform in terms of protecting the Constitutional rights of the persons accused of committing acts of terrorism

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Approval Sheet

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List of Acronyms and abbreviations

UN	United Nations
WWII	Second World War
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
ATP	Anti-Terrorism Proclamation
EPRDF	Ethiopian People’s Revolutionary Front
FDRE	Federal Democratic Republic of Ethiopia
UDHR	Universal Declaration of Human Rights
ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and Peoples’ Rights
ECHR	European Convention on Human Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
FHC	Federal High Court
OSC	Oromia Supreme Court
FSC	Federal Supreme Court
UNHRC	United Nations Human Rights Committee
HPR	House of Peoples’ Representative
CrPC	Criminal Procedure Code
ETB	Ethiopian Birr

Abstract

Proclamation 1176/2020 was enacted to remove the substantive and enforcement loopholes which negatively affect the fundamental rights and freedoms of persons. This research aimed at evaluating the practical and substantive improvements achieved since its enactment, employing a mixed-method approach combining empirical and doctrinal analysis. Data were primarily gathered through interviews with key stakeholders and a review of legal documents, including Proclamation 1176/2020 and relevant case files. Critical barriers to protecting the constitutional rights of individuals accused of terrorism were identified by this research. The continuous culture of impunity, lack of accountability, and weaponizing the theme of fight against terrorism to attack opposition parties, journalists and activists were among the barriers. These challenges continue to place the rights of the accused at risk, highlighting the need for further institutional reforms and enforcement measures. Addressing these issues is essential for ensuring the full realization of the legal improvements introduced by Proclamation 1176/2020.

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CHAPTER ONE

Introduction

1.1. Background of the study

The United Nations (herein after UNs) is established post WWII, determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and protecting peace and security.¹ Hence, the consequences of the two world wars were devastating, the primary purpose of the UNs is to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.² The UNs having the purpose of promoting peace and security and settling disputes in peaceful way, the shocking terrorist attack in New York, Washington, D.C. and Pennsylvania on 11 September 2001 which resulted in death of civilians and destruction of property occurred. Following this the UNSC adopted a resolution reaffirming the need to combat by all means, in accordance with the Charter of the UNs, threats to international peace and security caused by terrorist acts.³

After the UNGA & UNSC calls for states to join the journey of fighting acts of terrorism, most states including Ethiopia joined it. Ethiopia enacted the first Anti-terrorism Proclamation No. 652/2009 (hereinafter the repealed ATP). Most countries, when meeting their obligations to counter terrorism by rushing through legislative and practical measures, have created negative consequences for civil liberties and fundamental human rights.⁴ Likewise the repealed ATP is condemned for eroding the exercise of human and democratic rights both in its substance and procedure. The practice also exacerbated the situation. The undemocratic political landscape during the rule of the Ethiopian People's Revolutionary Democratic Front (hereinafter EPRDF)

¹ Charter of the United Nations and Statute of the International Court of Justice (entered into force 24 October 1945) 54, See the preamble.

² Ibid Article 1 (1)

³ UNSC Resolution 1373 (28 September 2001) UN Doc. S/RES/1373, para 5

⁴ OHCHR, *Human Rights, Terrorism and Counter-terrorism: Fact sheet No. 32*, Page 20

was characterized by mass violations of human rights, particularly through the suppression of political dissent. The EPRDF, in power from 1991 until 2019, frequently utilized repressive measures to maintain control, including labeling critics and political opponents as terrorists under the repealed ATP. The repealed ATP became a primary tool for silencing dissent.

This led to the detention, harassment, and sometimes torture of journalists, opposition members, and activists.⁵ The vague definition of terrorism in the law allowed the government to broadly interpret criticism of the state as terrorism, resulting in unfair trials and long prison sentences. This not only undermined political participation but also created a culture of fear, where individuals were afraid to express their political views openly. The weakening of political participation was further compounded by the lack of a truly competitive political environment. Opposition parties were often marginalized, elections were marred by irregularities, and media freedom was heavily restricted. This environment stifled the growth of democratic institutions, deepened social and political divides, and led to widespread human rights violations. The repealed ATP has had a damaging impact on the exercise of human rights, through the practical obstacles it created for human rights defenders and by exacerbating the climate of fear in which they operate.⁶

Despite promises of reform, these violations remained prevalent throughout much of the EPRDF's rule, and only in recent years have efforts been made to address some of these issues following the rise of Prime Minister Abiy Ahmed.

After the 2018 change of government and Prime Minister Abiy Ahmed assumed power, there was broadening of the political space by way of releasing political prisoners who had been imprisoned for years without due process of law, amending laws that unjustifiably curbed people's rights, closing of jails were massive human rights violations used to take place under the guise of the repealed ATP,⁷ renouncing the parties labeled as terrorists before 2018. Admitting the inhuman practices of the former Ethiopian government and the consistent and widespread use

⁵ Amnesty International Public Statement, 'Ethiopia: Concerns that Anti-Terrorism Law is being used to suppress freedom of expression' (1 July 2011) AI Index: AFR 25/005/2011

⁶ Amnesty International, 'Ethiopia: Human rights of victims of terrorism. Excessive restrictions on human rights work in Ethiopia' (Report) (21 June 2012) AI Index: AFR 25/009/2012

⁷ Human Rights Council, 'National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21' (2019) Paragraph 44.

of systematic torture by police and the security forces,⁸ Prime Minister Abiy Ahmed officially acknowledged, recognized, and named the acts as state terrorism.⁹ Consequently, a number of laws have been amended. One of the laws amended after 2018 is the Proclamation to Prevent and Suppress acts of terrorism. Under this thesis, the researcher assesses the substantive and practical improvements made since the enactment, if any. In order to assess this, mixed method: empirical and doctrinal methods are used. This research has a role of signifying the impediment to implement and protect the rights of persons accused of terrorism; therefore, the area to be focused on to improve the challenges would be identified.

1.2. Statement of the problem

The enactment of Proclamation 652/2009 by the Ethiopian People's Revolutionary Democratic Front (EPRDF) was intended to ensure national security and public order. However, the proclamation has been widely criticized for being misused as a political tool to silence opposition political parties, journalists, and government critics. Under the guise of counterterrorism, serious human rights violations were reported, with individuals facing unfair treatment and arbitrary detention. In response to these abuses, Proclamation 1176/2020 was enacted to address the shortcomings of the repealed ATP, which allowed for the violation of the fundamental human rights of accused persons. Proclamation 1176/2020 aims to ensure proportional punishment, hold executive organs accountable for violations of fundamental rights, and protect the rights and freedoms of the accused. However, despite these reforms, practical challenges persist. Practically speaking, apart from the prime minister's admission of the existence of state terrorism including torture, the work done to hold these perpetrators responsible for the human rights violations occurred is minimal. Issues such as impunity, the lack of accountability for executive bodies, and the continued reliance on past practices still put the rights of accused persons at risk.

⁸ *EBC Documentary* (Directed by Horizon Media, 2018) www.youtube.com/watch?v=4Gi4JUNYDCg accessed 11 July 2022); 'Prison Conditions in Ethiopia' (ARC Foundation 2021) https://www.ecoi.net/en/file/local/2044634/Ethiopia_prison_conditions_02.02.2021.PDF> accessed 2 July 2022

⁹ [Awol Allo, 'Torture, State Terrorism and Ethiopia's Transformation'](https://www.aljazeera.com/opinions/2018/6/23/torture-state-terrorism-and-ethiopias-transformation) <<https://www.aljazeera.com/opinions/2018/6/23/torture-state-terrorism-and-ethiopias-transformation>> accessed 11 July 2022.; Human Rights Council, 'National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21' (2019) Paragraph 44.

This research assesses the substantive and practical improvements that have been made in protecting the rights of accused persons following the enactment of Proclamation 1176/2020.

1.3. Scope of the research

This research focuses on evaluating the substantive and practical improvements made in protecting the rights of accused persons in Ethiopia following the reforms introduced after 2018. Specifically, it assessed the impact of Proclamation 1176/2020, which was enacted to address the deficiencies of the repealed ATP. The researcher employed a multi-method approach to evaluate the effectiveness of these reforms. This includes analyzing the content of Proclamation 1176/2020 and reviewing past case files to identify trends in legal practices before and after the proclamation. In addition, interviews were conducted with key stakeholders, including judges, lawyers, prosecutors, and accused individuals currently in custody, to gain insights into the practical application of the new legal framework. Through this combination of document review and stakeholder interviews, the research aims to provide a comprehensive evaluation of the improvements and ongoing challenges in safeguarding the rights of accused persons.

1.4. Research Questions

1. Under the Prevention and Suppression of Terrorism Crimes Proclamation, is there any substantive improvement in protecting the constitutional rights of people accused of committing terrorist acts?
2. How have the cases filed in court of law been handled and resolved under Proclamation No 1176/2020, and how have the cases been handled in courts of law (practically) in terms of giving protection to those accused and what were their impacts on those accused?
3. What are the challenges of enforcing rights of persons accused of committing acts of terrorism under the current Terrorism Legislation?

1.5. Research objective

1.5.1. General objective

- ❖ Auditing the improvements made in relation to protecting the constitutional rights of persons accused of committing acts of terrorism post 2018 legal reform.

1.5.2. Specific objectives

- Identifying any substantive improvement made in protecting the constitutional rights of persons accused of committing acts of terrorism under the Prevention and Suppression of Terrorism Crimes Proclamation.
- Evaluating the cases filed under the current terrorism legislation post 2018 legal reform, how the cases have been resolved and their implications.
- Sort out the challenges of enforcing rights of persons accused of committing acts of terrorism.

1.6. Methods, data collection and sampling

1.6.1. Methods

This research employed a qualitative data collection approach, utilizing both primary and secondary sources to gather comprehensive insights. Primary data is collected through interviews with key stakeholders, and collected by reviewing legal documents, including the text of Proclamation 1176/2020 and relevant case files. This helps in assessing the substantive legal reforms and understanding the broader legal context. Interviews were conducted with a range of stakeholders directly involved in the legal process. These include: a total of seven judges, with four from the Federal High Court and three from the Oromia Supreme Court; thirty accused individuals (twenty from Dalati Remand Center and ten from Kilinto Remand Center); both private and public defenders (with a total of eleven lawyers participating in the interview); twelve prosecutors (one from the federal level and eleven from Oromia). These interviews aim to capture the practical experiences and perspectives of those involved in the application of Proclamation 1176/2020, focusing on the protection of the rights of accused persons. In addition secondary data from journal articles, reports and commentaries is conducted. By combining these sources of data, the research aims to provide an in-depth analysis of the improvements and challenges in the protection of accused persons' rights under the new legal framework.

1.6.2. Sampling

To conduct this research, a purposive sampling technique, a type of non-random sampling, was used. First, the courts with jurisdiction over terrorism cases were selected, and followed by targeting judges from the terrorism bench. Consequently, five judges from the FHC Lideta Branch and the Oromia Supreme Court were interviewed. At the federal level, the Ministry of Justice has a dedicated office for terrorism cases, while at the regional level; public prosecutors handling terrorism cases are not separately designated, the same prosecutors also handle other serious crimes. Therefore, all prosecutors at both levels completed a questionnaire. Additionally, both private lawyers and public defense lawyers were approached by identifying them on the basis of cases, particularly those representing terrorism suspects from the period of the repealed ATP to the present, to easily identify improvements and practical challenges. Regarding the accused, since it was difficult to find individuals not in custody, the researcher limited interviews to those in the remand center, which was selected by an authoritative body as the most accessible location.

1.7. Literature Review

One of the existing literatures concerning terrorism law in Ethiopia is ‘Examining some of the *raison d’être* for the Ethiopian Anti-Terrorism Law,’ written by Wondwossen Demissie. This article primarily focuses on assessing the relevance of enacting the 652/2009 proclamation when the Security Council has passed a resolution following the September 11 attacks. He argued that the 652/2009 proclamation covers a broader scope in combating terrorism compared to the criminal procedure code; however, the fact that the government takes a different position for the same terrorist act is unconvincing. First, the government stated that the existing law is sufficient to combat terrorism and later on, the government changed its stand to enact the 652/2009 proclamation. In addition, the writer indicated that the UNSC Res 1373 doesn’t require states to enact Terrorism laws domestically.

‘An Examination of Ethiopia’s Anti -Terrorism Proclamation on Fundamental Human Rights’ by Peter Sekyere and Bossman Asare. This paper is another writing on the repealed ATP focusing on the examination of the 652/2009 Proclamation in line with the constitutional right to freedom of thought, expression, and opinion. The paper stipulates that though Terrorism is a very serious kind of crime, it should keep the balance in safeguarding individuals' rights with protecting peace

and security. Contrary to the international duty and the FDRE Constitution, Ethiopia's ATP infringes the basic right to freedom of thought, expression, and opinion and other human rights like the right to a fair trial.

The other article is 'How to Rescue Human Rights from Proactive Counterterrorism in Ethiopia' written by Wondwossen Demissie. The focus of the paper is on two provisions of ATP; criminalizing a preparatory act to commit terrorism and membership in a terrorist organization. The writer indicates that criminalizing such acts involves the prediction of future behaviors based on limited information, which opens a room for misuse of the law. Thus, he recommended that rather than criminalizing for the mere membership in a terrorist organization, the requirement for actual participation in such organizations and criminalizing preparatory acts only for a truly precursor crime.

The above-discussed literatures are directly related to the repealed ATP, and this research is different first in that it assesses both the repealed ATP and the 1176/2020 Proclamation in line with both international human rights instruments and FDRE Constitution. In addition, this research primarily focuses on the constitutional rights of the accused person, and the assessment with regard to substantive laws is made by taking the accused's rights as a benchmark. Moreover, this paper incorporates assessing both the substantive law and the practice on the ground. Thus, in terms of time and scope the scope covered by this research is different from other papers written in this area.

1.8. Limitation of the study

Conducting research on this particular topic presented significant challenges in gathering relevant data. One major issue was compounded by the relocation of the Oromia Supreme Court (hereinafter OSC), disorganized case files, and the unavailability of the required data.

Additionally, the reshuffling and transfer of judges from the terrorism bench to other locations further complicated the research. As a result, the researcher focused on interviewing those available at the OSC and the FHC Lideta branch's Constitutional and Terrorism bench who were willing to provide information.

Despite having letter of support from the University, when interviewing individuals in custody, detention center officials were reluctant to cooperate, limiting the number of interviewees and often including those accused of unrelated crimes. The process was uncomfortable, as officials initially questioned the researcher's personal information. Furthermore, due to the sensitive nature of the topic, many contacted individuals were unwilling to provide information.

