

**COUNTER-TERRORISM AND INTERNATIONAL HUMAN RIGHTS:
AN ASSESSMENT FROM THE
ETHIOPIAN ANTI-TERRORISM LAW PERSPECTIVE**

**LOS DERECHOS HUMANOS Y LA LUCHA CONTRA EL TERRORISMO:
UNA EVALUACIÓN DESDE LA LEY ANTITERRORISTA ETÍOPE**

Received: 18/04/2019 – Accepted: 02/10/2019

Getachew Hailemariam¹

Friedrich Alexander University Erlangen–Nuremberg (FAU)
getachew.hailemariam@fau.de

1 Lawyer from Ethiopia. PhD candidate at the Friedrich Alexander University Erlangen–Nuremberg (FAU) with the focus on International Economic Law.

Abstract

The 2009 Ethiopian Anti-Terrorism Proclamation (ATP)² was framed to prevent and punish the ever-growing terrorist threat. However, since its inception, the ATP has been widely criticized for bypassing the internationally accepted human rights standards and being applied to unduly punish opposing voices. The ATP has been argued to leave in Ethiopia a background for governmental repression. The purpose of this article is to assess the ramifications of the ATP on human rights by addressing them from the human rights approach. This article assesses the ATP and its impact on civil liberties, such as protection against arbitrary detention and freedom of expression, association, and access to justice. In conclusion, this article outlines approaches as to how to balance the government's security measures and the respect and protection of human rights.

Keywords: International Terrorism; Ethiopian Anti-Terrorism Proclamation; Human Rights; Security.

Resumen

La Proclamación Antiterrorista Etíope (ATP) de 2009 fue diseñada para prevenir y castigar la creciente amenaza terrorista. Sin embargo, desde su inicio, la ATP ha sido ampliamente criticada por obviar los estándares internacionales de derechos humanos, y por ser aplicada para castigar indebidamente a las voces opositoras. Se ha argumentado que el ATP deja en Etiopía un contexto para la represión gubernamental. El propósito de este artículo es evaluar las ramificaciones del ATP en materia de derechos humanos, desde una perspectiva de derechos humanos. Este artículo evalúa el ATP y su impacto en las libertades civiles, como la protección contra la detención arbitraria y la libertad de expresión, asociación y acceso a la justicia. En conclusión, este artículo describe los enfoques sobre cómo equilibrar las medidas de seguridad del gobierno y el respeto y la protección de los derechos humanos.

Palabras clave: Terrorismo internacional; Ley antiterrorista; Etiopía; Derechos humanos; Seguridad.

Summary

1. Defining Terrorism
 - 1.1 Background
 - 1.1.1 The Ethiopian Case
 - 1.2 Domestic and International Terrorism
 - 1.3 Exemption Clauses
2. Counter–Terrorism and Human Rights
 - 2.1 International Laws on Counter–Terrorism
 - 2.2 Human Rights Obligations while Countering Terrorism
3. The Laws on Counter–Terrorism in Ethiopia
4. Selected Provisions of the ATP and their Adverse Impact on Human Rights
 - 4.1 Detention and the Right to Liberty
 - 4.2 Encouragement or Incitement, and Freedom of Expression
 - 4.3 Prohibiting a Terrorist Organization and the Right to Association
5. The Draft Anti–Terrorism Law
6. Balancing Counter–Terrorism with Human Rights: Lessons for Ethiopia
 - 6.1 Approaches
 - 6.2 Proportionality
 - 6.3 Human Dignity
7. Conclusion

Terrorism is one of the most serious threats to peace and security on global, regional, and national levels in the 21st century. Terrorism doesn't only destroy human rights, but it also jeopardizes the political stability of states³, healthy economic development⁴, the welfare of populations, expansion of democracy, and possibly the survival of civilization itself. A study carried out on the atrocities committed in the Middle East by Isis and in West Africa by Boko Haram terrorist organizations, revealed that

3 See ASONGU, S. and NWACHUKWU, J. *World Development*. Vol. 99, Issue C. 2017, pp. 253–270.

4 BANDYOPADHYAY, S. SANDLERY, T and YOUNASZ, J. *Foreign direct investment, aid, and terrorism* Oxford. Economic Papers, 2014, p. 25.

the right to life, the right to liberty, personal security, and the right to freedom of religion or belief become profoundly dishonored⁵.

Given the adverse effects of terrorism, the Draft Comprehensive International Convention against Terrorism considers terrorism to be a threat that risks innocent lives, jeopardizes fundamental freedoms, and severely impairs the dignity of human beings⁶. According to this argument, without the guarantee of personal, national, and existential security, individuals are prone to coercion or threats that can paralyze and prevent the exercising of their rights⁷. Immediately following the atrocious 9/11 attack on the U.S., without defining terrorism comprehensively, the United Nations (UN) Security Council recalled the threat of terrorism for international peace and security requiring states effectively to take counter-terrorism measures⁸. The ground was visualizing of a new, unknown, expanding danger that may not be attributed to specific offenders individually, but emanating from an incredible network of terror⁹. The counter-terrorism measures have gained momentum through the UN Security Council Resolution 1373 even though it was followed with little institutional human rights scrutiny or follow-up¹⁰. Concerns have been raised that the reluctance of governments to comply with human rights treaties on the pretense of security have been justified and legitimized through a simple reference to article 103 of the UN Charter¹¹. The UN Security Council Resolution 1373 is often used as a pretext by states to militarize laws and limit the practice of human rights. In 2002,

5 OCHAB, E and ZORZI, K. *Terrorism effects on human rights REPORT*. 23 Sept. 2016.

6 See UN Doc. A/59/894, 12 Aug. 2015.

7 AMATRUDO, A and BLAKE, L. W. *Human Rights and the Criminal Justice System: A grass Haus Book*, Routledge, 2014. p. 106. Traditionally, security of the people was linked to sovereignty, state borders, and natural resources.

8 See the UN Security Council Resolution 1373. S/RES/1373, 28 Sep. 2001.

9 See LEPSIUS, O. *Freiheit, Sicherheit und Terror: Die Rechtslage in Deutschland*. Leviathan. Vol. 32, Issue 1, 2004.

10 CLAPHAM, A. *Terrorism, National Measures and International Supervision*, in: A. BIANCHI, ed. *Enforcing International Law Norms Against Terrorism*, Graduate Institute of International Studies, Oxford and Portland Oregon, 2004, pp. 295-304.

11 *Ibidem*, p. 303-304.

the UN Secretary-General expressed his concern that human rights were under substantial pressure in various countries as a result of counter-terrorism measures¹². Among other things, the principle of legality, conditions of treatment in pre-trial detention, freedom from torture, fair trial rights, and due process guarantees were under threat. Some writers consider the clash between security and human rights to be a major dilemma¹³.

Ethiopia enacted the first ATP No. 652/2009 on 28 August 2009¹⁴. The Ethiopian government holds the idea that Ethiopia has faced "a clear and present danger of terrorism"; nonetheless the substantive and procedural laws in place are not capable of averting such threats¹⁵. With the ATP, the Ethiopian government declared a formal battle against international terrorism with the objective of guaranteeing peace and security¹⁶. The Ethiopian government and other exponents of the ATP argue that the main features of the proclamation are similar and better than those of the anti-terrorism legislation in western countries, particularly referring to Austria, England, and Canada. In spite of widespread mainstream fear due to terrorism on a global level, opponents of the ATP assert that the Ethiopian government used the ATP as a device to carry out its development agenda in lieu of the fundamental human rights and freedoms¹⁷. The opponents of the ATP complained that the law has been used to abolish dissidents and threaten independent journalists, members and supporters of various national movements across Ethiopia, members of legally registered opposing political parties, religious leaders, and other independent voices regarding the

12 UN Secretary-General. Report. A/58/266. 8 Aug. 2003, p. 12-13.

13 See OWEN, J. J. *The Tolerant Leviathan: Hobbes and the Paradox of Liberalism*. Vol. 37, No. 1, Fashion for Democracy, 2005. General Comment No.29, 2001, para. 16 of the United Nations High Commissioner for Refugees (UNCHR) states that the principles of legality and the rule of law require the basic criteria for a fair procedure in a state of emergency to be complied with.

14 ATP, 2009.

15 See GEBREWOLD, B. *Ethiopian Nationalism: An Ideology to Transcend All Odds*, Africa Spectrum. Vol. 44, No. 1, 2009. p. 89.

16 Ethiopian Growth and Transformation Plan I (2010/11-2014 / 15) and Plan II (2015/16-2019/20).

17 AMNESTY INTERNATIONAL, Ethiopia: 25 Years of Human Rights Violations, 2 Jun. 2016.

protection and enforcement of human rights within the country¹⁸. Moreover, it has been argued that the ATP paved the way for the security apparatuses of the country to abuse its power by going beyond what is necessary¹⁹.

Until early 2018, the secessionist rebel group and ethnically oriented political party called the Tigray People Liberation Front (TPLF), in collaboration with other racially oriented groups, ruled the country for twenty-eight years under the shield of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF)²⁰. Over time, the legal, socio-economic, and political factors sparked a massive dissatisfaction from the public across the country. One basic element of the protest was the narrow political playing field created by the ruling party to gain vengeance against opposing groups by using freedom restricting laws on terrorism, media, and civil and political organizations since 2005²¹. In April of 2018 where deprivation of socially conditioned expectations, exploitation, an authoritarian, a racist and sectarian social order have reached at its peak, everything starts to fall apart in a cascade and a vibrant act of social movement and resistance was broken out, which in turn caused a fraction or disagreement among the coalition of the EPRDF. Especially, it was the alliance of the Oromo Democratic Party (ODP) and Amhara Democratic Party (ADP) that brought the incumbent Prime Minister Abiy Ahmed to the epicenter of power. Following this, the Ethiopian government expressed its sincere willingness to reform the ATP. On 18 May 2019, the Council of Ministers approved the new anti-terrorism

18 *Idem*.

19 HUMAN RIGHTS WATCH, World Report, 2018.

20 The Ethiopian People's Revolutionary Democratic Front (EPRDF) was the coalition of the Tigray People's Liberation Front (TPLF), the Amhara Democratic Party (ADP), the Oromo Democratic Party (ODP) and the Southern Ethiopian People's Democratic Movement (SEPDM). The Afar National Democratic Party (ANDP), the Benishangul-Gumuz People's Democratic Unity Front (BGPDUF), the Ethiopian Somali People's Democratic Party (ESDP), the Gambela People's Democratic Movement (GPD) and the Hareri National League (HNL). On 1 Dec. 2019 Prosperity Party was established as a successor to the EPRDF by incumbent Prime Minister Abiy Ahmed. MAMDANI, M. *The Trouble with Ethiopia's Ethnic Federalism*. The Network Times, 3 Jan. 2019.

21 See HUMAN RIGHTS WATCH, World Report, 2019.

bill and submitted and approved by the federal parliament in 1 January 2020²². The revised ATP modified the ATP to some extent, although it still contains controversial provisions similar to those of the previous ATP²³.

In a nutshell, the objective of this article is to give a general overview of international terrorism and assess the legal basis of the fight against terrorism in Ethiopia. Particular focus is placed on the ATP and its impact within the last decade on the perceived violations of selected human rights from the perspective of international human rights obligations. This article clarifies to some extent why terrorism is still fundamentally controversial, and which legal discourses have triggered the legal reform in contemporary Ethiopia.

From this perspective, this article addresses the following questions: What are the legal regimes of counter-terrorism in Ethiopia at the international level? How does the ATP affect freedom of expression, liberty, and the right to association, as well as the access to justice in Ethiopia? How can balance be brought to security and human rights in Ethiopia?

This article has six major parts. The first part introduces the concept of terrorism in general. The second part addresses the link between human rights and the crime of terrorism vis-à-vis security. The third part offers some initial ideas regarding the legal regime governing counter-terrorism in Ethiopia. The fourth part analyzes the human rights implication of the ATP. The fifth part deals with the new draft of anti-terrorism law of Ethiopia. Finally, the sixth part focuses on different approaches that must be considered in balancing the security agenda of the Ethiopian government and the protection of human rights.

By analyzing laws and best practices, this article argues that the ATP falls short of delivering an accurate test for determining the type of conduct that may be regarded as terrorism. Consequently, due to its imprecision, the ATP has reinforced the disregard of human rights by casting the ethos of fear. Additionally, this article identifies a broad discrepancy between what has been regarded as human rights on paper and human rights in practice. This article proposes

22 Council of Ministers Approves Anti-Terrorism Law, 21 May 2019, available at <<https://ethiopianembassy.be/2019/05/21/council-of-ministers-approves-anti-terrorism-law/>> [accessed on 25 Aug. 2019].