CHAPTER TWO

Legal Framework for the Protection of the rights of Accused Persons

2.1. Introduction

Crime is committed all over the world. There is no exceptional part of the world where crime is avoidable. Despite the fact that the world is progressing in all aspects, crime is still prevalent. In case where a crime is committed, the government has the duty to follow up the peace and security of its nation; so that individuals who are suspected of committing a crime, arrested persons, accused persons, convicted persons and sentenced persons have rights reserved for these category of people and procedural rules to be followed in criminal proceedings under the international and regional human rights instruments. This is because, even if a person is categorized as suspected, arrested, detained, accused, convicted, and sentenced of committing a crime, they still have rights as human beings, as well as specific rights related to them.

In this Chapter, the rights of persons accused of acts of terrorism as provided under the legal framework of the International Human Rights Instruments are discussed.

2.2. The Legal Framework for the Protection of the Rights of Accused Persons under the ICCPR and other Human Rights documents

The ICCPR forms part of the International Bills of human rights and recognizes Civil and Political rights of individuals. Each State Party to the ICCPR undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind.¹⁰ All branches of government (executive, legislative

¹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art. 2 (1)

and judicial), and other public or governmental authorities, at whatever level national, regional or local are in a position to engage the responsibility of the State Party.¹¹

Additionally, the state parties are required to give necessary effect to the covenant rights in the domestic order and where there are inconsistencies between domestic law and the Covenant, it is required that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees.¹² Thus, states parties to the Covenant, upon becoming a party, accept this obligation stated under article 2 of the Covenant.

Among the fifty-three provisions of the Covenant, Article 14 specifically deals with the guarantees given to accused persons in terms of striking the balance between individual rights and the need to combat crime. Article 14 incorporates under paragraph 1, guarantees everyone's right to fair trial and equality before court either in a suit law or charged with any criminal charge, paragraph two to five recognized procedural guarantees available to persons charged with criminal offense, paragraph six provides for the right to require compensation in case miscarriage of justice takes place and lastly paragraph seven provides for the prohibition of double jeopardy. The rights specifically guaranteed to accused persons under the Covenant and other human rights documents are discussed hereunder.

2.2.1. The right to equality before court and tribunal; the right to fair and public hearing before competent, independent and impartial court and tribunal

A. The right to equality before court and tribunal

The right to equality before court is recognized under article 14 paragraph 1 of the Covenant and the principle of non-discrimination¹³, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.¹⁴ Even in case of declared public emergencies the Covenant obliges states parties not to take measures inconsistent with their other obligations under international law and not to involve discrimination solely on the ground of race, color, sex, language, religion

¹¹ UNHRC, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', (2004) CCPR/C/21/Rev.1/Add.13, para 4

¹² Ibid para 13

¹³ Supra Note 10, Article 2

¹⁴ UNHRC, 'General Comment No. 18: Non- Discrimination', (1989) HRI/GEN/1/Rev.9 (Vol. I), Para 1.

or social origin.¹⁵ Meaning, measures states take at the time of declared emergencies should be consistent with the objective of the Covenant which is respecting the recognized rights of human person which derives from the inherent dignity of humanity.¹⁶ The Covenant in addition to addressing the issue of non-discrimination under article 2, further stipulates it under article 26 of the Covenant which imposes the duty not to discriminate in any laws (international or domestic). Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.¹⁷

All persons shall be equal before the courts and tribunals.¹⁸ The right to equality before courts and tribunals which is recognized under article 14 of the Covenant, in general terms, guarantees, in addition to the principles mentioned in the second sentence of Article 14, paragraph 1, those of equal access and equality of arms, and ensures that the parties to the proceedings in question are *treated without any discrimination*.¹⁹ Additionally, the Committee under the Communication No. 468/1991 stipulated that the notion of equality before the courts and tribunals encompasses the very access to the courts.²⁰

B. The right to fair and public hearing

Everyone is entitled in full equality to a fair and public hearing. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.²¹

The notion of fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive.²² Any

¹⁵ Supra Note 10, Article 4 (1)

¹⁶ See the preamble of ICCPR

¹⁷ Ibid, Article 26

¹⁸ Ibid, Article 14 (1)

¹⁹ UNHRC, 'General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial', (2007), CCPR/C/GC/32, Para 8

²⁰ Communication No 468/1991: *Angel N Oló Bahamonde V Equatorial Guinea* 468, para 9.4.

²¹ Supra Note 10

²² Supra Note 19, para 25

influence (either from public at large or authorities or individuals) that hinders parties to the proceeding to exercise their right amounts to violation of the right to fair trial²³; thus, fair trial indicates creating a conducive environment for the parties.

The right to public hearing by a competent, independent and impartial tribunal established by law is also the other right reserved for parties to a trial. Publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.²⁴ This means that proceedings shall be open for the public and anyone interested can take part in the hearing of the trial. Exceptionally, press and the public can be excluded from all parts of the trial for the reasons of public security, morals, public order and also for the interest of juvenile persons in case of disputes concerning matrimony, trials made closed.²⁵ Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public.²⁶ Also, exclusion of the public from the process of the trial should not be limited to a particular category of persons.²⁷

Additionally, everyone at a trial proceeding is entitled to hearing of one's case by competent, impartial and independent courts/tribunals established by law;²⁸ and is an absolute right which is not subject to any exception.²⁹ "Impartiality" of the court implies that judges must not harbour preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties.³⁰ And a court or tribunal is said to be independent when it is independent of any other organs of government: legislative and executive and also any political influence that may hinder or influence judges to favor one of the parties at the trial is against this absolute baseline. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges and guarantees relating to their security of tenure

²³ Communication No 770: *Mr Dimitry L Gridin V Russian Federation*, para 8.2.

²⁴ *Supra* Note 19, para 28

²⁵ *Supra* Note 10, Article 14 (1)

²⁶ *Supra* Note 19, para 29

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ *Ibid*, para 19

³⁰ Communication No 387/1989, *Karttunen v Finland*, para 7.2.

until a mandatory retirement age or the expiry of their term of office.³¹ Thus, appointment, promotion, suspension of function of judges is determined by judiciary procedures not by the interest of other branches of government. In relation to competence of the judiciary, the functions of the executive organ of government and the judiciary should be distinguishable or where the latter is able to control or direct the former, it is incompatible with the notion of an independent tribunal.³² Besides, it is necessary to protect judges against conflicts of interest and intimidation.³³

In general, public hearing before an impartial, competent and independent court or tribunal is crucial in accomplishing fair trial both in settling criminal charges and suit at law within the meaning of article 14, paragraph 1.

2.2.2. The right to Presumption of innocence

The notion of the principle of innocence is not founded easily. In ancient times the principle was the principle of presumption of guilt: meaning a person accused of committing a crime is presumed guilty of committing the crime he is charged with and the defendant must exculpate himself as best he could.³⁴ In other words, criminal responsibility is established based on the accused's reputation and previous conduct; which is later on replaced by the system of capacity responsibility.³⁵ Then after, the principle is injected into the modern human rights instruments: UDHR, ICCPR, ACHPR, ACHR, and ECHR.

Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law.³⁶ The rule of presumption of innocence incorporates two things: first, a person

³¹ Supra Note 29

³² Ibid

³³ Ibid

³⁴ Anthony Gray, *Presumption of Innocence in Peril: A Comparative Critical Perspective* (Lexington Books 2017) <<http://gen.lib.rus.ec/book/index.php?md5=B129FBE0427D1667A75DE5282237C91F>> accessed 27 June 2022, P3.

³⁵ Ibid

³⁶ Supra Note 10, Article 14(2); American Convention on Human Rights, (Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969) (ACHR) Art. 8 (2); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM

who is charged with crime must be proved guilty; and the second is proof of guilt must displace all reasonable doubt.³⁷ i.e. Innocence of an accused person lasts until proven by evidence that can be proved beyond reasonable doubt; this rule gives the accused the benefit of doubt, and it's required that persons accused of a criminal act must be treated in accordance with this principle.³⁸ In proving the charge, when there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal.³⁹

Indeed, the principle of presumption of innocence is inextricably linked to fairness in criminal due process and is intrinsically related to the protection of human dignity.⁴⁰ A statement made prior to final judgment that can prejudice the innocence of the accused by any public authority or public at large is prohibited. This is because accused persons should be proven guilty according to law (the substantive and procedural laws not statements or opinions from authorities or public).

In general, the principle of presumption of innocence is a guarantee given for accused persons regardless of the gravity of the offence he is accused of, to be presumed innocent until substantiated by clear evidence that can prove the charge against the accused beyond reasonable doubt. Application of this principle in addition to contributing to the fairness of trial, gives the chance to defend oneself, limit use of power by authorities, limit risk of error (reduce influence of judges by other organs or individuals), keep the autonomy of judiciary and respect human dignity.

2.2.3. Minimum Guarantees

a. Be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him

58 (African Charter), Art 7 (2); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Art. 6 (2);

³⁷ James Bradley Thayer, 'The Presumption of Innocence in Criminal Cases' (1897) Vol. 6, No. 4 The Yale Law Journal Company, Inc 185, p197.

³⁸ Supra Note 19, para 30

³⁹ Supra Note 34

⁴⁰ M. Cheif Bassiouni, 'Human Rights in The Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions' vol: 3 Duke Journal of Comparative & International Law 64, p265.

Any person accused of committing crime has a right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.⁴¹ Contrary to requirement provided under article 9 paragraph 2 of the Covenant which is guaranteed to inform the person arrested of the reasons of his arrest, the requirement under article 14 paragraph 3 sub 'a' is specifically applicable in case a criminal charge is opened against an accused, the accused has the right to be informed with the language he understands in detail both the nature and cause of the charge opened against him. As the Committee comments on, the information to be provided for an accused person should indicate both the law and the alleged general facts on which the charge is based.⁴² It is even more important that notice of the charges be made in a timely manner to allow for sufficient preparation of the defense, and that the charges not be substantially altered shortly before trial commences in order to avoid undue surprise and prejudice to the defense.⁴³

Even in case of trial in absentia, this requirement is expected to be fulfilled; the accused irrespective of his presence be notified of the charges against him and the proceedings⁴⁴ and such kinds of trials are permissible when necessary steps are taken to inform the accused to be present for trial in person beforehand.⁴⁵ In general the requirement of providing information to an accused person about the cause and nature of a charge brought against him promptly in detail with a language he understands plays a vital role in exercising other rights (preparation for defense, examination of witness and extra); in addition it highly contributes to fair trial.

b. Preparation for defense

Accused person has the right to have adequate **time** and **facilities** for the preparation of his defense and to communicate with counsel of his own choosing.⁴⁶ This right is an important

⁴¹ Supra Note 10, Article 14 (3a); ECHR, Art. 6 (3a); ACHR, Art. 8 (2b).

⁴² Supra Note 19, para 31

⁴³ Supra Note 40, page 276

⁴⁴ Supra Note 42

⁴⁵ Communication No 16/1977: *Daniel Monguya Mbenge v Zaire* 16, para 14.1.

⁴⁶ ICCPR, Article 14 (3); American Convention on Human Rights 1969 31, Article 8 (2c); 'European Convention on Human Rights' 34, Article 6 (3b).

element of the guarantee of a fair trial and an emanation of the principle of equality of arms.⁴⁷ This is required to balance the wing between both parties: the prosecutor and the accused in trial. The requirement of adequate time is decided in a reasonable way that can help the accused be prepared well for his defense and it is decided on a case-by-case basis.

*In addition, an adequate facility includes access to all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defense (e.g. indications that a confession was not voluntary).*⁴⁸

The African Charter on Human and Peoples' Rights provided that everyone has the right to have his cause heard which comprises the right to defense including the right to be represented by counsel of his choice.⁴⁹ Moreover, having a legal counsel of one's choice at each important stage of criminal proceedings is a fundamental right of the defense and is of paramount importance to the concept of due process.⁵⁰ Being represented by counsel and presence of effective counsel will deter and prevent abuses against the person arrested, charged, or prosecuted.⁵¹ Indeed, the Committee indicated that a person accused should be granted prompt access to legal counsel and the representing counsel should be able to meet the accused in private in conditions that fully respect the confidentiality of their communication.⁵² The Committee on communication No. 770/1997 emphasized that denying private access to legal counsel is a violation of the Covenant.⁵³ Giving legal advice without any influence, undue interference in a manner of professional ethics is also required from the representing counsel.⁵⁴

⁴⁷ Communication No 226/1987: *Michael Sawyers and Desmond McLean v Jamaica*, para 13.6; Communication No 253/1987: *Paul Kelly v Jamaica*, para 5.9.

⁴⁸ *Supra* Note 19, para 33

⁴⁹ African Charter, Art. 7 (1c)

⁵⁰ *Supra* Note 40, page 280

⁵¹ *Ibid*

⁵² *Supra* Note 19, para 34; See also 'Resolution to the right to Recourse and Fair Trial' ACHPR/Res.4(XI) 92, para 2e

⁵³ Communication No. 770/1997: *Mr. Dimitry L. Gridin v Russian Federation*, para 8.5

⁵⁴ *Supra* Note 19, para 34

c. Be tried without undue delay⁵⁵

The right to be tried without undue delay/speedy trial is crucial to the guarantee of fair trial and this right is intended to limit infringements on personal freedom caused by pretrial and trial detention,⁵⁶ may violate the right to leave one's own country as guaranteed under article 12 (2) of the Covenant, may affect the exercise and enjoyment of rights and guarantees of the Covenant unrelated to article 14.⁵⁷ One of the justification for the recognition of speedy trial is undue delays may cause the loss of evidence or the fading of the memories of the witnesses.⁵⁸

Furthermore, if the accused is held in detention during the period of the trial, the right to speedy trial helps to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.⁵⁹ The Committee suggests that the right to be 'promptly' brought before a judicial authority implies that delays must not exceed a few days.⁶⁰ In one way or another, the right to a trial without undue delay ensures a fair trial. If an accused is not brought before a court within a reasonable time, they have the right to request release from detention, as recognized under the Covenant.⁶¹ Additionally, in case of remand in custody, it must not only be lawful but reasonable and necessary in all the circumstances⁶²; keeping in remand of custody must not infringe other rights of accused persons. Besides, undue delay of trial minimizes the emotional strain on the accused caused by pending criminal proceedings⁶³ and is uneconomical.

d. The right to defense

The right to defense is simply a right to defend oneself against any charge/s brought against oneself. The right to defense under the Covenant includes: the right to be present during one's

⁵⁵ ICCPR, Art. 14 (3c); African Charter, Art. 7 (1d).

⁵⁶ Supra Note 40, page 285.

⁵⁷ Supra Note 19, para 63

⁵⁸ Supra Note 37

⁵⁹ Supra Note 19, para 35.

⁶⁰ Communication 1128/2002: *Marques de Morais v Angola*, para 6.3.

⁶¹ ICCPR, Article 9 (3)

⁶² Supra Note 60

⁶³ Supra Note 19, para 35

own trial; the right to defend oneself personally or through counsel; and the right to representation, even when the accused cannot afford it.⁶⁴

According to the Covenant, being physically present in trial is a rule; however, if an accused is duly summoned for his physical appearance on a specific date and the accused refuses to appear, trials in *absentia* are permissible.⁶⁵ To comply with the requirements of a fair trial, when trying a person in *absentia* is compatible with article 14, only when the accused is summoned in a timely manner and informed of the proceedings against him.⁶⁶

The right to defend oneself personally is also guaranteed under the Covenant. However, this right is not absolute; it can be limited for the best interest of justice which requires appointment of a lawyer; for instance, in case of grave crimes, complication of the case the accused is charged with.⁶⁷ Because representation of counsel is not only a matter of interest to the accused, but is also paramount to due process of the law and to the integrity of the judicial process, the court must ensure that self-representation is adequate and effective.⁶⁸

It's necessary that an accused have a lawyer at all stages of the proceeding for cases involving capital punishment.⁶⁹ This right assures the accused of the right to participate in his or her defense, including directing the defense, rejecting appointed counsel, and conducting his or her own defense under certain circumstances.⁷⁰

Regarding the right to appointment of counsel in case of indigency, when the accused cannot afford for counsel of his/her choice, at a minimum appointment of counsel by state is required to protect the right to defense, the right to fair trial, the right to equal protection under the law of the accused.⁷¹ This guarantee is applicable whenever the interest of justice requires.⁷² The element of

⁶⁴ ICCPR, Article 14 (3d); ECHR, Art. 6 (3c)

⁶⁵ Supra Note 19, para 36.

⁶⁶ Communication No 699/1996: *Ali Maleki v Italy*, para 9.3.

⁶⁷ Supra Note 19, para 37

⁶⁸ Supra Note 40, page 283

⁶⁹ Supra Note 19, para 38; see also *Communication No 2289/2013: Selyun v Belarus*, para 7.6.

⁷⁰ Ibid

⁷¹ Supra Note 40, page 282

the interest of justice comes into picture in case of grave offense and the existence of some objective chance of success at the appeal stages.⁷³ Failure to give information to an accused whenever interest of justice requires, about his right to have a legal counsel, amounts to the violation of the minimum guarantees of the rights of the accused person.⁷⁴ Counsels assigned by the competent authorities must be effective and incompetence or blatant misbehavior of appointed counsels, as is incompatible with the interest of justice, may be attributed to the State as the violation of article 14 para 3d of the Covenant.⁷⁵ In addition any hindrance from the court or public authority to appointed lawyer from undertaking effective tasks assigned to the lawyer constitutes violation of the provision.⁷⁶ Hindrance may be inability to discuss with one's client privately to prepare for defense is also incompatible with the notion of this provision.⁷⁷

e. The right to examine witness evidence

Under Human rights instruments, accused persons have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against them.⁷⁸ This right guarantees the accused equal legal powers of compelling the attendance of witnesses and of examining or cross examining any witness available to the prosecution; it is important for ensuring an effective defense by the accused and their legal counsels.⁷⁹

*It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defense, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.*⁸⁰

Here the accused has the right to examine and question witnesses presented before court to testify the accused is guilty in order to prove his innocence. In some instances, hearsay evidence

⁷² Supra Note 19, para 38

⁷³ Ibid

⁷⁴ Communication No 2266/2013: Valery Rybchenko v Belarus, para 8.11

⁷⁵ Supra Note 52, Page 282

⁷⁶ Ibid

⁷⁷ Communication No 917/2000, *Arutyunyan v Uzbekistan (HRC 2004)*, para 6.3.

⁷⁸ ICCPR, Article 14 (3e); ECHR, Art. 6 (3d); ACHR, Art. 8 (2f).

⁷⁹ Supra Note 19, para 39.

⁸⁰ Ibid

is admissible; also unanimous witnesses are called to testify against the accused. This however, jeopardizes the right to fair trial and presumption of innocence of the accused.

The Committee stipulates that evidence, statements or confessions obtained contrary to article 7 of the Covenant may not be invoked as evidence as the right under the provision is not subject to any limitation.⁸¹ The only exception to this rule is that when statement or confession obtained in violation of article 7 is used as evidence that torture or other treatment prohibited by this provision occurred.⁸² Additionally, State parties to the Covenant are entrusted with the duty to enact a domestic legislation in the determination of which evidence is admissible and how their courts assess it.⁸³

f. Free assistance of interpreter

An accused has the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court.⁸⁴ It ensures the effectiveness of both the right to a fair trial and the right to counsel.⁸⁵ This right is guaranteed for anyone in a legal proceeding at every stage of oral proceedings.⁸⁶ It is not clearly stipulated under the covenant whether this right includes interpreting documents that are relevant for the trial or the interpretation is limited to the courtroom. The obligation to request for an interpreter is upon the accused person; state parties are not expected to provide an interpreter without any request from the accused.⁸⁷

g. Not to be compelled to testify against himself or to confess guilt.⁸⁸

This rule protects the accused from any form of physical or psychological influence to make him testify he is guilty; in other words an accused is presumed innocent until the prosecution brings evidence which can support that the accused is guilty of committing the crime/s. Forceful confession is against the object of the ICCPR and CAT specifically.⁸⁹ If a confession is obtained

⁸¹ Ibid, para 6.

⁸² Ibid; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987), Art 15.

⁸³ Supra Note 19, Page 39

⁸⁴ ICCPR, Article 14 (3f); ECHR, Art. 6 (3e); ACHR, Art. 8 (2a).

⁸⁵ Supra Note 40, page 284

⁸⁶ Supra Note 19, para 40

⁸⁷ Z P v Canada, *Communication No 341/1988*, para 5.3.

⁸⁸ ICCPR, Article 14 (g); ACHR, Art. 8 (2g).

⁸⁹ ICCPR, Article 7; CAT Article 15

involuntarily, it is inadmissible unless it is to be used to demonstrate to court that the confession was coerced.

2.2.4. The right to appeal

An appeal is applying to a higher court for reversal of judgment/decision passed by lower courts. The African Charter indicates that for violation of fundamental rights guaranteed under conventions, laws, regulations and customs in force to appeal before competent national organs, every individual has a right to have the right to his cause heard in this regard.⁹⁰ Similarly, the American Convention on Human Rights also guarantees accused persons rights to appeal.⁹¹ On the contrary, the ICCPR reserved the right to appeal for convicted persons.⁹² Also the African Commission, in its Resolution on the right to recourse and fair trial, interprets the right to appeal as if it is reserved for those who have been convicted.⁹³ Respecting the right to appeal of accused contributes in ensuring the right to fair trial.

2.2.5. The Principle of Segregation

The principle of segregation is mainly acknowledged under the Nelson Mandella rules, and other human rights instruments. The principle is simply, separation of one group from the other for justice purposes, for the optimal management of prisons and to ensure safety and liberty of persons deprived of their liberty. For instance separation of accused persons from convicted persons,⁹⁴(in order to protect the right to presumption of innocence of accused persons), separation of Women from men,⁹⁵(to protect women from physical, sexual and verbal abuse), persons detained for civil matters from those accused of criminal matters,⁹⁶and separation of juvenile offenders from adults,⁹⁷(to protect young offenders from abuse).

⁹⁰ African Charter, Art. 7 para 1 (a).

⁹¹ ACHR, Art. 8 (2h)

⁹² ICCPR, Article 15 (5)

⁹³ Recommendations and Resolutions Adopted by the African Commission on Human and Peoples' Rights 1988 1, Page 35.

⁹⁴ United Nations Office on Drug and Crime, 'The United Nations Standard Minimum Rules for the Treatment of Prisoners' 38, Rule 11 (b); ICCPR, Art 10 para 2a

⁹⁵ Ibid, rule 11 (a).

⁹⁶ Ibid, rule 11 (c).

⁹⁷ Ibid, rule 11 (d)

2.2.6. Principle of legality

This principle is acknowledged under human rights instruments and it is simply protection of a person from being accused of an act/omission which did not constitute criminal offence under either national or international law at the time it was committed.⁹⁸ This rule also applies to not imposing heavier penalties than that provided under legislation at the time the crime is committed.⁹⁹

Generally, this chapter tried to highlight the guarantees provided for accused persons under human rights documents and the importance and element of the rights. These documents as discussed above impose the obligation to give effect to any of the rights enshrined in the documents a state is a party to.

In general, this chapter has attempted to emphasize the guarantees provided for accused persons under human rights documents, as well as the significance and elements of the rights. As previously discussed, the state parties are obligated to give effect to all the rights stated in the documents.

⁹⁸ ICCPR, Article 15 (1); African Charter, Art. 7 (2); ECHR, Art. 7(1); ACHR, Art. 9

⁹⁹ Ibid

CHAPTER THREE

The analysis of the rights of accused persons under FDRE Constitution, Proclamation No. 625//2009 and Proclamation No. 1176/2020

3.1. Introduction

The International community collectively joined the journey of fighting terrorism which threatens international peace and security following the 2001 attack. In the journey of combating terrorism, International organizations and organs as well as states undertake mechanisms like enacting laws that prevent acts of terrorism and punish those who committed or supported commission of acts of terrorism. States, invoking their fight against terrorism, they are adopting and enacting laws and measures that are noncompliant with international human rights principles and standards and further narrow the space around civil society.¹⁰⁰ Ethiopia is also one of the states criticized for adopting Anti-terrorism proclamation that is inconsistent with International and regional human rights documents as well as FDRE Constitution. Under this Chapter, the discussion focuses on the rights of accused persons under the FDRE Constitution; the concept of terrorism and the substantive and procedural improvements made by the proclamation No. 1176/2020.

3.2. Rights of Persons accused under FDRE Constitution

The FDRE Constitution, which is enacted during the regime of EPRDF, protects fundamental rights and freedoms broadly recognized in a number of international human rights instruments.¹⁰¹ The 1995 FDRE Constitution also gives recognition to International human rights instruments Ethiopia has adopted to be part and parcel of the law of the land and chapter three of the Constitution to be interpreted in conformity with human rights documents which Ethiopia has

¹⁰⁰ Center for Strategic and International Studies, 'Changing the Will, Finding the Way' (2018).

¹⁰¹ Getahun Kassa, 'Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System' (2007) Vol. 20, p79.

adopted.¹⁰² Despite Ethiopia has ratified all major International and regional human rights instruments, people have not enjoyed the protection of their rights stipulated in these Conventions.¹⁰³ The right of accused persons which is recognized under article 20 of the FDRE Constitution is discussed below.

i. The right to be heard by an ordinary court

Accused persons have the right to public trial by an ordinary court of law within a reasonable time after having been charged.¹⁰⁴ According to this provision, hearing of trial needs to be public at ordinary court. The right to public trial except in special cases of protection of public morals, privacy of parties to the trial and national security¹⁰⁵, expected to be implemented. Likewise, the accused has the right to have his cause be heard within a reasonable time after having been charged; which is one element of fairness of a trial, in which speed the trial commences and reaches its conclusion.¹⁰⁶ The right to be heard as per the African Charter on Human and Peoples' Rights includes: the right to presumption of innocence, the right to appeal to competent national organs, the right to defense and speedy trial.¹⁰⁷ It is evident that the Constitution doesn't specifically indicate the requirement of qualification of court, although by referring to article 13 (2) of the FDRE Constitution, it can be interpreted in-line with article 14 (1b) of the ICCPR which indicates for the qualification of court/tribunal be independent (the only indicated qualification under the Constitution)¹⁰⁸, impartial and competent.

Moreover, the right to be heard needs to be observed at each level of trial and it's the court's duty to assume it. The court to which the charge is brought shall fix the time and date of the trial and cause the accused (if he is in custody or not) and the public prosecutor to be summoned to

¹⁰² Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 (hereinafter cited as FDRE Constitution), Cumulative reading of Article 9 (2) & 13 (2)

¹⁰³ Almaz Zewde, 'Human Rights in Ethiopia: Looking Back and Moving Forward' (2019) 13 International Journal of Ethiopian Studies 137.

¹⁰⁴ Supra Note 102, Article 20 (1)

¹⁰⁵ Ibid

¹⁰⁶ Girmachew Alemu, Yonas Birmeta and Wondemagegn Tadesse, *Ethiopian Human Rights HandBook* (Center for Human Rights Addis Ababa University 2013)p81.

¹⁰⁷ The Banjul Charter, (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986), Art. 7 (1)

¹⁰⁸ Supra Note 116, Articles 78 & 79 (2)

appear on the date and time fixed by the court.¹⁰⁹ The accused has to appear to the court where the case is brought personally or through his legal representative to defend himself.¹¹⁰ This right includes the right to be present to the court, the right to examine any witness presented against him, the right to bring evidences that justifies his innocence, the right to get enough preparation time for the defense.¹¹¹ Thus, when the right to be heard of the accused is safeguarded, it results in promoting fair trial and equality of the parties.¹¹²

ii. The right to know the details of the charges in a writing

Accused persons have the right to be informed with **sufficient particulars** of the charge brought against them and to be given the **charge in writing**. There are three elements of this right: the information, the form in which the information is provided and the time for providing the information.¹¹³ The form and content a charge should have which is indicated under article 111 of the CrPC should be followed and a copy of every charge shall be given to the accused free of cost.¹¹⁴ The charge should indicate the situation and the crime committed in detail (must fulfill the requirement of sufficient particulars provided under the constitution).¹¹⁵ This serves the accused to get prepared to defend himself against the charge and this result in enhancing the right to defend oneself.

iii. The right to presumption of innocence and the Privilege against self-incrimination

The presumption of innocence is the fundamental to protection of the other rights of the accused including the right to bail.¹¹⁶ The accused remains presumed innocent until the prosecution's evidence proven beyond a reasonable doubt that the accused has committed the alleged crime.

¹⁰⁹ The Criminal Procedure Code Proclamation 1961, Imperial Ethiopian Government Proclamation No. 185 of 1961, Art. 123

¹¹⁰ Ibid, Article 127 (1).