23 See Ethiopia approves new Anti-Terrorism Law, available at <<http://apanews.net/en/news/ethiopia-approves-new-anti-terrorism-law>> [accessed on 08 Mar. 2020].

the need for the redefinition of terrorism in the ATP to make it suitable for a human–friendly counter–terrorism project.

1. Defining Terrorism

1.1 Background

Terrorism is the term that exists mostly *inter alia* in the political discourses of colonialism, socialism, capitalism, and Islamic fundamentalism²⁴. The act of terrorism is not associated with any specific religion, nationality, or civilization. The history of terrorism embraces such issues as the pre–modern use of terror in ancient Rome, medieval Europe, and the French Revolution; as well as the jihadist violence, state terrorism, the Red Brigades in Italy, the Red Army Faction in Germany, the Israeli–Palestinian conflict, Northern Ireland, anarchist terrorism, and the Ku Klux Klan; along with lesser–known movements in Uruguay and Algeria²⁵.

Perceptibly, terrorism is a complex, multi–faced, and divergent political dimension that cannot merely be attributed to a mono–causal cause–and–effect relationship²⁶. No one explanation, theory, or discipline will ever fully account for all terrorists’ actions and their motives.²⁷ The contending attitudes of states on terrorism lead to the no one–size–fits all definition of terrorism. It has been estimated that there are well over 100 different definitions of terrorism in scholarly literature²⁸. The perplexity stems from the differences in social, cultural,

24 See for example JALATA, A. *Terrorism from Above and Below in the Age of Globalization*. Sociology Mind. Vol. 01, No. 01, 2011.

25 See SÁNCHEZ-CUENCA, I. *The Historical Roots of Political Violence Revolutionary Terrorism in Affluent Countries*. Cambridge University Press, 2019. See LAW, R.D. *Terrorism: A History* (Themes in History). 2. Aufl, 2016.

26 See SAUL, B. *Defining Terrorism in International Law*. Oxford University Press, 2008. Bundeskriminalamt, ed. *Netzwerke des Terrors–Netzwerke gegen den Terror*. BKA–Herbsttagung 2004, Band 30, Luchterhand, 2005, p. 22.

27 CANTER, D, ed. *The Faces of Terrorism: Multidisciplinary Perspective*. Chichester: Wiley, 2009, p. 1.

28 COADY, C. A. J. *Terrorism, Morality, and Supreme Emergency*, in: I PRIMORATZ. *Ethics, Symposium on Terrorism, War, and Justice*. Vol. 114, No. 4. The University of Chicago Press, 2004, p. 38. UN Human

political, and ideological attributes of states²⁹. This skeptical attitude is in no way groundless. In fact, analysis of more than 500 state reports to the Counter-Terrorism Committee, established by the UN Security Council Resolution 1373, revealed that there were states with very broad and vague definitions for terrorism³⁰. The vagueness and broadness of the definitions cast doubt on the compatibility of the respective anti-terrorism laws with human rights standards.

The controversy surrounding terrorism both on local and international levels³¹ is also due to how difficult it is to draw a line between the scope of the application of terrorism with other contending concepts such as violent extremism and the legitimate struggle for self-determination. Apart from non-state actors, it is arguable whether terrorism shall also include state's violent repression against its own citizens. The blurred political picture of terrorism makes it prone to be weaponized by governments against contending domestic democratic forces³². There remains only a limited consensus on the question of whether the motives of terrorism are limited to politics, ideology, religion, or ethnicity. With the prospect of creating an internationally shared standard, the UN General Assembly has established Ad Hoc Committees and working groups on multiple occasions³³. On 13 December 2016, Resolution 71/151 of the UN General Assembly established a working group to finalize the Comprehensive Draft Convention on International Terrorism³⁴. Although a binding interpretation of the term terrorism is still missing on an international level, the 2004 UN Security Council Resolution 1566 currently serves as the working definition. It defines terrorism as:

Rights Council Panel Discussion on the Human Rights Dimensions of Preventing and Countering violent extremism, 2016.

29 SUTER, K. *September 11 and Terrorism: International Law Implications*. Australian Journal of International Law, 2001, p. 27.

30 SAUL, B. *Defining Terrorism in International Law...* Op. Cit., p. 20.

31 COADY, C. A. J. *Terrorism, Morality, and Supreme Emergency...*, Op. Cit., p. 38.

32 See LUTZ, J. M. and LUTZ, B. J. *Democracy and Terrorism*. Perspectives on Terrorism. Vol 4, No. 1, 2010.

33 Ad Hoc Committee established by General Assembly Resolution No. 51/210 of 17 Dec. 1996.

34 Ídem.

“... a criminal act with the intent to cause death or bodily injury, or taking of hostages with the purpose to provoke a state of terror or intimidate a population or compel a government or international organization to do or to abstain from doing any act, which constitutes offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature”³⁵.

Broadly interpreted, terrorism can be commonly understood as a deliberate actual or threatened use of force to victimize³⁶, injure, cause death, or cause destruction of property by individuals, nationals, or subnational groups against non-combatants, states, or international organizations to obtain political, ideological, or religious objectives through coercion using psychological warfare against a broad audience beyond its immediate victims in order to change the status quo³⁷. Terrorism is motivated by “political, philosophical, ideological, racial, ethnic, religious, or other similar acts”, which consists of causing death or injury, or taking hostages to provoke a state of terror, intimidate a population, or force a government or international organization to act or refrain from any action.

1.1.1 The Ethiopian Case

The ATP defines neither terrorism nor terrorist acts. Instead, article 3 of the ATP lists several acts of terrorism that result in rigorous imprisonment ranging anywhere from fifteen years to life or death. Article 3 of the ATP explains ‘terrorist acts’ as follows:

35 UN Resolution No. S/RES/1566, 8 Oct. 2004. European Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism, 2001/931/CFSP.

36 See. PARKIN, W.S. *Victimization Theories and Terrorism*, in: G LA FREE and J D. FREILICH, eds. *The Handbook of the Criminology of Terrorism*. John Wiley & Sons, Inc, 2017.

37 See International Convention for the Suppression of the Financing of Terrorism adopted in New York on 9 Dec. 1999 and enacted 10 Apr. 2002. See Chapter Thirteen, article 21 and 22. Ethiopia has been a party to the Convention since 20 Mar. 2012.

"Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country causes a person's death or serious bodily injury; creates serious risk to the safety or health of the public or section of the public; commits kidnapping or hostage taking; causes serious damage to property; causes damage to natural resource, environment, historical or cultural heritages; endangers, seizes or puts under control, causes serious interference or disruption of any public service; or threatens to commit any of the acts stipulated under sub-articles (1) to (6) is punishable with rigorous imprisonment from 15 years to life or with death"³⁸.

The Objective Material Element and Subjective Mental Condition

As to the objective material element, article 3 of the ATP positively sets a "seriousness" qualification for material damages. Still, there are risks to punishing individuals for every serious intentional damage to property or other serious interference or disruption of essential public or private services. In other words, the "seriousness" qualification cannot cause every serious interference or disruption of public services to be labeled as terrorist acts because it makes the applicable domain of the law too broad³⁹. Moreover, the requirement of "seriousness" is not equally applied concerning others acts such as damage to natural resource, environment, historical or cultural heritage.

Article 3 of the ATP falls short of delivering detailed information as to the means and the kinds of activities that qualify as terrorist activities, except for the vague catchall coercing or intimidating the government and destabilizing or destroying the fundamental...social institutions of the country. The terminologies employed have inherent vagueness making the application of the meaning of terrorism indeterminable. Basically, pressuring a government to adopt or abandon a standpoint is the manifestation of a well-functioning democratic society. If inducement of a government is performed forcefully, it

38 ATP, 2009, article 3.

39 ATP, 2009, article 2(7).

qualifies as domestic criminal violence, but that lacks the essential element to be perceived as terrorism.

The subjective element of terrorism is emulated in creating terror and fear⁴⁰. Most definitions have no substantial divergences in this regard. Nevertheless, the degree of the influence of its interpretation regarding government decision making may vary. For instance, the definition of terrorism in the UN Security Council Resolution 1566 made the subjective element of terrorism open-ended to include political, philosophical, ideological, racial, ethnic, religious or other similar nature. Unlike the African Union Anti-Terrorism Convention, the Ethiopian ATP has an exhaustive list of the kinds of motives that must lead to a given terrorist act⁴¹. The ATP states that a terrorist act must be committed with the intention of advancing a political, religious, or ideological purpose.

Ethnic-Based Terrorism

The ATP consists of no express ethnic-based terrorism. As D. Bymann noted, ethnic terrorism differs from other terrorist activities carried out for religious, ideological, or financial motives⁴². Ethnically motivated terrorists often seek to influence their constituencies or identities more than the country as a whole and target any who would otherwise potentially compromise their identity⁴³. Ethnic based terrorism uses violence in order to make a statement for a particular national identity. In doing so, they create fear among other rival groups, but the counterattack by a state can create a secessionist insurgency tendency of this group⁴⁴. They claim there exists a nation with an explicit and distinct character, and the interest and values of that nation have priority compared to others. By bringing different justifications into light which support them, ethnic based terrorists claim political independence (political sovereignty)

40 Organization of African Unity (OAU). Convention on the Prevention and Combating of Terrorism, 14 Jun. 1999.

41 The 2008 Anti-Terrorism Act of Ghana added to the intention category a terrorist act committed based on 'a racial or ethnic cause.

42 BYMANN, D. *The logic of ethnic terrorism*. Studies in Conflict & Terrorism. Vol. 21, Issue 2, 1998.

43 *Ídem*.

44 *Ídem*.

even if they do not have such a claim, and they do so by using terrorist acts to manipulate and marginalize other minorities⁴⁵. Similarly, case studies on political and ethnic nationalism in the Irish Republican Army (IRA) in Northern Ireland, Euskadi Ta Askatasuna (ETA) in the Basque Country, Frontu di Liberazione Naziunalista Corsu (FLC) in Corsica, Ushtria Çlirimtare Kosovës (UCK) in Kosovo, Teyrêbazên Azadiya Kurdistan (TAK), Kurdischen Arbeiterpartei PKK (PKK) in Turkish Kurdistan, and Imarat Kavkaz (IK) in Chechnya collectively show the link between terrorist tactics and the need for political independence, which have led to considerable bloodshed⁴⁶.

In Ethiopia, where eighty different languages are spoken, ethnically motivated terrorism is not a new phenomenon and its threat shall also not be underestimated in the future. According to the Internal Displacement Monitoring Center and the Displacement Tracking Method of the International Migration Organization (IMO), Ethiopia is currently the number one country in the world when it comes to internal displacement⁴⁷. The reasons for that, among other things, are ethnic-based engagements. Article 46 the 1995 Ethiopia's Constitution draws the border of regional states on the basis of language and ethnicity. In today's Ethiopia, the ownership of land lies with the nations, nationalities, and people of the individual nine regional states⁴⁸. The constitutional structure of some regional states shows that ownership of the land of the regional states lies with certain indigenous groups⁴⁹. This, combined with socio-economic deprivation, has intensified ethnic fundamentalism, exclusion, hatred, and the struggle for natural resources as minorities and non-native other ethnic groups from different regional states have been marginalized and described as settlers. Article 39 of Ethiopia's Constitution, which corresponds to Woodrow Wilson

45 See BUKER, H. *A Motivation Based Classification of Terrorism*, Forensic Research & Criminology International Journal. Vol 5, No. 2, 2017.

46 DUERR, G. M. E, ed. *Secessionism and Terrorism: Bombs, Blood and Independence in Europe and Eurasia* (Political Violence). Taylor & Francis Ltd, 2018.

47 DTM. Ethiopia, 2019, available at <<https://www.globaldtm.info/category/east-africa/ethiopia/>>, [accessed on 23 Aug. 2019].