¹¹¹ *Birhanu Nurga V Federal Anti-corruption Commission Prosecutor* (2007) Vol 18 (The Federal Supreme Court Cassation bench)280.

¹¹² Ibid.

¹¹³ Supra Note 106, page 78

¹¹⁴ Supra Note 109, Article 109 (4)

¹¹⁵ See Teklu Fisha & Tsehay Wahu v. Oromia Public Prosecutor, FSC Cassation Decision Vol 18, (30/11/2007), Page 289

¹¹⁶ Supra Note 106, Page 84

The prosecutor bears the burden of proving the accused is guilty of committing the alleged crime. In case the accused person is in custody, he can request to be released on bail. The exercise to the right to bail is limited either by the gravity of the crime plus there is the possibility of the person in respect of whom the offence was committed dying¹¹⁷ or due to the nature of the accused.¹¹⁸ Unless for the circumstances the law limits bail grant, granting bail for an accused person who is in custody helps in promoting other constitutional rights of the accused and puts him in a better position to collect evidence and defend himself.

Furthermore, the right not to be compelled to self-incriminate is constitutionally guaranteed. The privilege against self-incrimination enables individuals to protect themselves against oppressive governmental power by refusing to testify or to answer official questions where that might incriminate themselves in future criminal proceedings.¹¹⁹ The privilege is considered as a substantive human right.¹²⁰ This privilege is not absolute privilege; for the purpose of protecting or advancing public interest, a suspect or an accused may be compelled in case he has relevant information even though, by so doing, he might incriminate himself i.e. this doesn't however, justify torture.¹²¹ The scope of the privilege doesn't cover documentary evidences, it relates to testimonial/oral evidences.¹²² The FSC on the file no. 111742 provided that the fact that the accused entered plea of guilt alone doesn't suffice, it needs to be done in relation to each and every element of the charge.

iv. The right to defense

This right includes two pillar guarantees: The right to full access of any evidence and the right to legal counsel. Accused persons are entitled to full access to any evidence presented against them.¹²³ Evidence is the core thing to show whether a person is innocent or guilty, helps the accused get prepared for his defense and also an accused having the right to access evidence helps in promoting the equality of arms between the prosecution and the accused. This

¹¹⁷ See Article 63 of the CrPC

¹¹⁸ See Article 67 of the CrPC

¹¹⁹ Wendmagegn Gebre, 'The Right of Silence and Privilege against Self-Incrimination in Criminal Proceedings: An Appraisal of the Ethiopian Legal Framework' (2014) Vol.4 Bahir Dar Univeristy Journal of Law 335, 371.

¹²⁰ Ibid at 377.

¹²¹ Ibid

¹²² Ibid at 369

¹²³ Supra Note 102, Article 20 (3)

examination of evidences includes examining witnesses testifying against them, to adduce or to have evidence produced in their own defense, and to obtain the attendance of and examination of witnesses on their behalf before the court and producing evidence in once own defense and obtaining the attendance of witnesses on their behalf and examination of witnesses is included.¹²⁴

The FSC Cassation Division on File no. 100860 stated that the court when ordering the accused to present his evidences must consider the situation of the accused: whether he is in custody or not and give sufficient time for preparation of defense. Hence, when the accused has no enough time to get prepared for his defense, it can hinder the right to fair trial.

Accused persons have the right to defend themselves in person or through legal representatives of their choice and in case an accused has no means to pay for counsel and miscarriage of justice would result the accused has the right to be represented by counsel at state's expense. The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.¹²⁵ In general the right to defense of an accused is secured once the right to evidence and the right to have legal representation are respected.

v. The right to appeal

All persons have the right to appeal to the competent court against an order or a judgment of the court which first heard the case.¹²⁶ Under the ICCPR, the right to appeal is provided for convicted individuals; and it doesn't clearly indicate that the same right is applicable for accused individuals. However, under the FDRE Constitution '*all persons*' have the right to appeal; which certainly includes accused persons. Review should be substantive, both on the basis of sufficiency of the evidence and of the law; a review that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the ICCPR.¹²⁷ The undue delay of review by the higher instance court impairs the effectiveness of the right to appeal and entails the violation of article 14 (3c) of the ICCPR.¹²⁸

¹²⁴ Ibid

¹²⁵ Supra Note 19, para 10.

¹²⁶ Supra Note 102, Article 20 (6)

¹²⁷ Supra Note 19, para 48

¹²⁸ Ibid, para 49

vi. The right to assistance of an interpreter

When an accused cannot understand the language of the court, the accused has the right to have an interpreter at state expense. In exceptional cases, it also might require that the free assistance of an interpreter be provided where otherwise an indigent party could not participate in the proceedings on equal terms or witnesses produced by it be examined.¹²⁹

3.3. The concept of Terrorism (Definitional Problem)

Terrorism can be viewed within criminal justice model as a “very serious crime.”¹³⁰ The League of Nations defined acts of terrorism as 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."¹³¹ However, the League of Nations never came into force and after WWII, there are numerous Conventions and Resolutions adopted in order to provide a comprehensive and universally accepted definition of Terrorism, however, it is without success. Although terrorism lacks a single definition, it is classified into various classes. These are Revolutionary (which seeks the complete replacement of existing political system with new one), sub-revolutionary (aimed at modifying the existing political structure) and establishment terrorism (state sponsored terrorism).¹³² This state terrorism can either be clandestine state terrorism (in case state directly participate in acts of terrorism) and surrogate state terrorism which is committed by state inaction or complicity after the fact i.e. when state approves or fails to condemn or act against an act of terrorism carried out by third party.¹³³

In the field of mutual legal assistance, one of the basic principles for judicial cooperation in general and extradition in particular, is the principle of dual criminality - an act must be a crime in both countries involved.¹³⁴ If states disagree about whether or not an act constitutes terrorism,

¹²⁹ Ibid, para 13

¹³⁰ Alex Schmid, ‘Terrorism - The Definitional Problem’ 36 Case W. Res.J.Int’l L. 375 (2004) 47, 384.

¹³¹ Convention for the Prevention and Punishment of Terrorism, 19 League of Nations O.J.23 (1938), Article 2 (1)

¹³² IPPS/AAU, *An Anthology of Peace and Security Research*, vol 3 (Institute for Peace and Security Studies 2010) 206.

¹³³ Ibid

¹³⁴ Supra Note 130

chances of interstate cooperation are clearly diminished.¹³⁵ Thus, having a comprehensive definition helps in understanding what constitutes terrorism and fight it all together; hence, the monopoly of defining what acts of constitutes acts of terrorism, interpreting the law and enforcing the law which later results in defining the term in a broad and vague way, which leaves a room for abuse.

In addition to lack of comprehensive definition of the term, abusing/misusing the concept of combating terrorism to limit other human rights and weaken political aliens is evident. International human rights experts, including those of the UN system, are unanimous in finding that many measures which states are currently adopting to counter terrorism infringe on human rights and fundamental freedoms.¹³⁶ Respect for human rights and the rule of law must be the bedrock of the global fight against terrorism.¹³⁷ Compromising Human rights cannot serve the combat against terrorism. On the contrary, it facilitates achievement of the terrorist objective by ceding to him the moral ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is most likely to find recruits.¹³⁸ Similarly, Ethiopia is also one of the states that abused Anti-terror law (Proclamation 625/2009). Beneath, the criticisms rose internationally and domestically by human rights defenders, Civil societies, academicians, politicians which are raised against the repealed ATP and the modified areas of the new Proclamation No. 1176/2020 in better protecting the rights of the accused are discussed.

¹³⁵ Ibid

¹³⁶ UNCHR, 'Report by Secretary General Kofi Annan, keynote address to the closing plenary of the International Summit on Democracy, Terrorism and Security,' (10 March 2005)

¹³⁷ Supra Note 4, Page 2

¹³⁸ Ibid at 9

3.4. Human rights documents, FDRE Constitution and the Proclamation No. 1176/2020

3.4.1. Main reasons for the enactment of the Proclamation 1176/2020

The EPRDF adopted the ATP as one of the most draconian anti-terrorism legislations in the world, and used it as an instrument/tool to crush dissent and opposition.¹³⁹ The repealed ATP has been a cancer eating up the rights enshrined in the Constitution and continued to threaten human rights and democracy in Ethiopia;¹⁴⁰ meaning the government used it in order to silence the opposition parties and individuals who are critics of the government. The law missed the purpose of legislation by focusing on pleasing the government on power rather than serving the public. Individuals accused under the repealed ATP experienced procedural difficulties in exercising their rights. Substantively and procedurally the law hinders the exercise of constitutional rights of persons accused. Thus, proclamation 1176/2020 is enacted to replace proclamation 652/2009 as the later one has substantive and enforcement loopholes which produced a negative effect on the rights and freedoms of citizens.¹⁴¹ And the proclamation is aimed at fostering effective legal safeguard and protection to the rights and freedoms of accused persons; and to establish prevalence of rule of law by making law enforcement bodies accountable in case of their noncompliance with the laws.¹⁴²

3.4.2. Terrorism and related crimes under Proclamation No. 1176/2020

Objective of the proclamation

As stated in the Proclamation itself, the repealed ATP was necessitated to provide for adequate legal framework since the laws in force in the country were not sufficient to prevent and control terrorism.¹⁴³ The new law, i.e., Proclamation No. 1176/2020 was also enacted to strike proper balance between control and prevention of the crime and establishing safeguards for the protection of the fundamental rights of persons accused. In fact, as inferred from the preamble of

¹³⁹ Supra Note 9

¹⁴⁰ Peter Sekyere, Bossman Asare, 'An Examination of Ethiopia's Anti-Terrorism Proclamation On Fundamental Human Rights', European Scientific Journal vol 12 no.1, January 2016, page 368

¹⁴¹ Prevention and Suppression of Terrorism Crimes Proclamation, Proclamation No. 1176/2020 (hereinafter cited as Proclamation 1176/2020), (entered into force March 25, 2020), see para 4 of the preamble

¹⁴² Ibid

¹⁴³ Anti-Terrorism Proclamation, Proclamation No. 625/2009, (hereinafter cited as the repealed ATP) (August 28, 2009), See the preamble

the repealed Anti-Terrorism Proclamation (ATP), its primary focus was on enhancing prosecution and investigation techniques; whereas the current Proclamation, seeks to address the substantive and enforcement loopholes of the repealed ATP which produced a negative effect on the rights and freedoms of citizens.

It has thus come up with adequate provisions that enable the protection of rights and freedoms of individuals and prevalence of accountability of law enforcement bodies.¹⁴⁴ Proclamation 1176/2020 repealed the previous proclamation with the dual purpose of combating terrorism by bringing the perpetrators to justice and also to hold law enforcement officials accountable for their actions when they violate the fundamental rights of the accused persons.¹⁴⁵

I. Definition: Terrorist Acts

The Proclamation No. 1176/2020 defines ‘terrorism crime’ as those criminal acts provided under Articles 3, 5 to 11, 29, and 30 of the proclamation.¹⁴⁶ Article 3 of the Proclamation No. 1176/2020 defines ‘terrorist acts’ as:

*Terrorist acts:- whosoever, with the intention of advancing political, religious or ideological causes for terrorizing, or spreading fear among the public or section of the public or coercing or compelling the Government, Foreign Government or International Organization: causes serious bodily injury to person, endangers the life of a person, commits hostage taking or kidnapping, causes damage to property, natural resource or environment or seriously obstructs public or social service; is punishable with rigorous imprisonment from ten to eighteen years.*¹⁴⁷

The way the 2020 definition is structured, however, is different from the 2009 definition as far as the above mens rea component is concerned.¹⁴⁸ The repealed ATP is criticized for its definition

¹⁴⁴ Ibid

¹⁴⁵ Ibid

¹⁴⁶ Ibid, Article 2(2)

¹⁴⁷ Ibid, Article 3(1)

¹⁴⁸ Abadir M Ibrahim and Abdi Dekebo Dale, ‘Tilting at Windmills with Anti-Terrorism Laws: The Challenges of Doctrinally Challenging the Definition of Terrorism’, Sisay A. Yeshanew and Abadir M. Ibrahim (eds), *Righting Human Rights through Legal Reform: Ethiopia’s Contemporary Experience* (School of Law- Addis Ababa University 2020)167

of terrorist acts which is overly broad and vague this could be used to criminalize non-violent political dissent.¹⁴⁹

The definition of terrorist activities under Ethiopia's 2009 ATP is broad and imprecise, raising significant concerns that the law could be used to criminalize legitimate exercise of the rights to freedom of expression and peaceful assembly.¹⁵⁰ Mostly, 'either per se or in their application, (these definitions) brings within their fold the innocent and the suspect alike and thereby increases the risk of arbitrary detention, disproportionately reducing the level of guarantees enjoyed by ordinary persons in normal circumstances.¹⁵¹ With the view of limiting the limitations, the new legislation restricts the intent to "terrorize" the public or compel the national or foreign government or international organizations.¹⁵²

According to Article 3(6) of the repealed ATP, if a group to promote a political or ideological objective against the government calls a strike or conducts a protest march with the intention of exerting influence, and as a result public services are disrupted, the strike may be considered terrorism.¹⁵³ While the new proclamation provides for exceptional situation when an act is not considered as 'acts of terrorism'; stating that obstruction of public service caused by strike and the obstruction is related to the institution or profession of the strikes or exercising rights recognized by law such as demonstration, assembly and similar rights shall not constitute acts of terrorism.¹⁵⁴

Not only this, in relation to proportionality of punishment provided, both proclamations differ. The punishment provided for every act indicated under sub-article 3 of the repealed ATP is rigorous imprisonment of 15 years to life or death penalty. Regardless of considering the degrees

¹⁴⁹ Human Rights Watch, 'Analysis of the draft Ethiopia's Anti-terrorism Law' <https://www.hrw.org/news/2009/06/30/analysis-ethiopias-draft-anti-terrorism-law#_ftn8>

¹⁵⁰ Supra Note 5

¹⁵¹ 'Report of the Working Group on Arbitrary Detention to the UN Commission on Human Rights, Doc. E/CN.4/2004/3' (2003), para. 64.

¹⁵² Ibid.

¹⁵³ የፀረ ሽብርተኝነት አዋጅ የጥናት ቡድን, የበኢፌድሪ ጠቅላይ አቃቤ ሕግ የህግና የፍትህ ጉዳዮች አማካሪ ጉባኤ, የፀረ ሽብርተኝነት አዋጅ ጥናትና ምክረ-ሃሳብ (2011E.C) unpublished p258

¹⁵⁴ Supra Note 141, Article 4

in the commission of the crime, the punishment set for all degrees (from preparation to completion) are the same.¹⁵⁵ Even the demarcation between the degree of crimes and what constitutes each of the acts is not either provided under the definition or the provision itself. For instance under the criminal code, the first degree of crime is preparation, however, under the proclamation 625/2009, planning is provided as one degree of crime without providing the definition and what constitutes planning of committing acts of terrorism under the proclamation results in misinterpretation and as planning under the ordinary criminal code is not included hence, it may hinder the possibility of renunciation and active repentance of one's idea/action.

Contrary to the repealed proclamation, under Proclamation No 1176/2020 the punishment level provided is reduced and capital punishment results in case, if the action taken to achieve the causes stated under article 3 (1) causes serious damage to historical or cultural heritages, infrastructures, property, or natural resource environment, the punishment is rigorous imprisonment for a period of fifteen years to life or death.¹⁵⁶ The fact that the level of seriousness required to distinguish acts as a terrorist acts under article 3 (1e) & 3 (2) is not clearly provided perhaps, open to interpretation. Moreover, under the new proclamation the sentencing period set for each degree of crime provided separately from article 3- 11 of the proclamation is positive improvement.

II. Terrorism Related Crimes

As indicated above, terrorism crime is either committing acts of terrorism under article 3 or committing related crimes (Article 5-11 & 29).

➤ Article 5: Intimidation

Intimidation according to the proclamation is intimidating to commit any of the acts under article 3 and it is punishable taking into consideration one of these conditions: whether the intimidator has the capacity, opportunity or ability of materializing the act or whether the community or a certain segment of society is terrorized by intimidation is required to exist.

➤ Article 6 planning and preparation

The bottom line in the degree of commission of crime as per the 2004 criminal code is preparatory acts and the new proclamation includes planning as a punishable act. The new

¹⁵⁵ Supra Note 143, Article 4

¹⁵⁶ Supra Note 141, Article 3(2)

Proclamation provides for definition of terms that are not included under the criminal code¹⁵⁷ and defines planning as to identify or define the condition, place, time the terrorist act is to be carried out or similar matters beyond the *mere intention* of committing the crime.¹⁵⁸ The definition provided under the new proclamation is almost similar and it is not easy to identify both planning and preparation from one another. Though stating the point of difference of planning and preparation is difficult, the difference is left to be addressed case by case.¹⁵⁹

➤ Article 7- Conspiracy to carry out terrorism acts

As article 36 of the Criminal Code defines Conspiracy is when two or more persons enter into agreement to commit a crime. Conspiracy to exist needs the agreement of at least two persons to commit terrorist acts is punishable with rigorous imprisonment of 5 to 12 years like preparation.

➤ Article 8- False threat of terrorist act

False threat to commit terrorist act is committed when a person knowing the threat is false expresses/performs false act by any means and such act causes shock, fear, anxiety, or worry in the public or in the society or certain section of the society. According to the provision it is punishable with simple imprisonment or in case damage is caused due to the act the punishment is rigorous imprisonment from three to ten years. The basic purpose of punishing false threat/intimidation whether damage caused or not in case the elements of the crime is fulfilled, is to prevent people from putting other people at risk by claiming to do (raising) an arbitrary alarm of act of terrorism.¹⁶⁰

➤ Article 9- Rendering Support

Rendering support is knowingly supporting or assisting directly or indirectly the commission of a terrorist act or with the intent to support a terrorist organization. Here the Amharic version states for terrorism crime not terrorist act; hence, the Amharic version prevails over the English version, rendering support is knowingly supporting the commission of any of the acts provided

¹⁵⁷ ‘የሽብር ወንጀልን ለመከላከል ለመቆጣጠር ወጣው ህግ መሰረታዊ ይዘት ላይ የተዘጋጀ የስልጠና ማኑዋል’ 19; The Criminal Code of the FDRE, Proclamation No. 414/2004 (hereinafter Criminal Code) (May 09, 2005), Articles 26, 27, 36 & 38

¹⁵⁸ Supra Note 141, Article 2(6)

¹⁵⁹ Terrorism Module Legal and Justice Affairs Advisory Council Federal Attorney General, ‘የሽብር ወንጀልን ለመከላከል ለመቆጣጠር ወጣው ህግ መሰረታዊ ይዘት ላይ የተዘጋጀ የስልጠና ማኑዋል’, Page 15

¹⁶⁰ Ibid, page 23

under article 2 (2) of the current proclamation. According to the new proclamation, unlike the repealed ATP, the punishment provided for rendering support intentionally and by negligence is different (rigorous imprisonment from seven to fifteen years and simple imprisonment from one to five years respectively). In relation to rendering support the provision provides two conditions: the first is it requires explaining whether the support was made to commit the crime or whether the supporter knew or deserved to know that the support is given to commit terrorism crime and the second condition is for whatever purpose giving support to an organization designated as a terrorist.¹⁶¹ When comparing to article 5 (1a) of the repealed ATP, the current proclamation punishes knowingly preparing, providing or handing over information, or document for the purpose stated under the provision. Here under the current proclamation providing/preparing/handling over of information is included and whether the document is forged or not is not important as long as such act carried out fulfills the required element of the crime. Rendering support of property nature under the current proclamation is left to be governed according to the Prevention and Control of Money Laundering and Financing of Terrorism Proclamation No. 780/2013. The other is though the principal crime was not committed or materialized, a person who commits the acts provided under article 9 (1 or 2) is punished with rendering support.¹⁶² Indeed, those who're giving humanitarian aid under the umbrella of organizations engaged in humanitarian activities or has legal duty to support other is not punishable for the support made only to undertake function or duty.¹⁶³

➤ Article 10: Incitement

The criminal code defined incitement as whoever intentionally induces another person whether by persuasion, promises, money, gifts, and threats or otherwise to commit a crime shall be regarded as guilty of having incited the commission of the crime.¹⁶⁴ Whosoever intentionally incites another person by inducing, promises, money, gift, threat or any other similar means to commit one of the acts provided under article 3 of the new proclamation, shall be punishable with a punishment provided for the offence provided that the crime was attempted or

¹⁶¹ Ibid, Page 24.

¹⁶² Supra Note 141, Article 9(3)

¹⁶³ Ibid, Article 9(5).

¹⁶⁴ Article 36(1) of the Criminal Code

committed.¹⁶⁵ The repealed ATP contrary to criminal code punishes incitement though the incited offence is not attempted.¹⁶⁶ Contrary to the criminal code, incitement is punishable even when the intended crime has not materialized or attempted is punished with rigorous imprisonment from one to five years.¹⁶⁷ During the discussion on the draft of the new proclamation, comment was given about avoiding encouragement as a penalized act as it was the provision that is broad and limits the right of everyone has the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice;¹⁶⁸ publication or causing publication of a statement which is *likely to be understood* by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism is punished.¹⁶⁹ The provision failed to provide a **reasonable and legitimate ground** to limit the right to freedom of expression and speech as any information a person shares via any medium may be considered as influencing the **public without setting any standards**. Under the current proclamation, incitement is publishing, producing, communicating, distributing, storing, selling, or making available to the public which needs to be made in clear manner by statement, writing, using image or by any other conduct to cause commission of any of the acts under article 3. In order to limit the limitation on a justifiable ground, the term ‘clear’ is included and deciding clarity perhaps is difficult however, the fact that the incitement made by any means stated to commit terrorist acts is expected to make the person to whom the incitement made to have him believe to commit terrorist act (the mental element: intention is required) while the repealed ATP, focused on the way the recipients of the message understands the message is the element needed to determine the act constitutes acts of terrorism rather than the intention of the person transmitting the message.¹⁷⁰

➤ Article 11: Possessing property associated with terrorism

¹⁶⁵ Supra Note 141, Article 10(1)

¹⁶⁶ Refer to: Supra Note 164, Article 36 (2); Ibid, Article 10(3)

¹⁶⁷ Supra Note 141, Article 10(3)

¹⁶⁸ Supra Note 102, Article 19(2)

¹⁶⁹ Supra Note 143, Article 6

¹⁷⁰ Supra Note 153, Page 261; Ibid

Under the repealed ATP, the punishment provided for possessing and dealing with terrorist act committed intentionally or negligently is the same. Contrary to this the new proclamation, punishment set for the intentionally and negligently possessing of property associated with terrorism is not the same.

➤ Article 29: Heading terrorist organization

Heading of terrorist organization is stipulated as a terrorism crime under the new proclamation and the mere fact that a person heads an organization that is proscribed by HPR is punishable. The fact that a person resigns from his position prior to proscription or leads the organization before it was proscribed by HPR relieves him from punishment; however, punishment exists provided that he commits an offence during his leadership. A person is considered as heading an organization if he has the responsibility of overseeing the administration or the Organization in whole/in part, or preparing plans and follow up its implementation or has authority to make decision or whose management position is ascertained by the rules of the Organization or performs acts, which under normal circumstances are performed by manager.¹⁷¹ Undertaking any of these duties is considered as heading terrorist organization.

➤ Article 30: Membership and training

Knowingly or having the reason to know an Organizations proscribed as a terrorist organization & joining as a member or taking training is punishable with rigorous imprisonment from one to five years. Under the current proclamation much emphasis is given in this regard; a person is deemed to be participated as a member of terrorist organization where participated in the organization while the organization is proscribed, makes contribution as a member as a rule of the organization or accepts the objective and operation of the Organization or participated in action to realize the objective of the Organization or makes known his membership on his own free will is considered as participation in terrorist organization.

III. Bail Right

The right to bail is a constitutional guarantee which is subject to limitation on justifiable grounds. In relation to both proclamations, the right to bail is not clearly prohibited. Even article 20 (4) of the repealed ATP provides that the public prosecutor may appeal on bail cases; which indirectly

¹⁷¹ Supra Note 141, Article 29(2)

shows that when the accused/suspect is granted bail, the public prosecutor may take an appeal to reverse the grant. However, the problem which poses in implementing the right to bail under the previous ATP is since the minimum threshold of penalty provided is fifteen years¹⁷² which hinders the exercise to the right to bail according to the CrPC.¹⁷³

In contrast, the current Proclamation even doesn't clearly indicate in a provision that bail can be exercised, the fact that the level of punishment unless for limited acts, the punishment is below fifteen years and setting different punishment period for each degree of commission of crimes as discussed above has a positive effect in exercising the right to bail.

IV. The right to appeal

The right to appeal is a constitutional right. So, whether a person can access higher courts to reverse any decision against him depends on the court that have the first jurisdiction; meaning, in Ethiopian context if the High Court has the first instance jurisdiction, the only court left is the supreme court in case it is a federal courts. Under the previous ATP both the Federal High Court & the Federal Supreme Court have the first instance jurisdiction over terrorism crimes.¹⁷⁴ Admittedly, both courts entertain terrorism cases and those whose case is first brought to the Supreme Court left with no appeal. Where the highest court of a country acts as first and only instance, the absence of any right to review by a higher tribunal is not offset by the fact of being tried by the supreme tribunal of the State party concerned; rather, such a system is incompatible with the ICCPR.¹⁷⁵

Contrarily the current proclamation stated that the Federal High Court has a first instance jurisdiction to try terrorism cases.¹⁷⁶ This better protects the right of the accused to appeal, to be

¹⁷² Under the repealed ATP, the punishment of whoever commits, plans, incites, prepares, conspires or attempts any of the acts provided under article 3 (1-6) is the same; refer to Article 3 & 4 of the Proclamation No. 652/2009.

¹⁷³ Supra Note 109, Article 63(1)

¹⁷⁴ The repealed ATP, Article 31

¹⁷⁵ Supra Note 19, para 47

¹⁷⁶ Proclamation 1176/2020, Article 39; in this provision, the amharic version states that the Federal High Court has the first jurisdiction while the English version provides that the Federal High Court and the State Supreme Court have the first instance jurisdiction. Even both are different, according to the delegation power indicated under the FDRE Constitution, the state supreme courts have the power to entertain cases that fall in the jurisdiction of the Federal high court. In that case the issue can be settled.

tried with the language s/he understands and also it is economical, reduces courts overload. The problem with repealed proclamation is in relation to giving first instance jurisdiction for the federal Supreme Court (has no court with equal level/power in the state level). Thus, if a person is tried before a supreme court according to the previous proclamation, it automatically jeopardizes the right to appeal of an accused as the final decision given on cases is the Federal Supreme court in Ethiopia. Thus, it is better to exercise the right to appeal under the current proclamation.

V. The right to obtain and adduce evidence and confront witnesses

Accused persons have the minimum guarantee of obtaining and adducing evidence and examination of witnesses. As Per the FDRE Constitution, accused person have the right to full access of any evidence presented against them. Such evidences may be documentary, oral, indirect, and any other. Along with the constitution, the criminal procedural code with regard to criminal investigation and trial prohibits any compelled statement made by accused.¹⁷⁷ The cassation bench decides on file no. 111742, ‘the court must make sure that the accused at the time of entering plea of guilt understands to each and every element of the charge/counts within the charge. Simply entering plea of guilt alone doesn’t suffice by itself; the court needs to examine it with the details of the charge.’¹⁷⁸

The repealed ATP as opposed to these guarantees, violates the right to full access and examination of evidences by allowing admissibility of evidence regardless of how it was obtained and without disclosing the source of the evidence; hearsay evidence, evidence obtained by intelligence bureau without disclosing the method of obtaining, evidence obtained under surveillance, confession without limitation.¹⁷⁹ When Canada in its Evidence Acts introduced by the Anti-terrorism Act in relation to the non-disclosure of information in connection with or during the course of proceedings, the HRC recommends Canada to review its Evidence Act so as to guarantee the right of all persons to a fair trial, and in particular, to ensure that individuals cannot be condemned on the basis of evidence to which they, or those representing them, do not have full access.¹⁸⁰ The right to adequate facilities according to the HRC must include access to

¹⁷⁷ Supra Note 109, See Articles 27 (2), 31 (1), 35 (2), 134 (1).