48 The question of who are the nation, nationality and people in Ethiopia remains a subject of dispute.

49 See for Example the Constitution of Harari Regional state of Ethiopia.

and Lenin's thesis that self-determination consists of succession and statehood, also enshrines the rights of external succession through the self-determination of these ethnically organized regional states and encourages dissatisfied people to promote and press for new statehood⁵⁰. There has been a vigorous push towards sovereign status based on ethnic identity, and the modus operandi these dissatisfied people use is militancy and insurrection to live up to their claim when they think the legal path is implausible⁵¹. It suffices to argue that punishing ethnic-based terrorism would deduce the political radicalization⁵² and the racial tension in the country, however, it might also paradoxically question the whole framework of ethnic federalism (which is the structuring of federal units in line with ethnicity)⁵³. Ethnic federalism is believed to reinforce the sectarian ideology and the ethnic party-oriented sentiment to the detriment of the Ethiopian values of social cohesion. Racial terrorism can naturally follow the implementation of the ethnicity-based federalism. Thus, punishing ethnic-based terrorism can only be credible as far as the right to secession and language, and ethnicity-based border division can be re-corrected in Ethiopia's Constitution. The Constitution should therefore reflect the values of humanity to live together, regardless of race, culture, or religion, based on the foundation of genuine human unity in the form of unitary federalism⁵⁴ and possession of the same human nature, idea, reason, and free will.

50 See AYANO, G.H. *A Reflection on the Dam at the Blue Nile River: Yesterday and Today*, Abay Media, 2017

51 See KHOBRAGADE, V. *Ethnicity, Insurgency and Self-Determination: A Dilemma of Multi-Ethnic: A Case of North-East India*. *The Indian Journal of Political Science*. Vol. 71, No. 4, 2010, pp. 1159-1174. See also GETACHEW (2017), *A Reflection on the Dam at the Blue Nile River: Yesterday and Today*, Abay Media.

52 See MCCAULEY, C and MOSKALENKO, S. *Mechanisms of Political Radicalization: Pathways toward Terrorism*. *Terrorism and Political Violence*, Vol. 20, Issue 3, 2008.

53 ABBINK, Jon. *The Ethiopian Revolution after 40 Years (1974-2014); Plan B in Progress?* *Journal of Developing Societies*. Vol 31, No. 3, SAGE Publications, 2015, p. 351.

54 See for example STURM, R. *Unitary Federalism-Germany Ignores the Original Spirit of its Constitution*, REAF-JSG 28, 2018. See also ADENEY, K and BHATTACHARYA, H. *Current challenges to multinational federalism in India*. *Regional & Federal Studies*. Vol. 28, Issue 4, 2018.

1.2 Domestic and International Terrorism

The crime of terrorism has domestic and international facets. One of the varying purposes for making a distinction between terrorism in its legal domestic and international sense is the desire to delineate and define specific conducts in their material terms, and identify the actors to determine the criminal proceedings, punishments, and forum⁵⁵. While the state's jurisdiction over a criminal matter requires a specific link to the crime regarding the territoriality, the extraterritorial nature of the offense gives the state the power to prosecute the individuals using universal jurisdiction⁵⁶ only when the criminal is within its territory⁵⁷. Another important distinction between domestic and international terrorism is a state must enforce duties imposed by international law directly on the international offender for the breach of a provision of national legislation and implement the treaty⁵⁸.

Accordingly, terrorism is international when the attack has a foreign element, and the opposite is true for domestic terrorism. On 18 December 1972, the UN General Assembly Resolution 3034 established an early understanding of international terrorism. It proclaimed that "...international terrorism endangers or takes innocent human lives or jeopardizes fundamental freedoms". It further provides that "the underlying causes of those forms of terrorism and acts of violence lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes..."⁵⁹. The UN General Assembly Resolution 3034 holds that terrorist acts –including those involving states directly or indirectly– which spread violence and terror resulting in loss of life and

55 See WISE. E.M. *International Crimes and Domestic Criminal Law*. De Paul Law Review. Vol. 38, Issue 4, 1989. See DRAGAN, R. *Addressing Human Rights in the Court of Justice of the Andean Community and Tribunal of the Southern African Development*, UNU-CRIS Working Paper, 2014.

56 BASSIOUNI, M. C. *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, Va. J. Int'l L. Vol. 42, No. 81, 2001-2002.

57 WISE. E.M. *International Crimes and Domestic Criminal Law...*, Op. Cit.

58 Ídem. See also DRAGAN, R. *Addressing Human Rights in the Court of Justice of the Andean Community and Tribunal of the Southern African Development*. UNU-CRIS Working Paper, 2014.

59 UN General Assembly Resolution No. A/RES/3034 (XXVII), 18 Dec. 1972.

property and jeopardize the normal functioning of international relations, constitute a threat to peace, global security, and friendly relations between states⁶⁰. The UN Security Council Resolution 1373 (2001) reaffirms that international terrorism constitutes a threat to international peace and security and calls on states to prevent and combat acts of terrorism on their territory, taking into account international instruments. The report of the UN General Assembly of the Sixth Working Party of the Committee on Measures to Combat International Terrorism, referred to in article 5, states that if a terrorist offense is committed within a single state, the alleged offender and the victims are nationals of that state, the alleged offender is found within the territory of that state, and no other state has any basis in the case, then the international convention may not apply⁶¹.

R. Kolb wrote that an international terrorist act results when either the act takes place in more than one state, or the act take place in a space where no state has exclusive national jurisdiction. The other scenarios resulting in international terrorism are when the offender and victim are citizens of different states, the acts affect citizens of more than one state, the acts affect targets having an international status, or the effects of the terrorist act are felt in a third states⁶². International terrorism, therefore, has a cross-border dimension, regardless of which actors are involved in the threat to international peace and security. In this context, the definition of cross-border/international terrorism in the relevant domestic anti-terror legislation is a critical factor for the efficacy of international counter-terrorism measures. In the United States of America (U.S.), international terrorism deals with terrorist activities beyond one national boundary concerning the methods used, the people that are targeted, or the places from which the terrorists operate. The European Parliament resolution on the prevention of radicalization and recruitment of European citizens by

60 Ídem.

61 UN General Assembly. Measures to eliminate international terrorism, Report of the Working Group, Sixty-fifth session Sixth Committee Agenda item 107. A/C.6/65/L.10, 2010.

62 See KOLB, R. *The exercise of criminal jurisdiction over international terrorists*. In: A. BIANCHI. Enforcing international law norms against terrorism. Oxford: Hart, 2004, pp. 243-244. See also article 7 of the 1999 International Convention for the Suppression of the Financing of Terrorism.

terrorist organizations shows the cross-border complexity of terrorist acts⁶³. Identification with, participation in, or a *link* to cross-border terrorist organization, including but not limited to, the Islamic State of Iraq and Syria (ISIS), Al-Qaeda, Al-shabaab, and Boko Haram, are acts that have been associated with international terrorism⁶⁴.

Domestic terrorism is when all perpetrators, methods, and targets are limited to being within the domestic territory of a country. Domestic terrorism involves groups based in and operating entirely within a country and its territories, without foreign country direction⁶⁵. In Germany and the U.S., there are a growing number of threats from groups such as domestic right-wing racist autonomous groups, Islamist and foreign extremists, and radical left groups, which has created the need for a clear and precise definition of the level of participation needed to be regarded as an active member in these groups and the line where extremism ends and terrorism begins⁶⁶. In Germany, the Criminal Code punishes creating and financing terrorist associations. Similarly, the Federal Constitutional Protection Act creates the necessary security facilities for the liberal-democratic order to protect itself without distinction from all forms of extremists and radical actions, including terrorism, which endangers the peaceful coexistence of people⁶⁷. In the U.S., terrorism has a domestic connotation when violence is committed within the U.S. jurisdiction against the civilian population or the infrastructure of a nation, often by citizens of that nation, and usually to intimidate, coerce, or influence national politics⁶⁸. The U.S. authorities classify domestic terrorists

63 See the European Parliament Resolution No. 2015/2063(INI), 25 Nov. 2015.

64 See Terrorism Act 2000 of England, Part II. HOME OFFICE, Proscribed Terrorist Organizations, 12 Apr. 2019.

65 See Domestic Terrorism in the United States.

66 SROKA, A, et als. *Radicalism and Terrorism in the 21st Century: Implications for Security*. Peter Lang AG, 2017. See also BOURNE, A and BÉRTOA, F. C. *Mapping 'Militant Democracy': Variation in Party Ban Practices in European Democracies (1945-2015)*. *European Constitutional Law Review*, Vol. 13, Issue 2, 2017, pp. 221-247.

67 See para. 129 of the German Criminal Book.

68 Rand Corporation. Domestic Terrorism, available at <<https://www.rand.org/topics/domestic-terrorism.html>>, [accessed on 23 Aug. 2019]. See DESHPANDE, N and ERNST, H. Countering Eco-Terrorism in the United

as religious and racial supremacy or intolerance based or anarchistic or anti-government political and unique special interests based groups⁶⁹. Article 141 of the Croatian Criminal Code of 1997 punishes an act of anti-state terrorism within the territory of the Republic of Croatia or against its citizens with a term of imprisonment of at least three years. On the other hand, as per article 169 of the Croatian Criminal Code, a terrorist attack on a foreign state or international organization may be punishable by prison terms ranging from a minimum three years, five to ten years, or a long-term prison sentence depending on the seriousness of the crime. Especially, the criminal proceedings of international terrorism need the approval from the State Attorney of the Republic of Croatia⁷⁰.

In Ethiopia, pursuant to the preamble of the ATP, the fundamental purpose of the Ethiopian counter-terrorism law is to fight against terrorism in cooperation with governments of other parts of the world that have anti-terrorism objectives, as well as the enforcement of international agreements. The UN Security Council Resolution 1566 defines international terrorism as

“... criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent

States: The Case of ‘Operation Backfire’: Final Report to the Science & Technology Directorate, U.S. Department of Homeland Security, 2012. The eco-terrorism in the U.S., which is often committed by domestic actors, creates an immense loss of the nature.

69 See PRESLEY, S.M. *Rise of Domestic Terrorism and Its Relation to United States Armed Forces*. Research Paper, 1996.

70 See CRIMINAL CODE CROATIA. 1 “Narodne novine” – The Official Gazette of the Republic of Croatia. No. 110/ Oct. 21, 199, article 141 and 169.

such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature"⁷¹.

Under the ATP a terrorist act against a government is punishable. Article 2(9) of the ATP defines the term "government" as the Ethiopian government, a foreign state, or an international organization which makes it resemble to the criminal targets or objects listed under UN Resolution 1566. In this respect, the Organization of African Unity (OAU) Convention on Terrorism does not fully illustrate what constitutes a terrorist act, and rather it prohibits the participation of member states in terrorism under article 4(1). The assumption of jurisdiction for international terrorism depends on the individuals involved, the territory, and the targets. Correspondingly, whereas the commission of a terrorist act under article 3 of the ATP by individuals or groups leads to a rigorous detention of fifteen years to death, article 7 of the ATP penalizes the participation in a terrorist group with a rigorous detention ranging from five years to lifelong detention depending on the level of participation.

As a reaction to the monarchical system, which had remained in place until the fall of Emperor Haileselassie in the second half of the 19th century, a new form of Afro-Marxist-Leninist oriented organization took the political stage in various phases through coup d'état and civil war. In other words, while the first phase took place during the militaristic regime in Derge from 1974-1987, the second phase had begun when the EPRDF had taken power in 1991 through a civil war. According to a book written by Semahagn G. Abebe, published in 2016, Ethiopia has been described since 1991 as "the last post-Cold War socialist federation" after the collapse of the Soviet socialism⁷². Given the uncertainty associated with the controversial political, socio-economic and psychological nature of extremist groups, there is no robust culture in Ethiopia, other than the political orientation of the party⁷³, to categorize various organized or armed

71 See the UN Security Council Resolution 1566, S/RES/1566, 2004, para. 3.

72 ABEBE, S. G. *The Last Post-Cold War Socialist Federation: Ethnicity, Ideology and Democracy in Ethiopia*. Routledge, 2016. See also MCCLOSKEY, H and CHONG, D. *Similarities and Differences between Left-Wing and Right Wing Radicals*. British Journal of Political Science. Vol. 15, No. 3, 1985.