¹⁷⁸ Supra Note 115

¹⁷⁹ The repealed ATP, Article 23

¹⁸⁰ ‘Concluding Observations of the Human Rights Committee, Canada, CCPR/C/CAN/CO/5’ para 13.

documents and other evidence; this material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary).¹⁸¹ The fact that the law admits intelligence reports without a need to disclose the method of collection thereof might enable the intelligence officials to bypass the constitutional guarantee not to use torture to obtain evidences.¹⁸² For instance, majority of prosecution during the repealed ATP based on forced confession, torture, evidences solely obtained from intelligence report which undoubtedly results in violation of the right to protection from torture and inhumane treatment.¹⁸³

Under the current Proclamation, the issue which relates to evidence is left to be entertained according to the draft criminal procedure and evidence code; until the coming into force of the draft legislation, it is governed according to the criminal procedure code. The special investigation technique which is provided under the new proclamation is applicable when the regular investigation technique is not effective to gather evidence of commission of an act of terrorism which has a serious damage to the country and public according to article 50 & 51 of the CrPC up on the court's approval to use the technique in case of necessity.¹⁸⁴ Evidences obtained through interception by national or foreign law enforcement organs shall not be valid where they are not presented directly as they are obtained.¹⁸⁵ When the court authorizes the use of the special investigation technique, the technique of collecting the evidence and the time period within which it is executed shall be included and the time granted shall not exceed 90 days.¹⁸⁶ The court by investigating the performance of the police and evaluating the significance of using special investigation technique may grant period of not exceeding 30 days.¹⁸⁷

¹⁸¹ Supra Note 19, para 33.

¹⁸² Hiruy Wubie, 'The Impact of Terrorism and Counterterrorism on Human Rights Protection: The United Nations' Response and Ethiopian Experience' (LL.M Thesis Addis Ababa University, 2010)113.

¹⁸³ Laetitia Bader, *'They Want a Confession': Torture and Ill-Treatment in Ethiopia's Maekelawi Police Station* (Human Rights Watch 2013).

¹⁸⁴ Proclamation No. 1176/2020, Article 42(1)

¹⁸⁵ Ibid, Article 42 (6)

¹⁸⁶ Ibid, Article 42 (7)

¹⁸⁷ Ibid

The special investigation authorization to collect evidence given to the police by the court in case of urgent conditions may be permitted to be undertaken with the permission of the head of the nearest and appropriate public prosecutor institution.¹⁸⁸ Within 48 hours after taking permission from the public prosecutor institution along with his good cause shall provide it to the court and it is the court's discretionary to accept and deny.¹⁸⁹ Here the unclear point with this provision is that what constitutes appropriate public prosecutor institution is not clearly indicated and the requirement of providing to the court within 48 hours may be become practically challenging.

VI. Newly added guarantees

Under the new proclamation in addition to modifying and repealing those provisions that are inconsistent with international, regional human rights documents and FDRE Constitution, the newly added guarantees are the responsibility and standard of the executive and the right to compensation for the victim of human rights violation.

The law requires both the Federal Police and Federal Attorney General to be assigned to investigate and participate in the investigation and conduct litigation respectively, shall be taken training on matters of crimes of terrorism and protection of Human Rights and possesses the required experience, skill and good ethical behavior.¹⁹⁰ According to the provision, this requirement is mandatory.

Furthermore, disciplinary action or civil and criminal liability is imposed when any person entrusted with the duty of preventing and investigating crimes or handling litigation violates and damage sustained as a result of the infringement by such an entity.¹⁹¹ The Federal Attorney General has the duty to hold those who violate the rights of individuals accountable.

Where during the proceedings, the court finds that the Executive Organ performed in violation of the law, it may on the same file, orders the person or the institution that violated the law to compensate the victim a moral damage & the victim may claim compensation for damage.¹⁹² These are the positive steps taken document wise in better protecting the rights of accused individuals.

¹⁸⁸ Ibid, Article 42 (3)

¹⁸⁹ Ibid

¹⁹⁰ Ibid, Articles 36(3) & 38(2)

¹⁹¹ Ibid, Article 41(1)

¹⁹² Ibid, paragraph 3 & 4

Overall, the new proclamation was enacted to make the journey of combating terrorism meet with the standards provided by the FDRE Constitution and human rights documents. It focuses on repealing the provision that illegitimately limits the constitutionally guaranteed rights like the right like the right to examine any evidence presented against oneself, the right to cross examine, the right to protection from arbitrary arrest, the right to freedom of expression, the right to demonstration and extra. Thus, when assessed, compared to the old one, the new proclamation is made in such a way to be largely compatible with the constitutional rights. But there are still provisions that can be manipulated which relates to remand as the total period of time in which remand period is allowed is not provided, it is open to be interpreted and exercised in violating the rights of the suspect and/or accused.

CHAPTER FOUR

Practical Aspects of Proclamation No 1176/2020

Introduction

The discussion in this Chapter focuses on assessing the practice in the actual protection of the rights of persons accused of committing acts of terrorism. To analyze this, the researcher conducted interviews with various stakeholders in both the federal and Oromia regional states. These stakeholders include public defense lawyers, private lawyers, judges, public prosecutors, and accused individuals held in custody at Kilinto and Dalati Remand Centers; and consulted case files of persons accused of terrorism.

4.1. Protection of the Rights of the Accused Persons in Practice

A. The Right to Be Informed of the Charge

Being informed in writing with sufficient particulars is a fundamental guarantee for an accused person. The phrase "sufficient particulars" indicates that the information must include both legal and material details used in instituting the charge.¹⁹³ There are three elements to this right: the information itself, the form in which it is provided, and the timing of its provision. Only when adequate information is provided can the accused exercise their right to defense.

According to the data collected, almost all of public prosecutors agreed that the right to receive sufficient particulars of the charge in writing is always respected for individuals accused of terrorism. However, the accused reported that they received the charge only after prolonged detention.¹⁹⁴ Some individuals remain in custody at Dalati and Kilinto without knowing any

¹⁹³ Supra Note 106, Page78

¹⁹⁴ Interview with accused detained in Dalati (Sabata): September 18, 2023, he stated that after being detained for one year and four months at Galan detention center without being charged, he was transferred to Dalati and given the charge; the other interviewee stated that he had been at police station for two years and three months facing

charges filed against them for over a year.¹⁹⁵ Officials have referred to them as being in custody due to the ‘current situation’ (haala yeroo), which is not defined by the proclamation or the criminal code. This situation contravenes the principle of legality, which requires a legal basis for punishing an act. Likewise, all the constitutional rights of an accused person are defeated in such circumstances, as the person is in a position of not knowing the exact legislation that the person has breached. Such systematic violation of human rights jeopardizes the right to defense, equality of arms, the right to produce evidence, and all other rights discussed in the preceding chapters.

In the case of Federal General Attorney v. Abebe Temesgen et al., one of the accused has been held in custody for ten months, while the other two have been in custody for nearly nine months.¹⁹⁶ Similarly, giving clear and timely information (both facts and legal details) about the charges, as required under Article 111 of the CrPC, is essential to exercise the constitutional right to defense. Public prosecutors noted that due to the nature of such cases, specifying exact dates can be difficult. Lawyers acknowledged this difficulty but argued that it is often used by public prosecutors as an excuse to avoid providing necessary information about the charge.¹⁹⁷

Moreover, according to article 124 of CrPC, as soon as the date of the trial has been fixed, the public prosecutor and the accused shall give the registrar a list of their witnesses and experts, if

human rights violations and at last transferred to Dalati; interview with accused’s in custody in kilinto detention center: on September 04, 2023

¹⁹⁵ Ibid (eg: those detained with respect to the conflict in the Tigray for Mai Kadra case, the majority of them are in custody for two years without having been charged formally); Interview with anonymous lawyer, Private Lawyer, on August 05, 2023.

¹⁹⁶ Federal Attorney General V. Abebe Temesgen et al., (File No. 292171, FHC Lideta branch, Third Constitutional and Terrorism Bench, 20/12/2014) (Unpublished).

¹⁹⁷ See OAG v. Lami Hailu, (File No. 354770, OSC, 03/09/2025) (Unpublished) in this case, the prosecutor indicated that on an unidentified date, the accused and his accomplice killed three militia members and two defense force personnel. However, no information was provided about the deceased, which limits the accused’s right to receive sufficient information about the situation and charge in order to defend himself; Interview with anonymous lawyer, private lawyer, on August 17, 2023.

any, whose presence is necessary.¹⁹⁸ Contrary to this requirement, public prosecutor simply states that for the sake of their safety that the name of witnesses is not included.¹⁹⁹ Proclamation 699/2010 provides on how to protect witnesses from danger and attack, taking the measures under the proclamation needs to be according to the law.

In the ESKINDER NEGA et al case, the public prosecutor stated that hence, the prosecution needed protection for 16 witnesses to testify in a closed bench while five witnesses to testify behind curtains. Likewise, in the Jawar et al case, the public prosecutor simply stated according to Article 4 (1) paragraph 'h & j' witness protection is given to 146 witnesses. Simply stating that the name and identity of the witness is not disclosed highly jeopardizes the right to defense, the right to cross-examination and equality of arms. Ato Betemariam indicated that the public prosecutor uses the witness protection theme due to the fact that the prosecution's witnesses are not identified; hence, charges are filed without the completion of identifying witnesses.²⁰⁰

B. The Right to Be Presumed Innocent and Protection from Self-Incrimination

'The rule of presumption of innocence (herein after 'PI') incorporates two principles: first, a person charged with a crime must be proved guilty; second, the proof of guilt must overcome all reasonable doubt.'²⁰¹ The right to PI is crucial to the due process of law.

Judges at both the federal and OSC levels stated that in their everyday court activities, they always focus on upholding the right to PI. As Judge Edosa mentioned in the Mai-Kadra case (involving 202 individuals), the accused alleged that their right to PI had been violated by the

¹⁹⁸ Supra Note 109, Art. 124 (1)

¹⁹⁹ Federal Attorney General v. ESKINDER NEGA et al, (File No. 260175, FHC Lideta Branch First Terrorism and Constitutional Bench, 28/04/2014) (Unpublished); Federal Attorney General v. Jawar Mohammed et al, (File No. 260215, FHC Lideta Branch First Terrorism and Constitutional Bench, 28/04/2014) (Unpublished).

²⁰⁰ Interview with Ato Betemariam Alemayehu, Private Lawyer, on August 11, 2023.

²⁰¹ Supra Note 37.

prison administration and guards. The court issued a warning to avoid treating these accused individuals as guilty while the trial is pending.²⁰²

Sometimes, media outlets, especially in high-profile cases, contribute to violations of PI by making adverse statements or comments about the accused. This is contrary to the prohibition against any such statements made by authorities during criminal investigations or trial proceedings, which could compromise the PI. For example, when the federal attorney general made a statement about the case of Jawar Mohammed et al., the court ordered the federal attorney general to appear in court and explain the statement.²⁰³ The accused and their lawyers viewed this as a significant achievement.²⁰⁴ Similarly, after the murder of notable singer Hachalu, the former Attorney General issued a press release about Tilahun Yami and his accomplices before the investigation was completed, which contravened the principle of PI.

C. The Right to Full Access to Evidence and to Examine Witnesses

As a constitutional guarantee, an accused individual has the right to full access to evidence that supports their innocence, including exculpatory evidence. In this context, majority of public prosecutors agreed that this right is respected, while some of them disagreed. This can be assessed as follows:

First, confessions should be made voluntarily, without coercion. This principle is constitutionally guaranteed and supported by other laws.²⁰⁵ However, accused individuals have alleged that they provided statements involuntarily. When asked if they reported these allegations to the court, investigating police officers warned them not to disclose anything and threatened to kill them if they did.²⁰⁶ They were also discouraged from changing their confessions, as per Article 35(2) of the CrPC;²⁰⁷ because even if they brought such allegations to court despite these threats, the

²⁰² Interview with Ato Edosa Chala, Judge at FHC Lideta Branch Constitutional and Terrorism Bench, on August 12, 2023

²⁰³ Jawar, cited above at note 199

²⁰⁴ Interview with an anonymous lawyer, Private lawyer, on August 19, 2023.

²⁰⁵ The FDRE Constitution, Article 20 (3); The CrPC, Article 27 (2)

²⁰⁶ Supra Note 194.

²⁰⁷ Interview with anonymous Lawyer, Defense Lawyer, at OSC, on August 07, 2023.

public prosecutor might call individuals present at the time of the confession, known as ‘የደረጃ ምስክሮች’ (ragaa sadarkaa), to substantiate the confession was given without threat or coercion. Although calling such witnesses to testify lacks a legal basis, they are brought to court to testify against the accused, leaving the accused with limited means to defend themselves.²⁰⁸

Additionally, if an accused has such allegations, they must provide evidence and bear the burden of proof, which can be burdensome given that these violations often occur systematically. In the case of Federal Public Prosecutor v. Getu Girma, when the court ordered the accused to provide evidence and they called fellow accused individuals in custody to testify on their behalf, the court rejected their testimony, arguing that they might have testified in hopes of being released.²⁰⁹ Such practices disregard the situation of the accused and hinder the realization of justice.

Second, according to Article 38(b) of the CrPC, upon receiving a report, the public prosecutor may order a preliminary inquiry. The primary purpose of a preliminary inquiry in the Ethiopian context is to preserve evidence. One of the lawyer interviewed for this study indicated that preliminary inquiries are frequently abused in terrorism cases.²¹⁰ Prosecutors order preliminary inquiries not to preserve evidence but to identify and rectify faults in the case from cross-examination questions to improve their chances at trial.²¹¹ The lawyer added that public prosecutors rarely bring witnesses who testified during the preliminary inquiry to trial. Since prosecutors use hearing testimony behind curtains or by disguising identity, it is difficult to determine whether these witnesses testified during the preliminary inquiry. According to the researcher’s interview with public prosecutor, they only present the preliminary inquiry file in court if the accused confesses, as per Article 35(2) of the CrPC.²¹² Rather than using the

²⁰⁸ See Supra Note 197: In which despite the accused pleading not guilty, the OAG called ‘የደረጃ ምስክሮች’ witnesses who testified that the accused confessed voluntarily. Based on this testimony, the court delivered its judgment; Public Prosecutor v. Dassu Birhanu et al, (File No. 354811, OSC, 17/08/2015) (Unpublished).

²⁰⁹ Federal Public Prosecutor v. Getu Girma, (File No. 221386, FHC Lideta Branch First Constitutional and Terrorism Bench, 25/12/2013) (Unpublished).

²¹⁰ Supra Note 204

²¹¹ Ibid; Interview with anonymous lawyer, private lawyer, on August 17, 2023.

²¹² Interview with Public Prosecutor, Public Prosecutor at OAG, on September 22, 2023.

preliminary inquiry to preserve evidence; it is used to determine whether the case is viable for prosecution. Consequently, the right to a fair trial and equality of arms—fundamental rights of the accused have been undermined.