73 See PETROS, Y. *A Survey of Political Parties in Ethiopia*. Northeast African Studies. Vol. 13, No. 2/3, 1991,

groups strictly as right-wing, left-wing, anarchist or autonomous from domestic terrorism. Instead, a radical position in Ethiopia has a specific significance that can be associated with religion or ethnicity. Originally, nationalism was the central political idea of the legitimacy of European states since the French Revolution. European colonialism and the outbreak of World War I were the culmination of European *physical* imperialism in the twentieth century. Also, this period in time marked the beginning of the peak of nationalism by gaining and consolidating political power through identity formation and boundaries within a nation-state territory⁷⁴. However, considering Ethiopia's centuries old shared values, the politics of remembrance of the ethno-cultural self-understanding remain inextricably linked with the general claim to humanity for togetherness and the avoidance of temporal cultural experiences of contingency. Irrespective of the Ethiopian shared societal bondage, the ideological orientations and practices of politically organized groups are diffused. As a result, the exact categorization of those groups as politically right or left becomes blurred⁷⁵.

In Ethiopia, for example, some groups claim to have been colonized by "the Ethiopian Empire" and also accuse the Ethiopian historical elite leadership of domination and exploitation⁷⁶. These groups, some of which were established primarily during the communist Derg military government of Ethiopia and believed in armed struggle, include the Tigray People's Liberation Front, the Ogaden National Liberation Front, and the Oromo Liberation Front. These groups present the thesis of *national oppression* at the forefront of their efforts to explain either their autonomy, their stronger claim of entitlement, or how

pp. 141-164.

74 See DANN, O and DINWIDDY, J. *Nationalism in the Age of the French Revolution*. Hambledon Press, 1988.

75 See the Global Terrorism Database. The Tigray People's Liberation Front (TPLF) was listed four times from 1983-2016 in the Global Terrorism Database for committing the crime of terrorism on private citizens and property, religious figures/institutions and non-governmental organizations (NGOs). Similarly, the Oromo Liberation Front (OLF) is listed five times from 2000-2015 for committing terrorist acts against government officials, military, private citizens, and properties. The Ogaden National Liberation Front (ONLF) is listed eight times from 2007-2014 for committing terrorist acts on the military, private citizens and property, business centers, public utilities, and government officials.

76 See MARCUS, H.G. *A History of Ethiopia*. Berkeley: University of California Press, 1994.

they need to deconstruct Ethiopia and restructure it in their way⁷⁷. The *national oppression* rhetoric identifies a given historical enemy and justifies any behavior against the enemy group⁷⁸. The teachings are used to psychologically influence their mass groups to institute an egoistic and hamster-oriented political and economic ideology. These groups systematically use, and abuse, the term *colonialism* to convince or justify their reactionary activities or violent separatist reaction towards the international community, because international law permits the right to self-determination of the *colonized nation* by foreign actors. Even if these groups lean in favor of imported ideologies such as *communism* and use *colonialism* as a pretext to seize power and conquer territory, their tolerance of *others* or *members of other ethnic groups* has been criticized for being too narrow.⁷⁹ At the other end of the spectrum, the former Ginbot 7 idea and Ethiopian unity oriented movement, which had camped in Ethiopia and Eritrea, led an armed struggle against the former Tigray People's Liberation Front (TPLF) ran Ethiopian government. Ginbot 7 for Justice, Freedom, and Democracy was founded after the *hijacked* Ethiopian national election of 2005⁸⁰. The government described it as a terrorist organization until the Federal Parliament canceled its record after the election of the new Prime Minister in 2018.

Furthermore, although the ATP does not explicitly and in detail define the scope of the standard of a dichotomy between *international* and *domestic terrorism*, the Ethiopian courts do distinguish between the two. In practice Ethiopian courts punish those suspected of being associated with the Al-Shabaab and the Islamic State of Iraq and the Levant (ISIS) as being international terrorists, while those alleged to have a connection or involvement in banned home

77 They identified the Amhara ethnic leadership as their historical enemy.

78 See for example PAXTON, R.O. *The Five Stages of Fascism*. The Journal of Modern History. Vol.70, No. 1, 1998.

79 See for example FUKUYAMA, F. *Identity: The Demand for Dignity and the Politics of Resentment*. 1st ed. Farrar, Straus and Giroux, 2018. GEBREGZIABHER, T. N. *Ideology and Power in TPLF's Ethiopia: A Historic Reversal; In The Making?* African Affairs. Vol. 118, No. 472, 2019, pp. 463-484.

80 See <http://www.ginbot7.org/>.

organizations⁸¹ are punished as being domestic terrorists⁸². Indeed, the issue that has to be mentioned here is that in response to international terrorism the ATP has frequently been invoked by Ethiopian courts to hold accountable those suspected of terrorist activity against Ethiopian citizen operating solely within the country and its territories without considering the distinctive features and motives of each of the different cases and their degree of association with other cross-border organizations⁸³. The fact that the ATP uses the same definition as is used internationally to punish domestic acts of terrorism by Ethiopian citizens as equivalent to international terrorism implies⁸⁴, on the one hand, the fact that terrorism is becoming a monolingual or common global criminal concept that every suspect must be convicted of regardless of his or her background. On the other hand, the lack of a consensual definition of terrorism at an international level has allowed states such as Ethiopia to expand the law in order to stifle domestic dissension.

It follows that whereas the strict demarcation of terrorism as national or international terrorism has been controversially discussed due to the increasing mistreatment or unequal treatment of terrorist suspects and the rapid emergence of the world as a global community, still a jurisdiction for cross-border terrorism or terrorism against other states must be defined and acquired on *good faith* and based on the standards of classical international criminal justice. Despite what has been said, the dichotomy between national and international terrorism is facing strong headwinds due to the fading picture of domestic terrorism given the gravity of globalization and its susceptibility to abuse. For Joseph B. Steinberg, in spite of the difficulty of arguing that the division of the foreign and domestic dimensions of counter-terrorism in itself is undesirable, it is necessary to weigh the costs and benefits of integration and bifurcation against

81 See the next discussion on proscription and the right to association in Ethiopia in a nutshell.

82 See KIBRET, Z. *The Terrorism of 'Counterterrorism': The Use and Abuse of Anti-Terrorism Law. The Case of Ethiopia*. European Scientific Journal (ESJ). Vol. 13, No. 13, 2017.

83 See KASSA, W.D. *Examining some of the raison d'être for the Ethiopian anti-terrorism law*. Mizan Law Review. Vol. 7. No.1, 2013. pp. 49-66. KIBRET, Z. *The Terrorism of 'Counterterrorism': The Use and Abuse of Anti-Terrorism Law, The Case of Ethiopia...*, Op. Cit., pp. 529-530.

84 See KASSA, W.D. *Examining some of the raison d'être for the Ethiopian anti-terrorism law...*, Op. Cit. p. 66.

civil liberties, the need to pursue other policy objectives that may be affected by the consolidation of counter-terrorism measures at home and abroad, and bureaucratic as well as political costs⁸⁵.

Regarding U.S. law, Shirin Sinnar argued that the legal dichotomy of terrorism that exists can be seen as against a background of implicit associations linking Muslims, foreigners, nonwhites. For U.S. citizens, she points out that the *international terrorism* propaganda to the divide evokes images of violent, dark-skinned Muslims threatening U.S. citizens at home and abroad, while the *domestic terrorism* category conveys a very different social meaning: if one can predict a small fraction like the white supremacists⁸⁶. The existence of different legal norms for national and international terrorism has led to a considerable gap in the investigation, prosecution, and condemnation of terrorism. In other words, the dichotomy has given the executive branch broad power and strengthened the elastic application of the international category to unequal treatment of immigrants and other minority groups with limited international ties. The dichotomy brought severe punishments and intensive surveillance of those who are considered international as opposed to domestic terrorists, such as white supremacist and neo-Nazis, although they, too, have international associations. Therefore, Sinnar proposes, among other things, the abolition or reduction of the formal distinction between national and international terrorism in the existing laws, guidelines, and practices in terms of oversight and accountability. She suggests that focus must be predominantly on the specific intention⁸⁷ of a defendant to support the illegal activities of a foreign organization instead of mere marginal international relations. This would set a higher threshold for

85 STEINBERG, J.B. *Erasing the Seams: An Integrated, International Strategy to Combat Terrorism*. Report. Brookings, 2006.

86 SINNAR, S. *Separate and Unequal: The Law of "Domestic" and "International" Terrorism*. Michigan Law Review. Vol. 117, Issue 7, 2019. p. 1396.

87 CHENOWETH, E and LOWHAM, E. *On Classifying Terrorism: A Potential Contribution of Cluster Analysis for Academics and Policymakers*. Defense and Security Analysis Vo. 23, No. 4, 2007, pp. 345-357. CHENOWETH and LOWHAM also observed that terrorist attacks between groups with seemingly different motives and locations provides insights into the dynamics of terrorism in the past, suggesting a preventive classification based on motives and their tactics, as these groups monitor and learn from each other's activities.

international terrorism by requiring some showing of the defendant being “an agent of a foreign power” or having “substantial/meaningful relations” with the foreign organization, which would diminish the risk of a general suspicion of all foreigners⁸⁸.

1.3 Exemption Clauses

The nature of an actor and their motive in terrorism are crucial factors to differentiate terrorism from other things, such as forms of organized criminal acts, war, guerilla fighting, and other struggles for freedom⁸⁹. Terrorism is likewise delineated from war crimes, genocide, and other serious criminal acts against humanity based on factors such as the intention, means, method, and target. On the basis of the four Geneva Conventions⁹⁰, the protection of civilians and other broad directions are well defined and must be followed in terms of *jus ad bellum* and *jus in bello* during a war or in national liberation movements⁹¹. Combatants cannot be designated as terrorists for acts in accordance with international humanitarian law and the Protocol to the Geneva Conventions⁹². Thus, the pursuit of self-determination from oppression and the use of force in time of national liberation movements are allowed and not defined as terrorist acts. However, the UN Security Council Resolution 1566 of 2004 in its respect considers those activities of self-determination that involve violence to force

88 SINNAR, S. *Separate and Unequal: The Law of “Domestic” and “International” Terrorism...*, Op. Cit., pp. 1402–1404.

89 See KRAUS, L, in: B. SAUL, ed. *Counter-Terrorist Detention and International Human Rights Law*. Research Handbook on International Law and Terrorism. Edward Elgar, 2014.

90 See RATNER, S.R, et als. *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*. Oxford, 2009.

91 See KAPITAN, T. *Can Terrorism be Justified?* In: in R. FUMERTON and D JESKE, eds. *Readings in Political Philosophy*. Broadview Press, 2011, pp. 1068–1087. See also Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949; Convention relating to the Treatment of Prisoners of War, 12 August 1949; Convention relating to the Protection of Civilian Persons in Time of War, 12 August 1949.

92 Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 Jun. 1977.

impose their political agenda on government or an international organization can fall under the definition of terrorism. The UN Security Council Resolution 1566 encourages states to punish international terrorism in their domestic jurisdiction. For countries, the concept of national liberation movements lies between the use of force as a first resort and the use of force as a last resort⁹³. This distinction has become so controversial that national liberation struggles have often provided moral or legal justification for terrorist acts⁹⁴. While individual terrorists intend to revolutionize or overthrow the system, the actions of governments, by and large, are deliberately calculated to preserve the status quo or even return things to the *status quo ante*⁹⁵. The state in question may involve itself in counter-terrorism to protect the life of citizens and its status in the governance⁹⁶. In other words, governments may use terrorism as an armed political resistance against the status quo, which necessitates a counterterror act.⁹⁷ For individuals, who seek to defend one's freedom, the term terrorism is used as a label to punish and circumvent their opponent's activities⁹⁸. As can be seen, there are still differences in the international conventions on the fight against terrorism between counties and academics with regard to the actors, the nature of the acts, the motives, and the consequences of terrorism. The underlining standard does not justify terrorism, because terrorism is a violence against civilians that is wrong⁹⁹. In the absence of a joint international human rights

93 See FRIEDLANDER, R.A. *Terrorism and National Liberation Movements: Can Rights Derive from Wrongs*. Case Western Reserve Journal of International Law. Vol. 13, Issue 2, 1981.

94 *Ibidem*, p. 282.

95 PILGRIM, C. M., *Terrorism in National and International Law*, Penn St. Int'l L. Rev., Vol. 8, No. 2, 1990, 147, p. 153.

96 *Ídem*.

97 See HIGGINS, N. *International Law and Wars of National Liberation*. Oxford Bibliographies in International Relations, 2014.

98 PILGRIM, C. M., *Terrorism in National and International Law*, Op. Cit.

99 DE BEER, A. C. *The Prohibition of Terrorism under International Law*, Peremptory Norms of General International Law (Jus Cogens) and the Prohibition of Terrorism. Brill, 2019. As to the conditions under which terrorism can be morally justified see CORLETT, J. *Can Terrorism Be Morally Justified?* Public Affairs Quarterly. Vol. 10, No. 3, University of Illinois Press, 1996, pp. 163-184.

enforcement mechanism, the presence of “terrorist elements” in the collective defense of fundamental human rights under the UN Charter may be “illegal but justified”¹⁰⁰. Since self-defense, necessity, etc., are typical of international criminal law, here as in Ethiopia a justified claim also arises to recourse the violation of an international obligation analogous from the law of state responsibility, which can excuse terrorist behavior¹⁰¹. With regard to the progressive denationalization of aggression, Markus Krajewski accentuated that since non-state actors constitute a threat to world peace under article 39 of the UN Charter, they can be regarded as *aggressors* within the meaning of article 51 of the UN Charter, which authorizes the right to self-defense¹⁰². The right to self-defense enshrined in the UN Charter entitles the attacked state to take defensive measures against the non-state actor, provided that the violence emanating from the non-state actor assumes intensity comparable to forms of state aggression¹⁰³.

According to article 3 of the OAU Convention on Prevention and Combating of Terrorism, struggle waged by the people for their liberation or self-determination under the principle of international law is justified¹⁰⁴. The

100 SAUL, B. *Defending 'Terrorism': Justifications and Excuses for Terrorism in International Criminal Law*. Australian Yearbook of International Law. Vol. 25. Sydney Law School Research Paper No. 08/122, 2006.

101 Ídem. See also, UN General Assembly resolution 56/83 of 12 December 2001, Responsibility of States for Internationally Wrongful Acts. See Consent (article 20), self-defense (article 21), countermeasures (article 22), force majeure (article 23), distress (article 24) and necessity (article 25).

102 See KRAJEWSKI, M. Selbstverteidigung gegen bewaffnete Angriffe nichtstaatlicher Organisationen – Der 11. September 2001 und seine Folgen. Archiv des Völkerrechts 40. Bd., No. 2. Mohr Siebeck GmbH & Co. KG, 2002, pp. 213–214.

103 Ídem. He underlined “the territorial integrity of the state of residence falls back for targeted measures against the non-state aggressor, but further measures against the state of residence of terrorists are prohibited as they do not fall under the right to self-defense”. See for example UN Resolution No. 2444 (XXIII), 19 Dec. 1968. Within the framework of the definition of combatants under international humanitarian law, those who qualify, especially armed conflict targeting terrorist fighters who are directly involved in hostilities or targeting military objectives, such as terrorist camps and weaponry warehouses, will generally be considered lawful.

104 In other jurisdictions like Ghana, an act in an armed conflict cannot be labeled as a terrorist act if it complies with the international humanitarian law. See article 4 (2) of Ghanaian Terrorism Act.

post-colonial conflicts of self-determination continue today and demand that the 1977 Additional Protocol I to the Geneva Conventions of 1949 article 1 paragraph 4 be enforced, which states that international armed conflict situations include armed conflicts in which people exercise their right to self-determination against colonial rule, foreign occupation, and racist regimes, even though this legal framework has turned out to be weak and limited. Moreover, states are unwilling to apply the current legal system except in an ad hoc and unpredictable manner¹⁰⁵.

The ATP is silent with regard to the national liberation movement, which falls under the provisions of international humanitarian law. It can be argued that any ideologically motivated, violent force, and violent self-determination activity of a group can be described as a terrorist act. In other cases, it has to be maintained that the criminalization of acts –which are not inherently violent or unlikely to cause severe damage to life, bodily integrity, or property of a person– under the cover of terrorism appears non-defensible for human rights reasons¹⁰⁶. Unlike Ethiopia, it is this conviction that made some other jurisdictions reconsider and provide an exemption for advocacy, protest, dissent, or industrial action without intentions to cause *serious* physical harm to a person or a serious risk to the health and safety of the public or a section of the society¹⁰⁷.

2. Counter-Terrorism and Human Rights

2.1 International Laws on Counter-Terrorism

Throughout history, terrorist activities have shown that people of all religions, men and women, people living under tyranny or freely in democracies, and people who have clear or vague objectives, have all participated in

105 See HIGGINS, N. *International Law and Wars of National Liberation*. Oxford Bibliographies in International Relations, 2014.

106 See MCCULLOCH, J. *Counter-terrorism, Human Security and Globalization—from Welfare to Warfare State?* Current Issues in Criminal Justice. Vol. 14, 2002–2003, p. 285.

107 See section 100.1(3) of the Australian Criminal Code and Australia Terrorist Act (2005) and article 2s(2) of the Ghanaian Anti-Terrorism Act.

some form of terrorism¹⁰⁸. Among other things, the terrorist incidents between 1968 and 1979 produced the bulk of the contents on international terrorism, including case histories of more than 4,000 terrorist incidents¹⁰⁹. In particular, the abduction of Jewish athletes by the Palestinian Liberation Organization (PLO) during the 1972 Olympic Games in Munich demonstrated the mounting danger of sabotage and terrorism. In the U.S., the 1970s are deemed to be the golden age of terrorism, because during this period nationalist and ethnic terrorists, religious zealots, and anti-war militants killed 184 people and injured more than 600 others¹¹⁰. Afterwards, the UN General Assembly Resolution 3166 (XVIII) of 14 December 1973 established the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Article 3 of that Convention allowed states to establish jurisdiction where the crime is committed in their territory or in cases where their citizens are involved.

Upon the fall of the Berlin Wall, conventional wars as a threat to sovereignty became inconsequential and the rapid globalization tendency since the late twentieth century created new cross-border terrorist *threats* and new *enemies* to fight¹¹¹. Due to globalization, one of the new threats to the structure of the international system is disastrous terrorist bombing, financial terrorism, and the threat of nuclear destruction. Globalization implies the ability of an otherwise small actor to alter the course of history by deploying extreme direct outrage¹¹². Coupled with the “New World Order” thesis of U.S. President George H. W. Bush in 1991, it has been argued that the crucial role in this new scenario has changed from national to international actors; it is believed that through the rule of law, a “World Government” will emerge and the Kantian dream of

108 CANTER, D, ed. *The Faces of Terrorism: Multidisciplinary Perspective*, Chichester: Wiley, 2009, p. 2.

109 See MICKOLUS, E.F. *Transnational Terrorism – A Chronology of Events, 1968-1979*. Greenwood Publishing Group, 1980.

110 BERGEN, P. *The golden age of terrorism*, CNN, 21 Aug. 2015.

111 SÁNCHEZ-CUENCA, I. *From a Deficit of Democracy to a Technocratic Order: The Postcrisis Debate on Europe*. Annual Review of Political Science. Vol. 20, 2017, p. 233.

112 WILDE, J. D. *Speaking or Doing Human Security?* In: M DEN BOER and J DE WILDE, *The Viability of Human Security*. Amsterdam University Press, 2008, p. 235.

"perpetual peace" will ensue¹¹³. In the "New World Order", security is closely linked to peace, being largely a means to this end, and implies a stable situation both from a foreign point of view and the internal security of states¹¹⁴. A testament of which was a historic ratification of the Oslo Accords in Washington, D.C., in 1993, and Taba, Egypt, in 1995 between Israel and the Palestine Liberation Organization (PLO)¹¹⁵. The Oslo Accords was remarkable in that the PLO agreed to officially recognize the State of Israel and Israel again allowed the Palestinians a form of limited self-government in Gaza and the West Bank even though recurring conflicts have been continually displayed¹¹⁶.

Broadly, the desire to ensure peace and security, as well as peaceful international coexistence, brought about instruments for a new scenario of multilateral actions by the international community¹¹⁷. The counter-terrorism measures that signify a peaceful international coexistence have been accompanied by legally binding instruments and strategic guidelines to multilateral institutions and regional structures whose coherence is alleged to be weak. Since 1963, nineteen international legal instruments have been designed to combat terrorist acts¹¹⁸. The UN and the International Atomic Energy Agency (IAEA) developed these instruments and made participation available by all member states¹¹⁹. These measures include: instruments regarding civil aviation, the protection of international staff, the taking of hostages, the nuclear material, the maritime navigation, explosive materials, terrorist bombings, and the financing of terrorism and nuclear terrorism¹²⁰. In other cases, however, member states of the

113 SÁNCHEZ-CUENCA, I. *From a Deficit of Democracy to a Technocratic Order...*, Op. Cit., p. 234.

114 *Ibidem*, p. 235.

115 See Oslo Accords. History.com Editors, 21 Aug. 2018, available at <<https://www.history.com/topics/middle-east/oslo-accords>>, [accessed on 25 Aug. 2019].

116 *Ídem*.

117 SÁNCHEZ-CUENCA, I. *From a Deficit of Democracy to a Technocratic Order...*, Op. Cit., p. 234. SCOTT, G.M. et als. *Debated Issues in World Politics*. Pearson Education, Inc, 2004.

118 UN Office of Counter Terrorism, available at <<https://www.un.org/en/counterterrorism/>>, [accessed on 24 Aug. 2019].

119 *Ídem*.

120 *Ídem*.

terrorism conventions are obliged to take the necessary measures to prevent the commission of terrorism, punish acts that are deemed to be criminal, and protect their citizens and properties as well as other countries' citizens and properties by applying the universal jurisdiction principle to try perpetrators in their domestic courts¹²¹. While duly taking into account the states' responsibility under the principle of *pacta sunt servanda*¹²², the punishment of crimes in treaties, however, depends on whether the state party transposes them through its national criminal legal order.

The International Criminal Court (ICC), established by the Rome Statute Italy on 17 July 1998, has jurisdiction and is responsible for deciding on criminal issues relating to the crime of genocide, crimes against humanity, war crimes, and the crime of aggression¹²³. These offences constitute a violation of a rule of international law, whether in customary law or in contract law¹²⁴. For an offense to be considered a violation of international criminal law, it must constitute a violation of a rule protecting essential values and result in serious injuries for the victim and serious consequences for the individual criminal responsible for violating the law¹²⁵. Although different forms of terrorism are governed by different treaties, which regard terrorism as a serious threat to the international community, the lack of precision of terrorism based on political or ideological backgrounds is evidence of the lack of consensus within the

121 See for example article 5 of the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; article 3 of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons; article 6 of the 1997 International Convention for the Suppression of Terrorist Bombings; and article 7 of the 1999 International Convention for the Suppression of Financing of Terrorism. See RANDALL, K.C. *Universal Jurisdiction under International Law*. 66 Tex. L. Rev. 785, 1987-1988.

122 Article 26 of the Vienna Convention on the Law treaties (VCLT) entered into force on 27 Jan.1980 states that, "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith".

123 See article 5 of the Rome Statute of the ICC entered into force on 1 July 2002.

124 The political nature of terrorism makes the identification of terrorism under the status of the international customary law difficult.

125 ICTY-Prosecutor v. Dusko Tadic. A/K/A "Dule". Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 1995.

international community regarding the precise definition of an international crime of terrorism¹²⁶. In the majority of cases, terrorism is committed by a non–state actor who is not the subject of public international law. Due to the politicized tone and the lack of a uniform and generally accepted definition of the notion of terrorism, the ICC has excluded terrorism from its jurisdiction¹²⁷. The 1999 African Convention against Terrorism, the 2004 Additional Protocol to that Convention, and the 2002 Inter–American Convention against Terrorism also do not classify terrorism as an international crime against humanity¹²⁸. Given the existence of various conventions on terrorism and the absence of a generally accepted definition of terrorism, states are thus in a position to prosecute international terrorism cases before national courts. It should also, however, be noted that the extreme form of terrorism by non–state actors can be considered a war crime or a crime against humanity, which is therefore directly punishable under international law¹²⁹.

2.2 Human Rights Obligations while Countering Terrorism

The post 11 September 2001 anti–terrorism legislation cover a wide range of activities beyond the formerly privileged status of politically and ideologically motivated violence into behavior deemed to be particularly dangerous and therefore eligible for increased penalties and incarceration¹³⁰. A large number of states

126 Ídem.

127 HOYOS, M. C. *Including the Crime of Terrorism within the Rome Statute: Likelihood and Prospects*. Global Politics Review. Vol. 3, No. 1, 2017, pp. 25–38.

128 See ROHT–ARRIAZA, N. *Guatemala Genocide Case. Judgment No. STC 237/2005*. American Journal of International Law, Vol. 100, Issue1, 2006, pp. 207–213. Universal jurisdiction provides for a national court to prosecute individuals for serious crimes against international law that may harm the international community.