D. The Right to Bail

Under Proclamation 1176/2020, the right to bail is not inherently denied unless specified in Articles 63 and 67 of the CrPC. However, in practice, although the law does not generally deny the right to bail, courts often refuse to grant bail. The rationale is that many individuals who were previously granted bail did not appear for trial when summoned, leading to concerns that those granted bail might also abscond.²¹³ Nonetheless, the failure of some individuals to comply with court decisions does not justify denying bail to others. Additionally, according to Ato Yonas, what has remained a challenge is the shifting of accused persons in detention to other detention centers to avoid implementation of decision of the court granting bail to the accused.²¹⁴ This act brought serious violations as it basically fights the independence of court as well as puts the accused in an economically disadvantaged position. The systematic denial of bail rights without any justifiable ground, as well as non-compliance with the court decision in this regard, infringes the fundamental constitutional right of bail of the accused.

E. The Right to be Represented by Legal Counsel and Defense

It is the constitutional right of an accused to be represented by legal counsel of their choice, and if they cannot afford one, state-funded representation is necessary to prevent a miscarriage of justice. Although there are no practical issues with legal representation itself, the system's weaknesses in protecting lawyers who represent such accused individuals pose significant problems. Lawyers have reported difficulties in acquiring evidence to defend their clients, fear of defense witnesses appearing and testifying, and even not knowing the whereabouts of their clients. These challenges are causing some lawyers to withdraw from representing individuals

²¹³ According to Interview with Ato Tolosa Irko, Coordinating Judge at OSC, on August 17, 2023, "Although the accused has a permanent residence, the preference is to keep the accused in custody and expedite the trial rather than granting bail."

²¹⁴ Supra Note 200

accused of terrorism.²¹⁵ In the long term, this results in accused individuals lacking proper representation and defense, which violates their right to a fair trial. Defense lawyers at OSC have also noted that budget constraints, heavy workloads, and limited logistics make defending those accused of terrorist acts particularly difficult.²¹⁶ Without sufficient evidence and effective communication with clients, ensuring the accused's right to defense is compromised.

F. Independence, Competence, and Impartiality of the Court

The Human Rights Committee, in the case of *Gonzalez del Rio v. Peru*, emphasized that the requirements of competence, independence, and impartiality of a tribunal under Article 14, paragraph 1, are absolute rights that cannot be waived,²¹⁷ as they are crucial elements of the right to a fair trial. In this context, the authority of the court to decide cases based on legal procedures and rules faces challenges due to media involvement and statements from authorities before trials are completed. Non-compliance with court orders by the executive branch is a frequent issue. For instance, in *Federal Attorney General v. Kissi Kituma et al.*, the accused, despite being acquitted by the court, remained in custody for six months without due process.²¹⁸ Similarly, in the case between OAG and Chala Tamiru et al., OSC ordered the splitting of charges for one accused, Abdi Ragassa, while the OAG filed separate charges against him, leading to an OSC order for his acquittal.²¹⁹ Despite the court's order for Abdi Ragassa's release, the police failed to execute it, and his detention location remained unknown to his family and lawyers for an extended period.²²⁰ The reluctance of the executive to implement court orders challenges the judiciary's ability to rely on the law and effectively decide cases.²²¹ Non-compliance with court orders, especially in cases involving members of political parties, may lead to the resurgence of past

²¹⁵ Ibid, Supra Note 16; Interview with anonymous lawyer, Defense Lawyer at OSC, on July 25, 2023.

²¹⁶ Interview with anonymous lawyer, Defense Lawyer at OSC, on July 25, 2023; Interview with anonymous lawyer, Defense Lawyer at OSC, on August 07, 2023.

²¹⁷ Supra Note 19, Page 5

²¹⁸ *The Federal Attorney General v. Kissi Kituma et al.* (File No. 245433, FHC Lideta Branch Third Anti-terrorism and Constitutional Bench, 4/12/2013) (Unpublished).

²¹⁹ From 'OAG v. Chala Tamiru et al. (File No. 328088, OSC) (Unpublished)' the new case file opened was OAG v. Abdi Ragassa, (File No. 328313, OSC, 13/08/2013) (Unpublished).

²²⁰ Supra Note 201

²²¹ Ibid

unconstitutional practices and contrary to the constitutional right to joining political party of once own interest and choice.²²²

G. The Right to Speedy Trial

Both the constitution and the ICCPR mandate that an accused person be tried within a reasonable time, with this right assessed on a case-by-case basis. Police, public prosecutors, judges, and lawyers all share the responsibility of performing their duties diligently and without carelessness. A timely trial is crucial for safeguarding the accused's other human rights, including the right to movement and liberty. However, there are instances where public prosecutors fail to bring witnesses to trial as ordered by the court, often without a reasonable excuse.²²³

H. The Right to Compensation

As discussed in Chapter Three, the new proclamation introduces improvements to address violations faced by suspected and accused individuals. For example, in the case of Federal Attorney General v. Gebregiorgis Gesey, the Ministry of Justice delayed opening charge against the accused for eleven months after the investigation was completed. The Federal High Court, upon a relief request from the Federal defense lawyer, held the Ministry of Justice liable for violating the accused's rights by failing to bring him to trial in a timely manner and ordered a compensation payment of thirty thousand ETB.²²⁴ This is a positive development. Despite various allegations of human rights violations against individuals accused of terrorism, this is the only case where compensation has been awarded. When asked why such claims for compensation are rare among these victims, stakeholders cited reasons including a focus on urgent issues like medical treatment,²²⁵ uncertainty about the whereabouts of clients,²²⁶ and some individuals' reluctance to claim compensation to protect their reputations.²²⁷ For example, instead

²²² The FDRE Constitution, Article 38 (2)

²²³ Supra Note 211; Supra Note 197

²²⁴ Federal Attorney General v. Gebregiorgis Gesey, (File No. 292170, FHC Lideta Branch First Constitutional and Terrorism Bench, 28/9/2015) (Unpublished).

²²⁵ Supra Note 210 & 213

²²⁶ Supra Note 201

²²⁷ Supra Note 200

of holding criminals accountable for their conduct, accused individuals who have had their rights violated might demand an apology from the perpetrators.²²⁸

I. Other Concerns

Accused individuals interviewed alleged that their right to medical treatment is being jeopardized. For instance, one accused reported suffering from hypertension and claimed that the Abe Dunguru police station denied him access to medical treatment.²²⁹ He further added that he only received medical care after being transferred to the Kilinto Remand Center.²³⁰ Others similarly reported that, due to being charged with terrorism, obtaining medical treatment is difficult.²³¹ For instances in case of Jawar et al, when the court gives order that the accused's get medical treatment at Land Mark Hospital, the prison administration refused to implement it.²³² This situation violates the Constitution, human rights documents, and the Mandela Rules. Additionally, in violation of Rule 42 of the Mandela Rules, accused individuals at Dalati alleged that access to water for maintaining personal hygiene is severely limited, as they are required to pay ten ETB to take a bath.²³³ This is dehumanizing, and a prompt investigation needs to be undertaken to address these concerns. Not only is it a violation of Article 45 of Proclamation 1176/2020, which states that a person in prison on terrorist charges shall be protected in accordance with the FDRE Constitution, international agreements ratified by Ethiopia, and other pertinent laws.²³⁴

4.2. How Cases are handed under Proclamation No. 1176/2020 and their impacts on the accused

Since the enactment of Proclamation 1176/2020, the number of terrorism cases has reportedly declined at the Federal High Court (FHC), with judges noting a reduction in benches handling

²²⁸ Eskinder, cited above at note 199

²²⁹ Interview with Ato Takele, Accused in custody at Qilinto remand center, on September 04, 2023

²³⁰ Ibid.

²³¹ Supra Note 194

²³² Supra Note 203

²³³ Ibid. (at Dalati Detention Center)

²³⁴ Supra Note 141, Art. 45

such cases from three to two benches.²³⁵ However, in Oromia, judges, defense lawyers, and prosecutors have observed that a significant number of cases before the Oromia Supreme Court (OSC) are related to terrorism.²³⁶ This rise is attributed to factors such as ongoing war, internal conflict, the replacement of certain criminal law provisions, and the presence of armed groups in various zones/areas. In some cases, individuals have been charged with supporting terrorism due to their movement to areas controlled by proscribed groups.²³⁷ Many charges are filed under Articles 29 and 30 of Proclamation 1176/2020, and cases referred to court have often not been fully resolved in accordance with legal standards.

Furthermore, some cases have raised questions about whether the Proclamation is being applied fairly or if it is being selectively used against government critics. For example, opposition leaders and activists have been accused and detained under the Proclamation 1176/2020, often on charges that appear politically motivated.²³⁸ Many individuals in these cases were accused of terrorism under the repealed ATP, implying that the practice of weaponizing the Proclamation persists.

4.3. Challenges in Safeguarding the Rights of the Accused

As discussed in some of the problematic areas above, the challenges in protecting the rights of individuals accused of terrorism include lack of training for the law enforcement bodies on respecting the accused's constitutional rights as required by the proclamation. From the interviewed public prosecutors majority of them responded that they did not receive training before handling terrorism cases, as stipulated by Article 38 (2) of Proclamation 1176/2020. Initially, training was provided, but as the number of cases increased, it became difficult for those who had not received the training to participate in the prosecution of terrorism.²³⁹

²³⁵ Interview with anonymous Judge, Judge at FHC Lideta Branch Constitutional and Terrorism Bench, on August 04, 2023, at 11:00; Supra Note 7.

²³⁶ Interview with Ato Sagni Abdisa, Judge at OSC Criminal Bench, on July 27, 2023; Interview with anonymous lawyer, Defense Lawyer at OSC, on July 25, 2023; Supra Note 18; Supra Note 12.

²³⁷ Supra Note 204, the lawyer cited a pending case.

²³⁸ Federal Attorney General v. Dejene Tafa et al, (File No. 259952, FHC Lideta Branch First Terrorism and Constitutional Bench, 14/01/2013) (Unpublished); Supra Note 218; Supra Note 225; Supra Note 200.

²³⁹ Supra Note 209

Additionally, identifying who detained the accused and holding those accountable for human rights infringements remains challenging.²⁴⁰ Furthermore, impunity continues to contribute to existing violations despite the enactment of new laws. Instead of acknowledging the mass and systematic human rights violations under the repealed ATP, there has been no tangible justice for those who suffered during its application. Those responsible for human rights violations in the past are still in office, unaccountable for their actions, setting bad examples by perpetuating impunity.

Besides, unlike the repealed ATP, under the current proclamation the issue of remand is left to be addressed according to the CrPC, which doesn't indicate the total maximum remand period. Leaving this issue to CrPC also paves a way for abuse to the rights of accused individuals; and is open for interpretation and violation.²⁴¹

In general, despite legal improvements favoring accused individuals, significant practical obstacles remain in its enforcement, largely due to the actions and inactions of the executive branch. Accused persons often allege violations such as forced confessions, torture, and cruel treatment, particularly by police during the pre-trial stage, especially those held incommunicado at the Galan detention center. Public prosecutors frequently fail to investigate human rights violations or hold offenders accountable. Furthermore, the absence of a maximum remand period in the proclamation leads to prolonged detention before charges are filed. Data shows that during the pre-trial stage, numerous human rights violations occur, jeopardizing the right to a speedy trial.

²⁴⁰ Interview with anonymous Judge, Judge at FHC Lideta Branch Constitutional and Terrorism Bench, on August 01, 2023; Supra Note 22; On the case Dr. Wondwessen Aseffa et al., File No. 305232, the FHC ordered the Ethiopian Human Rights Commission to investigate allegations of human rights violations by accused's and the EHRC concluded that accused's rights were violated (incommunicado detention, unlawful detention, inhumane treatment).

²⁴¹ Supra Note 211

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. CONCLUSION

Proclamation 1176/2020 marks a notable shift from the repealed Anti-Terrorism Proclamation (ATP), addressing key weaknesses that previously undermined the constitutional rights of individuals accused of terrorism. The new Proclamation introduces several important reforms aimed at promoting justice and protecting human rights. It focuses on ensuring proportionality in punishment, reducing excessively long sentencing periods, and enhancing the right to bail, which were previously infringed.

It also grants the right to compensation for those who suffer human rights violations and mandates accountability for executive actions. One of its most important innovations is the introduction of judicial oversight over special investigation techniques, which helps to safeguard the rights of the accused during evidence collection.

However, despite these progressive reforms, significant practical challenges remain. One major issue is the lack of a maximum remand period under Proclamation 1176/2020, which creates loopholes that can lead to extended pre-trial detentions without formally notifying individuals of the charges against them. This gap can be exploited, leading to potential abuses.

Especially, the practice of using the theme of combating terrorism for political advantage by the ruling party remains one of the biggest obstacles after the enactment of the Proclamation. This is evident from the fact that members of opposition parties who were charged with terrorism under the repealed ATP are also being charged with terrorism under Proclamation 1176/2020. Despite these charges, none of the opposition party members accused of terrorism have been either acquitted or convicted. On the contrary, the public prosecutor has dropped their cases, and they have been released from custody. Sadly, this indicates that the implementation of the Proclamation has failed to achieve its primary objective in this regard.

Moreover, the problem of forced confessions persists, with individuals still subjected to rights violations by officials who were responsible for similar abuses under the ATP. Public prosecutors have also failed to hold violators accountable, further weakening the reform's impact. Additionally, the continued use of incommunicado detention²⁴², reports of torture, and the misuse of the Proclamation for political harassment reflect deeper systemic issues. Police reluctance to comply with court orders also poses a major obstacle to enforcing the Proclamation's provisions. These ongoing challenges demonstrate that while Proclamation 1176/2020 is a step forward, further institutional reforms and stricter enforcement measures are necessary to ensure that the legal protections it establishes are fully implemented and that the rights of accused individuals are respected in practice.

5.2. Recommendations

Based on the findings, the researcher would like to recommend the following:

1. A robust justice system focused on serving the public rather than political interests should be established as legislation should not serve political goals.
2. Impunity poses a significant threat to justice; individuals who violate rights under the pretext of counter-terrorism must be held accountable. The Ethiopian Human Rights Commission and the Ministry of Justice together with Federal Police should undertake prompt investigation about alleged violations & prosecute perpetrators to deter future violations and uphold justice. Not only should those responsible be held liable, but appropriate remedies, such as compensation, should also be provided to the accused whose rights have been violated so that justice is perceived as being served.
3. Strengthening capacity of police, prosecutors, defense lawyers and judges on how to safeguard the rights of accused by providing on-the-job trainings on a regular basis.
4. Additionally, the government should allocate adequate budget and necessary resources for combating terrorism while safeguarding the human rights of accused individuals.
5. Furthermore, government should refrain from using the proclamation to silence opposition parties rather the job of balancing between combating terrorism and safeguarding the rights of the accused should be done.