129 ISANGA, J.M. *Counter–Terrorism and Human Rights: The Emergence of a Rule of Customary International Law from United Nations Resolutions*. Denver Journal of International Law and Policy. Vol. 37, No. 2. 2009. See also AMBOS, K and TIMMERMANN, A. *Terrorism and Customary International Law*, in: B SAUL, ed. Research handbook on international law and terrorism. Elgar, 2014.

130 ALBRECHT, H.–J., and KILCHLING, M. *Victims of Terrorism Policies: Should Victims of Terrorism be Treated Differently?* In: M. WADE, & A. MALJEVIĆ, eds. *A War on Terror? The European Stance on a New Threat, Changing Laws and Human Rights Implications*, Springer, 2010. p. 222–223.

often view human rights as interests that compete with or compromise national security¹³¹. As time passes, the balance between liberty and security has begun to shift more towards security. The interplay between human rights jurisprudence and the crime of terrorism include the effects of terrorism on human rights, the classification of terrorism as human rights violation, the human rights implications of defining terrorism, the value of a holistic approach toward terrorism, and the applicability of human rights norms to traditional strategies to combat terrorism. As terrorist acts affect human rights, state's counter-terrorism may also have a damaging outcome for human rights.

The protection of human rights requires not only the prevention of direct interference from individual terrorists but also a response to the threat of intervention. Therefore, freedom from fear can be seen as human rights protected by international instruments and domestic laws. Article 55 of the UN Charter acknowledged the four freedoms concerning the respect of human rights as well as economic and social progress and development. These four freedoms are freedom of speech and worship, including freedom from want and fear. Among the four specified freedoms, one is the freedom from fear¹³². The concept of freedom from fear also applies to the prohibition of the use of aggression between states, the threat to peace and the violation of order, as affirmed in article 39 of the UN Charter.

Learning from the horrible and outrageous consequences of the World War II, the Preamble of the Universal Declaration of Human Rights acknowledges (UDHR) "a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want as the highest aspiration of the ordinary people"¹³³. Regarding the freedom from fear, the UDHR states that human beings shall enjoy the freedom of speech and belief and freedom from fear and want.

131 See HOVELL, D. *Dangerous evasions: enforcing limits on government actions in the war on terror*, in: J. HOCKING, *Counter-Terrorism and the Post-Democratic State*. Monash Studies in Global Movements. Edward Elgar, 2007, p. 117.

132 The original tenet of freedom from fear in the Four Freedoms Speech (1941) of Franklin D. Roosevelt stood for a "worldwide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor".

133 UN General Assembly, Universal Declaration of Human Rights (UDHR). 10 Dec. 1948, 217 A (III), Preamble.

Few among many, the International Covenant on Civil and Political Rights (ICCPR)¹³⁴, the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹³⁵, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹³⁶, and the Convention Against Torture (CAT)¹³⁷ accredited and institutionalized the four freedoms and confirmed that freedom from fear could only be achieved if conditions were created in which every person could enjoy the rights in both the ICCPR and the ICESCR¹³⁸.

The obligation of human rights necessitates the protection of human rights between citizens and in their relationship to states. Non-compliance with international human rights obligations in a state's law is unacceptable under article 27 of the 1969 Vienna Convention on the Law of Treaties. States are responsible when violations are committed directly by their organs, and/or disregard their responsibility to protect human rights when the direct source of a breach is private persons (in cases of terrorist acts)¹³⁹. Apart from that, the states are responsible when their duty to fulfill has become futile due to lack of due diligence to take decisive action to facilitate the enjoyment of human rights. The obligation of states to protect, respect, promote, and fulfill human rights is a justiciable matter¹⁴⁰. A particular feature reflected in the African Charter

134 UN General Assembly, International Covenant on Civil and Political Rights (ICCPR). 16 Dec. 1966, article 2 (1) and (2). See also the Office of the United Nations High Commissioner for Human Rights (OHCHR). Human Rights Handbook for Parliamentarians N° 26, 2016.

135 UN General Assembly. International Covenant on Economic, Social and Cultural Rights (ICESCR). 16 Dec. 1966, article 2 and United Nations Human Rights Commission (UNHRC) General Comment 3, 14 Dec. 1990, para. 1.

136 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 18 Dec. 1979.

137 UN General Assembly. Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), 10 Dec. 1984.

138 The right to security is associated with the meaning of the right to be protected against fear. Albeit, the exact meaning of the freedom to fear is a disputed concept.

139 DE SCHUTTER, O. International Human Rights Law Cases, Materials, Commentary. Cambridge University Press, 2010. p. 248.

140 Ídem.

of Human and Peoples' Rights is that it imposes responsibilities, not only on member states but also on persons having certain rights under the Charter, to discharge obligations between citizens and to discharge obligations between the citizen and the state of their nationality¹⁴¹. In other words, human rights obligations entail the protection of human rights horizontally between citizens and vertically in relations between states and their citizens.

Ethiopia has been a member of the UN since 1945 and a member of the African Union since 1963, and has signed numerous international fundamental rights agreements, regional human rights instruments, and treaties to prevent terrorism and other crimes¹⁴². Article 9 (4) of the Ethiopian Constitution declares all international agreements ratified by Ethiopia as an integral part of the laws of the land¹⁴³. Pursuant to article 15 of the ICCPR, an individual may be found guilty of an act or omission which constituted a criminal offence at the time it was committed, not only under the relevant national law, but also under the international law in force. However, any measure, including countering terrorism, must be in line with the underlying international legal framework for the protection of human rights. Broadly, enforcing the fundamental constitutional human rights in Ethiopia takes into account the Universal Declaration of Human Rights and other international human rights instruments assumed as a frame of reference for interpretation¹⁴⁴.

In Ethiopia, anti-terrorism policy is primarily regarded as an expression of a state's obligation to protect human rights. The multilayer obligation, as

141 Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, Preamble.

142 UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 21 Dec. 1965 in 1976, CETAW in 1983, CRC in 1991, ICCPR and ICESCR in 1993, CAT in 1994.

143 It is not clear whether the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution follows an adoptive monist as formulated by Judge and parliamentarian William Blackstone or a hybrid dualist approach as in the case of Germany. Article 71 (2) of the Ethiopian Constitution obliges the President of the country to proclaim laws and international agreements approved by the House of Peoples' Representatives as per the Constitution in the Federal Negarit Gazeta. See WOLDEMARIAM, *The Place of International Law in the Ethiopian Legal System*. Ethiopian Yearbook of International Law, 2016, pp. 61-93.

144 FDRE Constitution, 1995, article 13.

imposed by the FDRE Constitution on different stakeholders, demonstrates security as a prerequisite for lasting peace. The preamble of the FDRE Constitution aspires to build a political community founded on the rule of law that is capable of ensuring lasting peace, guaranteeing a democratic order, and advancing economic and social development¹⁴⁵. The basic principles of the most recent Ethiopia's Policy and Strategy on Foreign Affairs and National Security (2012) stresses peace and security as the alpha and omega value to ensure national existence. Similarly, it aspires to establish a democratic order through the respect of people and individual rights, affirm good governance, and assure stable working and living conditions¹⁴⁶.

Beyond the promise of peace and security, the FDRE Constitution guarantees fundamental human and democratic rights¹⁴⁷. A few of these rights include the right to liberty (article 17), the prohibition against inhumane treatment (article 18 and 28), the rights of the arrested and accused individual (article 19 and 20), freedom of expression (article 27 and 29), and freedom of association (article 31). Article 10(1) and (2) of the same Constitution stipulates that human rights and liberties emanate from the fundamental human nature and are inviolable and inalienable. Article 13(1) and (2) of the same Constitution impose duties on all government organs to respect and enforce those human rights provisions. Similarly, article 9(2) of the same Constitution imposes duties on all citizens, political organizations, other associations, as well as their officials to ensure observance of the provisions of the Constitution. However, for each human rights provision the FDRE Constitution contains a far-reaching limitation clause that constitutes uncertainty in the analysis of the legality and appropriateness of human rights restrictions. Furthermore, there is still a risk that the absence of material conditions to which the limits relate may lead to constitutional guarantees being subordinated to the discretion of the legislature¹⁴⁸.

145 Ibidem, Preamble.

146 The Federal Democratic Republic of Ethiopia Foreign Affairs and National Security Policy and Strategy, Ministry of Information Press & Audiovisual Department, 2002.

147 Even though the clear line between human and democratic rights is absurd, the distinction between human and democratic rights does not change the innate contents of human rights.

148 See ABEBE, A. K. *Limiting Limitations of Human Rights under the Ethiopian Constitution*, Ethiopian

3. The Laws on Counter-Terrorism in Ethiopia

In 2009, Ethiopia adopted a special anti-terrorism law: the ATP. The ATP was justified by Ethiopia's obligation to counter-terrorism under international law, and also on the claim that the country is exposed not only to terrorism on account of its geographical position in the volatile horn of Africa but also by armed domestic rebel groups. Following the claim that the jihadist Union of the Islamic Courts of Somalia declared war on Ethiopia in 2006–2007¹⁴⁹, the Ethiopian government used the *status quo* to intervene in Somalia in 2006. In May 2008, shortly before the adoption of the ATP, a bomb explosion by a Somali Islamist group in a minibus killed three people in Addis Ababa¹⁵⁰. Since then, another Islamic terrorist group was formed, i.e. the Al-Shabaab, networked with Al-Qaida, and committed several terrorist attacks in Somalia, Uganda, and Kenya. Herewith, the Ethiopian government considers the ATP as the appropriate instrument in the fight against international terrorism¹⁵¹.

Structurally, the ATP is divided into seven parts. The first deals with the general definition. Part two governs terrorism and related crimes. These include terrorist acts (article 3), planning and preparation, conspiracy, incitement and attempt of a terrorist act (article 4), rendering support to terrorism (article 5), encouragement of terrorism (article 6), and participation in a terrorist organization (article 7). Part three consists of preventive and investigative measures or provisions on arrests and searches of suspected terrorists. Part four addresses evidentiary and procedural rules including the admissibility of hearsay and intercepted information and the inapplicability of the statute of limitation for

Constitutional Law Series 4, 2011.

149 See YIHDEGO, Z.W. *Ethiopia's Military Action against the Union of Islamic Courts and Others in Somalia: Some Legal Implications*, International and Comparative Law Quarterly. Vol. 56, No. 3. Cambridge University Press, 2007, pp. 665–676.

150 MALONE, B, TADESSE, T. *Explosion rocks Ethiopian capital, three dead: police*. Reuters, 20 May 2008. See also POWELL, A. *Somali Islamist group claim responsibility for deadly attack in Ethiopia*. Associated Press, 29 May 2008.

151 HOME OFFICE. *Newly, the rise and expansion of Islamic State (ISIS) from the Middle East to Africa posed also a threat to Ethiopian citizen*, 2017. In 2015, the ISIS killed 30 Ethiopian citizens in Libya.

terrorism cases. Part five regulates measures to the proscription of terrorist organizations and freezing or forfeiture of their property. While part six deals with institutions that follow up cases of terrorism, the seventh part lists the miscellaneous provisions.

Although the ATP embodies new rules on substantive and procedural paradigms of criminology, the 2004 Ethiopian Criminal Code, the 1961 Criminal Procedure Code (to the extent that they are compatible with the ATP), and the ATP are used to prosecute terrorism in Ethiopia¹⁵². The special part of the Ethiopian Criminal Code punishes criminal activities that have been regarded as terrorist activities in diverse terrorism conventions¹⁵³. The Ethiopian Criminal Code also punishes violations of international humanitarian law or public international law¹⁵⁴. What makes the legal regime of the Ethiopian anti–terrorism sketchy is the lack of uniformity on its legal constructs.

4. Selected Provisions of the ATP and their Adverse Impact on Human Rights

4.1 Detention and the Right to Liberty

Liberty is the primary necessity of physical human existence. Liberty and security of every human in a sense that freedom from injury to the body and the mind, or bodily and mental integrity are protected in the form of freedom from arbitrary arrest and detention and the right to habeas corpus (article 9 – 11 of the ICCPR). Article 9 of the ICCPR forbids arbitrary deprivation of liberty for the prevention of terrorism¹⁵⁵. Arbitrariness includes elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements

152 ATP, 2009, article 36.

153 See the 2004 Ethiopian Criminal Code on crime against public security, peace, and tranquility. See also KRAUS, M. *Rechtsstaatlichem Terrorismusbekämpfung durch Straf und Strafprozessrecht*. Augusburger Studien zum Internationalen Recht. Band 9, 2011.

154 See Criminal Code of Ethiopia, 2004, article 170.

155 See WEISSBRODT, D and MITCHELL, B. The United Nations Working Group on Arbitrary Detention, 2016. Arbitrary detention includes: deprivation of liberty without legal justification, deprivation of liberty resulting from the exercise of universal human rights, grave violations of the right to a fair trial, and prolonged administrative custody deprivation of liberty as a violation of international and anti–discrimination standards.

of reasonableness, necessity, and proportionality¹⁵⁶. Article 6 of the African Human Rights Charter reiterates that liberty can only be deprived upon the existence of pre-established laws that outline the reasons for detention¹⁵⁷. The 2014 General Comment N° 35 of the UNHRC declared “liberty and security of person are precious for their own sake, and also because deprivation of liberty and security of person have historically been principal means for impairing the enjoyment of other rights”¹⁵⁸. Article 17(1) and (2) of the FDRE Constitution confirms that liberty of an individual can only be restricted for reasons and in accordance with the procedures laid down by law. The FDRE Constitution prohibits arbitrary arrests in any form. In addition, it declares that a detained person is to be brought to justice within forty–eight hours of arrest. Administrative preventive detention for the preservation of public order has become legally accepted¹⁵⁹. Nevertheless, evidence shows that the preventive or pretrial detention to counter terrorism and the respect for rights to liberty are at a crossroads across the globe¹⁶⁰. Common law system countries afford large scope for police investigatory power in their adversarial system. Civil law system countries tend to grant court oversight and investigatory power. According to article 5(3) of the European Court of Human Rights (ECHR)¹⁶¹, full “judicial control” is required in undertaking pretrial detention. As per the 2003 Australian Terrorism Act, the longest possible time for preventive detention under the Commonwealth is forty–eight hours, whereas the state and territory laws prescribe fourteen days. That can only be possible where there is a threat of an “imminent terrorist” attack, or immediately after a terrorist attack has occurred¹⁶². In England, the

156 UNHRC. General Comment No.35. CCPR/C/GC/35, 2014.

157 African Commission on Human and Peoples Rights, 2014, article 6.

158 UNHRC, General Comment No.35 – article 9: Liberty and Security of person, CCPR/C/GC/35, 16 Dec. 2014.

159 UNHRC, General Comment No. 8, 30 Jun. 1982.

160 See CASSEL, D. *Pretrial and Preventive Detention of Suspected Terrorists: Options and Constraints under International Law*. Journal of Criminal Law and Criminology, Vol. 98, No. 3. Springer, 2008.

161 See A. and others v. the United Kingdom. ECtHR. Judgment. App. 3455/05, 19 Feb. 2009. See DE LONDRAS, F. Counter–Terrorist Detention and International Human Rights Law, B SAUL, ed. Research Handbook on International Law and Terrorism. Edward Elgar, 2014.

162 TOLLEY. M.C. *Australia’s Commonwealth Model and Terrorism*, in VOLCANSEK, Mary L. and STACK, John

2008 Counter-Terrorism Bill lifted the pretrial detention from twenty-eight up to forty-two days¹⁶³. However, pre-trial detention beyond twenty-eight days must pass rigorous phases of oversight by the parliament, Home Secretary, independent reviewer, and more importantly, the court which approves the necessity of additional time at least every seven days¹⁶⁴. Furthermore, an extension of pretrial detention can only follow by looking at the threshold where the investigation is highly complex or involves multiple plots or links with various countries¹⁶⁵. In the Federal Republic of Germany, article 17 and 20 of the draft Police Task Act (PAG) of Bayern Land on preventive detention has allowed the police to extend the preventive detention every three months on account of the threshold "imminent danger" created by the suspect¹⁶⁶. The criticism is that the probability threshold for the "imminent danger" is demonstrably below the "sufficient probability" for settlement, which endangers the constitutional principle of certainty¹⁶⁷. Subsequently, the measure triggered a popular legal action to the Constitutional Court of Bavaria for the potential adverse effects of the PAG on human rights. This class action is entreated among other things to challenge the imbalance in proportionality created between individual liberty and public security¹⁶⁸. The class action emphasized that the encroachment on

F. Jr, *Courts and Terrorism: Nine Nations Balance Rights and Security*, Cambridge University Press, 2011. According to Tolley, in Australia "the introduction of new counterterrorism powers and the High Court's decisions in Al-Kateb (2004) and Thomas (2007), upholding the legality of indefinite detention of asylum seekers and the imposition of control orders, have cast doubt on Parliament's ability to safeguard fundamental rights and freedoms. In the absence of a federal bill of rights, there is little that the judiciary can do to invalidate the antiterrorism laws enacted by Parliament".

163 England Counter-terrorism Bill, 2008, article 23.

164 Ibidem, article 30 and 31.

165 See the Government Reply to the Nineteenth Report from the Joint Committee on Human Rights Session 2006-07 HI Paper 157, HC 394.

166 Global Internet Forum to Counter Terrorism. netzpolitik.org, 2018.

167 Nue Richtervereinigung, 2018, available at <<https://www.neuerichter.de/details/artikel/artikel/die-drohende-gefahr-im-polizeirecht-574.html>>, [accessed on 23. Aug. 2019].

168 FEICHTNER, I and KRAJEWSKI, M. Popularklage gem. Art. 98 Satz 4 der Bayerischen Verfassung, 3 May 2018, p. 29.

the right to liberty based on danger justification has the inherent potential to lower the threshold and thus make it disproportionate¹⁶⁹. The reason is that the aforementioned low probability test can come close to a mere dangerous guess¹⁷⁰.

In Ethiopia, “a police officer, having reasonable grounds to believe that a terrorist act has been or is being or will be committed, may take ‘any measure’ to prevent or reduce the danger...if necessary, by using ‘compelling measures’”¹⁷¹. Again, article 19(1) of the ATP authorizes pretrial detention by the police for the prevention of terrorist acts on a “reasonable ground”. Article 20(3) of the ATP purports that “the suspect of terrorist activity remains in detention be a minimum of 28 days; provided, however, that the total time shall not exceed four months”. Suspects are kept even after the lapse of the four-month period of remand. In practice, an investigating police officer is able to ask the courts for a remand until credible shreds of evidence are found. The police detain suspects of terrorism even after the expiry of the four-month period without giving individuals in custody an afforded notice to challenge the detention¹⁷².

A general study carried out on arbitrary detention, including cases based on the ATP carried out between 2011 and early 2018 in Somali Regional State, revealed that the special police unit of the region detained suspects arbitrarily and mishandled cases¹⁷³. It is not very uncommon for the police in Ethiopia to continue to detain a suspect, even if it is actively defying a court order for the suspect’s release¹⁷⁴. In 2012, Alemayehu G. Mariam wrote “Soviet state terrorism was intensified in the ‘Gulag’ prison called ‘meat-grinders’ because of the extremely harsh and inhumane conditions—torture, physical abuse by prison guards, solitary confinement, inadequate food rations and officially instigated

169 *Idem*.

170 *Idem*.

171 ATP, 2009, article 13 (1) (e).

172 See also OHCHR Human Rights Report, 2016 and 2017 and AMNESTY INTERNATIONAL. Annual Report, 2014, 2017, and 2018.

173 HUMAN RIGHTS WATCH. Torture and other Human Rights Abuses in Jail Ogaden, Somali Regional State. Ethiopia, 2018.

174 See ABRAHA, S. Freedom and Justice in Ethiopia. Signature Book Printing, 2009, p. 92.

inmate-on-inmate violence”¹⁷⁵. He added, “Ethiopia’s prison system today is reminiscent of the Soviet gulags in their abuse and mistreatment of political and other prisoners”¹⁷⁶. Even though the 2018 political change caused one of the most notorious prison facility called Makaelawi in Addis Ababa, the capital city of Ethiopia, to be closed, the country has to go far to close all private detention centers. According to the 2019 Human Rights Watch Report, in Ethiopia, many detention centers run by regional administrations –some well-known for ill-treatment, rape, torture, and lack of access to medical and legal aid– remain unaffected by the reform efforts¹⁷⁷. The new government faced security problems from across the country, either in the form of ethnic violence, internal displacement, the murder of government officials, or armed fighting, which made the use of ATP unavoidable. Although the new government has made progress in protecting human rights, including the release of those arrested before the 2018 state of emergency and other prisoners of conscience, the continued unnecessary use of the ATP on members and supporters of opponents has been criticized¹⁷⁸. The acute threat is the lack of a standard test for arresting a person for terrorist reasons.

4.2 Encouragement or Incitement, and Freedom of Expression

Freedom of expression is a necessity for the realization of the principles of transparency and accountability¹⁷⁹. It means the right of individuals to have, build, and express ideas. The protection of freedom of expression extends to

175 MARIAM, A. G. Political Prisoners inside Ethiopia’s Gulags Posted in Ethiopia News. Zehabesha, 2012.

176 Ídem.

177 See HUMAN RIGHTS WATCH, World Report on Ethiopia, 2019.

178 See FREEDOM HOUSE. Ethiopia Country Report, 2019. See HUMAN RIGHTS WATCH. Ethiopia: Abiy’s First Year as Prime Minister. Review of Freedom of Assembly, 2 Apr.2019. See also <<https://www.amnesty.org.uk/press-releases/ethiopia-five-journalists-held-terrorism-charges-should-be-released>> , <<https://cpj.org/2019/08/ethiopian-authorities-arrest-journalist-mesganaw-g.php>> , <http://www.xinhuanet.com/english/2019-09/22/c_138412789.htm> <<https://www.amnesty.org/en/latest/news/2019/10/ethiopia-release-of-coup-suspects-without-charge-follows-continued-abuse-of-anti-terrorism-law/>>

179 UNHRC. General Comment No. 34. CCPR/C/GC/34, 2011, article 19, p. 1.

ideas which offend, shock, or disturb the state or any sector of the population¹⁸⁰. Freedom of expression constitutes the basis for the full enjoyment of a wide range of other human rights and is the foundation of every free and democratic society¹⁸¹. Dieter Grimm claimed that there is no democracy without public discourse and no public dialogue without freedom of speech, freedom of media, and freedom of information¹⁸². According to John Stuart Mill, an individual is sovereign over him/herself and shall be protected against the tyranny of political rulers. The only purpose for which power can be rightfully exercised over any member of a civilized community against his/her will is to prevent *harm* to others¹⁸³.

While article 19(1) of the ICCPR grants the right to hold opinions without any limitations, article 19(2) covers the scope of the freedom of expression of every human or entity. It includes information and ideas of all kinds and the freedom to seek and receive information regardless of frontiers and in whatever medium: orally, in writing, in print, in the form of art, or through any other media¹⁸⁴. Article 19(2) and (3) of the ICCPR entrusts states with specific obligations and responsibilities to respect, protect, and fulfill the freedom of expression, while allowing states freedom of expression as a qualified right to impose a restriction. A look at article 17 and 19(3) of the ICCPR shows that the freedom of expression can be restricted for the rights or reputations of others and the protection of national security, public order, public health, or public morals. In this respect, General Comment No. 16 of the UNCHR expresses that article 17(2)

180 EUROPEAN COURT OF HUMAN RIGHTS, *Handyside v. The United Kingdom*. Appl. No. 5493/72 Judgment. No. 5493/72, 7 Dec. 1976.

181 UNHRC. General Comment No. 34, 2011, p. 1.

182 GRIMM, D. *Freedom of speech in a Globalized World*, in: HARA, I and WEINSTEIN, J, eds. *Extreme Speech and Democracy*. Oxford University Press, 2009, p. 11.