²⁴² Interview with anonymous Lawyer, Private Lawyer, August 05, 2023, at 02:00 pm

6. At the regional level, it is crucial to establish separate public defense office for individuals accused of serious crimes to ensure access to legal counsel and the quality of service delivery.
7. All necessary steps should be taken to the effect that the Draft Criminal Procedure and Evidence Codes enter into force so that issues intended to be governed by the codes is addressed.

Bibliography

Books

- Alemu G, Birmata Y and Tadesse W., *Ethiopian Human Rights Handbook*, (Center for Human Rights Addis Ababa University 2013).
- Ibrahim Abadir M and Dale Abdi Dekebo, 'Tilting at Windmills with Anti-Terrorism Laws: The Challenges of Doctrinally Challenging the Definition of Terrorism', Sisay A. Yeshanew and Abadir M. Ibrahim (eds), *Righting Human Rights through Legal Reform: Ethiopia's Contemporary Experience* (School of Law- Addis Ababa University 2020)

International and regional treaties

- The United Nations Charter, 1945.
- The Universal Declaration of Human Rights, 1948.
- The International Covenant on Civil and Political Rights, Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 2200A(XXI) of December 1966, entry into force 23 March 1976.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984, Entry into Force, 26 June 1987.
- The African Charter on Human and Peoples' Rights (Banjul Charter), Adopted on 27 June 1981, entered into force 21 October 1986
- The OAU Convention on the Prevention and Combating of Terrorism, 1999, Adopted at Algiers on 14 July 1999.
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)
- American Convention on Human Rights, (Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969) (ACHR)

Journal Article and Law Reviews

- Bassiouni, M. C., Human rights in the context of criminal justice: identifying international procedural protections and equivalent protections in national constitutions, *Duke J. Comp. & Int'l L.*, Vol. 3, 1992.
- James Bradley Thayer, The Presumption of Innocence in Criminal Cases, *The Yale Law Journal Company*, Vol. 6, No. 4., March 1897: 185-212.
- Kassa G., Mechanisms of Constitutional Control: A preliminary observation of the Ethiopian system. *Afrika Focus.*, Vol. 20, Nr 1-2, 2007: 75-104.
- Zewde A., Human Rights in Ethiopia: Looking Back and Moving Forward, *International Journal of Ethiopian Studies*, Vol. 13, No. 2, 2019: 137-152.
- Fantaye WG., The Right of Silence and Privilege against Self-Incrimination in Criminal Proceedings: An Appraisal of the Ethiopian Legal Framework, *Bahir Dar University Journal of Law*, Vol. 4, No. 2, 2014: 335-406.
- Schmid Alex, Terrorism- The Definitional Problem, *Case W. Res.J.Int'l L.*, Vol. 36, 2004.
- Sekyere Peter, Asare Bossman, An Examination of Ethiopia's Anti-Terrorism Proclamation On Fundamental Human Rights, *ESJ*, Vol. 12, No. 1, January 2016: 351-371.

Resolutions and Documents of the United Nations' Organs

- Resolution 1373(2001), Adopted by the Security Council at its 4385th meeting, on 28 September 2001.
- Human Rights Committee, General Comment No. 18.
- Human Rights Committee, General Comment No. 31.
- Human Rights Committee, General Comment No. 32.
- Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counterterrorism, Fact Sheet No. 32.
- UNCHR, 'Report by Secretary General Kofi Annan, keynote address to the closing plenary of the International Summit on Democracy, Terrorism and Security,' 10 March 2005.

- United Nations Office on Drug and Crime, The United Nations Standard Minimum Rules for the Treatment of Prisoners
- Recommendations and Resolutions, Adopted by the African Commission on Human and Peoples' Rights 1988 1, Page 35.
- Human Rights Council, 'National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21' (2019)

Domestic Laws

- Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995.
- The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004.
- The Criminal Procedure Code Proclamation 1961, Imperial Ethiopian Government Proclamation No. 185 of 1961.
- Anti-Terrorism Proclamation No. 652/2009.
- Prevention and Suppression of Terrorism Crimes Proclamation, Proclamation No. 1176/2020 (hereinafter cited as Proclamation 1176/2020), (entered into force March 25, 2020)

Internet sources

- [Front Matter from COUNTERTERRORISM MEASURES AND CIVIL SOCIETY: Changing the Will, Finding the Way on JSTOR](#), CSIS 2018, accessed on 02 August 2023
- Amnesty International Public Statement, 'Ethiopia: Concerns that Anti-Terrorism Law is being used to suppress freedom of expression' (amnesty.org, 1 July 2011) AI Index: AFR 25/005/2011, <[Ethiopia: Concerns that Anti-Terrorism law is being used to suppress freedom of expression \(amnesty.org\)](#)>, accessed 10 December 2022
- Amnesty International, 'Ethiopia: Human rights of victims of terrorism. Excessive restrictions on human rights work in Ethiopia' (Report) (amnesty.org, 21 June 2012) AI Index: AFR 25/009/2012, < [Human rights of victims of terrorism: Excessive restrictions on human rights work in Ethiopia: Oral intervention at the UN Human Rights Council 20th Session - Amnesty International](#)>, accessed 10 December 2022

- *EBC Documentary* (Directed by Horizon Media, 2018) www.youtube.com/watch?v=4Gi4JUNYDCg accessed 11 July 2022); ‘Prison Conditions in Ethiopia’ (ARC Foundation 2021) https://www.ecoi.net/en/file/local/2044634/Ethiopia_prison_conditions_02.02.2021.PDF> accessed 2 July 2022
- [Awol Allo, ‘Torture, State Terrorism and Ethiopia’s Transformation’ <https://www.aljazeera.com/opinions/2018/6/23/torture-state-terrorism-and-ethiopias-transformation>](https://www.aljazeera.com/opinions/2018/6/23/torture-state-terrorism-and-ethiopias-transformation) accessed 11 July 2022.
- Human Rights Watch, ‘Analysis of the draft Ethiopia’s Anti-terrorism Law’ (June 30, 2009) https://www.hrw.org/news/2009/06/30/analysis-ethiopias-draft-anti-terrorism-law#_ftn8>accessed February 2023

Interviews

- Interview with, Anonymous Lawyer, Private Lawyer, on 05 August 2023.
- Interview with, Ato Betemariam Alemayehu, Private Lawyer, on 11 August 2023.
- Interview with, Ato Edosa Chala, Federal High Court Constitutional and Terrorism Bench, Judge, August 12, 2023
- Interview with, Anonymous Lawyer, Federal Supreme Court Public Defenders Bureau, on 04 July 2023.
- Interview with, Anonymous Lawyer, Oromia Supreme Court Public Defense Lawyer, on 25 July 2023.
- Interview with, Anonymous Lawyer, Oromia Supreme Court Public Defenders Bureau, on 07 August 2023.
- Interview with, Anonymous Lawyer, Private Lawyer, on 17 August 2023.
- Interview with, Anonymous Public Prosecutor, Public Prosecutor at Oromia Attorney General, 22 September 2023.
- Interview with, Ato Tolosa Irko, Oromia Supreme Court, Coordinating Judge at Oromia Supreme Court, 17 August 2023.
- Interview with, Ato Yonas, Federal Supreme Court Public Defenders Bureau, Chief Executive, on 04 July 2023.
- Interview with, Ato Sagni Abdisa, Oromia Supreme Court, Judge, on 27 July 2023.

- Interview with, Accused persons, Oromia Prison Center Dalati Detention Center, 18 September 2023.
- Interview with, Accused persons, Federal Prison Center Kilinto Detention Center, 04 September 2023.

Parliamentary and unpublished Documents

- የፀረ ሽብርተኝነት አዋጅ የጥናት ቡድን, የበኢፌድሪ ጠቅላይ አቃቤ ሕግ የህግና የፍትህ ጉዳዮች አማካሪ ጉባኤ, የፀረ ሽብርተኝነት አዋጅ ጥናትና ምክረ-ሃሳብ (2011E.C) unpublished
- የሽብር ወንጀልን ለመከላከል ለመቆጣጠር ወጣው ህግ መሰረታዊ ይዘት ላይ የተዘጋጀ የስልጠና ማኑዋል’, Unpublished.
- ‘የሽብር ወንጀልን ለመከላከል ለመቆጣጠር ወጣው ህግ መሰረታዊ ይዘት ላይ የተዘጋጀ የስልጠና ማኑዋል’, Unpublished.
- Wubie Hiruy, ‘The Impact of Terrorism and Counterterrorism on Human Rights Protection: The United Nations’ Response and Ethiopian Experience’ (LL.M Thesis Addis Ababa University, 2010)

Appendix

"Auditing the Human Rights Improvements Made by the Post-2018 Ethiopian Legal Reform in terms of protecting the Constitutional Rights of Persons Accused of Committing acts of terrorism"

This is a study that is currently being conducted on the topic of "Auditing the Human Rights Improvements Made by the Post-2018 Ethiopian Legal Reform in terms of protecting the Constitutional Rights of Persons Accused of Committing acts of terrorism." The research is being carried out by Obse Basha as part of LL.M (Masters of Law) studies at Addis Ababa University. I respectfully request that you participate in the study and provide your feedback. The study's goal is to find out what you think about evaluating Human Rights Improvements the Post-2018 legal reform brought about in terms of protecting the constitutionally guaranteed rights for individuals accused of terrorist acts.

The study results are going to be used to develop appropriate recommendations for better protecting the rights of accused persons, particularly those accused of committing acts of terrorism. I want to assure you that the information you provide will be kept confidential. Your name and identity will not be disclosed to any other person. All of your responses will be anonymous and cannot be traced back to you in any way. I am, therefore, hopeful that you will freely and honestly provide your genuine opinions for following questions.

Thank you for your time.

I. Questions for lawyers (who represents persons accused of committing acts of terrorism) and/or defense lawyers

1. Do you have adequate time for the preparation of the defense?
2. Are you allowed to visit your client in private without any influence?
3. Can you easily access evidences that can prove innocence of your client?
4. Can you get evidence that the prosecution provides/attaches that can prove your client guilty?
5. Is the legal system suitable to stand for your client accused of committing acts of terrorism?
6. Can you easily get evidences that confession or information your client gave was acquired by torture or force?
7. Does the new ATP law help in better protecting the rights of accused?
8. Is there practical improvements in protecting the constitutional rights of persons accused of committing acts terrorism?
9. Is there any improvement in terms of accused persons' right to bail post-2018? What if a person accused of terrorism is ordered to defend (pursuant to Article 142 of the Criminal Procedure Code) under the Criminal Code for ordinary crime? Is the right to bail granted?
10. How do you evaluate the terrorism charges pre-and-post-2018? Are there cases where persons who commit ordinary crimes are being charged for terrorism?
11. How do you evaluate conviction and sentencing for crimes of terrorism post-2018?
12. What are the challenges in enforcing the right of the persons accused of committing acts of terrorism?
13. Have you ever represented an accused of crime of terrorism who confessed the crime by coercion? What was the effect of the evidence obtained by coercion?
14. Have you ever represented a client who was seeking compensation for violation of his/her human rights? If yes, was there compensation awarded to the victim?

II. Questions for Accused individuals (who are accused of committing acts of terrorism during the previous, current or under both ATP law)

1. What does your investigation look like? Or how do you describe your investigation?
2. At the time of investigation did the investigating office tell you about your legal rights?
3. Were there any force or threat you faced at the time of investigation?
4. For how long are you in custody before being brought to the court?
5. Did you allowed to contact your lawyer in private without any interference and influence?
6. Did your family allowed to visit you without any difficulty?
7. For how long did you kept in custody before opening of a charge?
8. Did you accused of committing acts of terrorism before? If so, did you acquitted, convicted, pardoned or your case dropped?
9. Was the judge fair to both parties (you and the prosecutor) and was the court environment suitable/conducive to defend yourself?
10. Do you understand the language of the court? If no, did you notify the court about the situation?
11. Did the judge granted you release on bail? If yes, for how long did you stayed in custody after you granted release in bail? If you did not released forthwith, did you bring the issue to the knowledge of the court that you're still in custody despite the court's order? If yes, what was the response?

III. Questions for police ((the federal Police and the Oromia Police)

1. Have you taken force at the time of investigation when the accused is reluctant to cooperate in the investigation process?
2. Did you ever accused of using force at the time of investigation?
3. Did you tell the accused his/her legal rights before proceeding to the investigation?
4. Why did most of the time investigation in case of persons accused of committing acts of terrorism take a long period of time?
5. Is the new ATP law helps in better protecting the rights of accused?
6. What are the challenges in enforcing the right of the persons accused of committing acts of terrorism?

IV. Questions for Attorney General/ Public prosecutors (the federal PP and the Oromia PP)

1. How do you balance between protecting the public and rights of persons accused of committing acts of terrorism?
2. Are you willing to share evidences that can prove that the accused is guilty with his/her lawyer?
3. Did you examine evidences provided to you especially confession of the accused (whether s/he willingly gave his words or gave his word under pressure or torture)? and if it is acquired by force or torture would you use it?
4. Have you ever requested of using anonymous witness, if so, did you bring it as a last resort or the first option? How do you relate it with the right to cross-examine of the accused?
5. Is the number of persons accused of committing acts of terrorism increasing post-2018? If yes, what did you think is the reason?
6. Is the new ATP law helps in better protecting the rights of accused?
7. What are the challenges in enforce the right of the persons accused of committing acts of terrorism?

V. Questions for judges

1. Is the number of persons accused of committing acts of terrorism increasing or decreasing post-2018?
2. Were there cases where persons who were charged of committing acts of terrorism were convicted of other less serious crimes under the criminal code?
3. How do you evaluate the application of speedy trial pre-and-post-2018?
4. What challenges are there under the current ATP?
5. How do you evaluate the issue related to anonymous witness? Do you allow it as a last resort or consider it every time requested?
6. How is the right to bail being entertained under the current ATP?
7. As a judge, do you try to ensure the rights to legal counsel of persons accused of crime of terrorism? Are those accused persons well-represented?
8. Were there cases where compensation was claimed by/awarded to/ individuals whose human rights was violated?