183 See Mill, J.S. *On Liberty*. Hackett Publishing Company, Inc, 1978.

184 UNHRC. General Comment No. 10. Freedom of expression, 1983, article 19. Freedom of expression is also guaranteed in article 13 of the American Convention on Human Rights, article 10 of the European Convention on Human Rights (ECHR), and article 9 of the African Charter on Human and Peoples. In the African case, freedom of expression is guaranteed "by law", which makes them vulnerable to being contained in any kind of law and thus restricted.

of the ICCPR bounds countries under an obligation to provide adequate legislation to protect every person against unlawful attacks on honor and reputation¹⁸⁵. Again, article 20(2) of the ICCPR provides that any advocacy for national, racial, or religious hatred which constitutes incitement to discrimination, hostility, or violence in any form shall be prohibited by law. According to UNCHR General Comment No. 34, a law restricting the freedom of expression must not endanger the right itself. The General Comment emphasizes the necessity to formulate a law so precisely that everyone can act accordingly, and it is unacceptable for a law to leave the full right to restrict the freedom of expression to the enforcement officer¹⁸⁶. Freedom of expression should be restricted only if the restrictive legislation is certain and clear as to the reasons for the restriction and justified by necessity in a democratic society (proportionality). Security Council Resolution 1624 adopted on 24 September 2005, after a bomb attack in London, considered hate speech and extremism as the main drivers of terrorism, and therefore democracy shall be understood as being more violent towards those who do not believe in it (militant democracy)¹⁸⁷. According to this Resolution, an incitement to terrorism has been committed, without the requirement of causation, simply by proper transmission of the information directly to the audience with the intention to cause harm. This Resolution does not refer to the word "public." This Resolution reminds states of the protection of international human rights.

In Ethiopia, the rights of everyone to hold and express opinions, thoughts, and their religion, as well as freedom of press without interference has a constitutional base¹⁸⁸. This guarantee is in accordance with the rights embodied in the ICCPR¹⁸⁹. Article 29(5) of the FDRE Constitution holds the position that freedom of expression and information may not be limited on account of the content or effect of the expressed point of view. Any propaganda for war and advocacy of national, racial, or religious hatred that constitutes incitement to

185 UNHRC. General Comment No. 16, 1988, article 17.

186 See UNCHR. General comment No. 34. CCPR/C/GC/34, article 19.

187 See ROACH, K. *The 9/11 Effect: Comparative Counter-Terrorism*. Cambridge University Press, 2011, p. 57.

188 FDRE Constitution, 1995, article 27 and 29.

189 ICCPR, article 18 and 19.

discrimination, hostility, or law is prohibited¹⁹⁰. To a certain extent akin with the ICCPR, article 29(5) of the FDRE Constitution indicates the possibility by which individual rights may be limited on the basis of general laws for the well-being of the youth, personal honor, prevention of propaganda of war, and the violation of human dignity¹⁹¹. However, the FDRE Constitution has still failed to mention specifically public policy or national security and morality as grounds for restricting freedom of expression. In other words, an argument to limit freedom of expression on account of national security would arguably be unconstitutional, even though the ATP itself is justified to limit the freedom of expression based on public order.

The limitation of freedom of expression in the framework of terrorism prevention for public order is a contentious matter since the scope of the limitation, for example with regard to indirect incitement to terrorism, varies as the countries and their legal, social, and political circumstances vary. Typically, supporting and encouraging the dissemination of racist statements under international and national law violates the right to freedom of expression. The publication of racist statements through the interview and production of television or radio programs may also constitute a criminal offense. This can occur when a person makes a statement or other communication to the public acting with the intention of making it widely available, threatens, insults, or humiliates a group of persons because of their race, color, national or ethnic origin, or belief. Likewise, a derogatory expression is legally questionable if it is disproportionate to the public's right to information and to the rights of persons who are affected.

The implication of the ATP on freedom of expression because of incitement or encouragement is anomalous and multidimensional since it poses the issue of prior censorship. Article 3 of the ATP distinguishes the act of terrorism from other minor crimes. Nevertheless, the imprecise motive to advance a political, religious, or ideological objective, as a ground of criminal responsibility, can come to collide with the constitutionally protected freedom of expression and endanger those who share political, religious, or ideological views with potential

190 ICCPR, article 19(3) and 20. See also UN Security Council Resolution No. 1624, 14 Sept. 2005.

191 See ICCPR, article. 19(3). See also WILKINSON, P. *Terrorism versus Democracy: The Liberal State Response*. Frank Cass Publishers, 2005, pp. 174-183.

terrorists¹⁹². Article 4 and 6 of the ATP penalizes incitement and encouragement of terrorism. The Ethiopian government censors not only the online platforms but also the communication devices which makes it difficult to differentiate a "terrorist" message from "normal" speech that breeds a culture of widespread self-censorship¹⁹³. When it relates to terrorism, the ATP empowers the executive to investigate journalistic sources, thus undermining the confidentiality of journalists' sources and dissuading people from expressing their views freely on matters of public concern.

As per the ATP, the incited offense does not need to be attempted¹⁹⁴. Preparation alone is punishable. Likewise, article 6 of the ATP punishes "anyone who publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement...of terrorism from 10 to 20 years of imprisonment"¹⁹⁵. For Téwodros W. Workneh the outcome of this provision warrants a scenario of arbitrary interpretation, jurisprudence, and execution of the law. He argued, "by keeping the law as vague and broad as possible, the

192 In 2014, two members of the bloggers of Zone 9, who wrote on public issues, were charged with destabilizing the nation with the motive of committing terrorism. Similarly, for his articles, Eskindir Nega, a prominent Ethiopian journalist, was arrested on a charge that he was affiliated with a terrorist labeled organization until he was free in 2018. See SCC, *R. v. Khawaja*, Judgment (SCC 69, 3 SCR 555), 14 December 2012, para. 57-58. The Canadian Trial Court indicated in the case between *R. v. Khawaja* that the motive clause of the criminal act is crafted overly broad. Care should be paid by the classification of terrorist activity by ideology not to characterize an entire population ideological movement as violent or predisposed to use terrorist tactics to advance ideological beliefs. See Amnesty International. Ethiopia: Release journalists arrested on unsubstantiated terrorism charges, 4 October 2019.

193 See WORKNEH, T. *Counter-terrorism in Ethiopia: manufacturing insecurity, monopolizing speech*. Internet Policy Review. Journal on internet regulation. Vol. 8, Issue 1, 2019, p. 13.

194 ATP, 2009, article 6.

195 OTENG, E. Jail term of Ethiopian activist, Yonatan Tesfaye reduced by three years. African News.com, 27 Nov. 2017. "The former 'Blue Party' spokesperson Yonatan Tesfaye was initially charged and sentenced for six years under the encouragement of terrorism (article 4 of the ATP). He was indicted for being a member of the forbidden group – the Oromo Liberation Front (OLF) and posting politically charged statements against the Government on Facebook."

government can choose to use it haphazardly in order to stamp out legitimate acts of political expression and dissent”¹⁹⁶.

In so far as incitement is concerned, the ATP is comparable with the United Kingdom’s (UK) Terrorism Act of 2006 Section 1 and 2 and the approach followed by the Council of Europe Convention on the Prevention of Terrorism article 5 (1) and (2)¹⁹⁷. The UK approach to encouragement in Section 1 adds a threshold concerning further justification or glorification of terrorism, clarifying the meaning of indirect encouragement and terrorist publication¹⁹⁸. Terrorist acts in general and the dichotomy between direct and indirect encouragement, in particular, remains controversial in the UK¹⁹⁹. Still, the Ethiopian approach to “direct or indirect encouragement” does not provide any clue regarding the kind of statements or expression that can be understood by members of the public as either direct or indirect encouragement. The wording “members of the public to whom the statement is published” has no convincing standard to test the gravity of the statement. The specific members of the public to whom the publication relates is also uncertain. Again, the ATP does not mention the intention of the person suspected of encouragement. In other words, the offense created here is not comprised of saying or disseminating something that might have the effect of encouraging persons to engage in terrorism. Preferably, what is published or said must have contained the danger that people might be encouraged to engage in terrorism. The core aim of the ATP from the central conception of freedom of expression is its ramification to criminalize not only clear cases of direct or indirect encouragement of terrorism through the

196 WORKNEH, T. *Counter-terrorism in Ethiopia: manufacturing insecurity, monopolizing speech...*, Op. Cit., p. 11.

197 COUNCIL OF EUROPE, Treaty Series – No. 196, Council of Europe Convention on the Prevention of Terrorism, Warsaw, 16.V, 2005.

198 See Broadly, in the UK, the subversive advocacy beyond the ambit of constitutional protection is speech as urging the commission of a specific crime, offensive speech, and speech articulating anti-democratic norms. Cram (2009), p. 85.

199 UKSC 64, *R v. Gul (Appellant)*. 2013, p. 11, para. 26; TRAPP, K., *R v Mohammed Gul: Are You a Terrorist if You Support the Syrian Insurgency?*, EJIL:Talk! Blog of the European Journal of International Law, 14 Mar. 2012.

media²⁰⁰, but also anything likely to be understood as such by the public, or a part thereof for whose consumption the publication was made. Any campaign for a peaceful demonstration or a political rally would also qualify for punishment under this provision²⁰¹. In the case between Tigray Regional State Public Prosecutor v. Ato Bushra Yahiya²⁰², Mr. Yahiy recorded his speech on a CD underlining the fact that "the al-haqash is not a government-owned institution rather it requires a new religion that wants to flourish". Additionally, he stated "mejlis is a Government cadre; the Government interferes in the affairs of religion"²⁰³. The Tigray Regional State Supreme Court, the one which has initially entertained the matter, decided against Mr. Yahiy for possessing materials of terrorism, though the defendant was regarded as free in the Federal Supreme Court Cassation division²⁰⁴.

In summation, the incitement provision in the ATP is broad and imprecise. The ATP's approach to incitement punishes the content or the point of view expressed. This has the effect of subjectivity that is likely to erode the international and constitutional commitment to freedom of expression²⁰⁵. Therefore,

200 However, see Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 01 Nov. 1996, article 19. Principle 6 provides that expression may be punished as a threat to national security only if a government can demonstrate that: the expression is intended to incite imminent violence, it is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

201 SEKYERE, P and ASARE, B. *An Examination of Ethiopia's Anti-Terrorism Proclamation on Fundamental Human Rights*. European Scientific Journal January. Vol. 12, N° 1, 2016, p. 362.

202 ETHIOPIAN FEDERAL SUPREME COURT CASSATION DIVISION, *Ato Bushra Yahiya v. Tigray Regional State*. Judgement, 2016.

203 Ídem.

204 In the same case the Federal Supreme Court Cassation division found the judgment stated above erroneous as there is no evidence showing the intention of the defendant to commit through those material terrorist acts. In another case, in 2013, Asfaw Berhanu, a journalist, was accused and sentenced to two years and nine months in prison for spreading false rumors and thereby creating a danger of public disturbances under article 486/1 of Ethiopia's 2004 Criminal Code.

205 ICCPR, article 29 (4), GORDON, L, ed. *Ethiopia's Anti-Terrorism Law a Tool to Stifle Dissents*. The-Oakland-Institute, 2015. AMNESTY INTERNATIONAL, Report, 2011 and 2014.

the prohibition of incitement should be applied in the way it attains the test of certainty on account of the “immanence of the danger and direct incitement to the commission of terrorism”²⁰⁶. The encouragement or advocacy of the commission of a terrorism offense should be restricted to a higher threshold for active incitement or “any writing, sign, visible representation or audio recording that advocates or promotes the commission of terrorism offenses...or counsels the commission of a terrorism offense”²⁰⁷.

4.3 Prohibiting a Terrorist Organization and the Right to Association

In Ethiopia, freedom of association is protected not only by various international human rights²⁰⁸ accords but also through the FDRE Constitution. Article 31 of the FDRE Constitution assures every person the right to freedom of association for any cause or purpose. Alternatively, ‘organizations formed in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited’²⁰⁹. It is evident that establishing an association with terrorist objectives or a promotion thereof is illegal making its prohibition lawful and justified²¹⁰.

Proscribing terrorist organizations and the freezing, seizure, and forfeiture of their assets is an obligation of states endorsed by the UN Charter²¹¹. The Security Council Resolution 1267 (1999), which first targeted Osama Bin Laden, allowed states to establish a range of terrorist designation mechanisms at a national level²¹².

206 See RONEN, Y. *Terrorism and Freedom of Expression*, in: B SAUL, ed. *Research Handbook on Terrorism and International Law*. Hebrew University of Jerusalem Research Paper No. 07-12. Edward Elgar, 2013.

207 See the Canadian Anti-Terrorism Act, 2015.

208 See for example article 22 of the ICCPR.

209 FDRE Constitution, 1995, article. 31; See BOURNE, A and BÉRTOA, F. C. *Mapping ‘Militant Democracy’: Variation in Party Ban Practices in European Democracies...*, Op. Cit., pp. 440-465. Troubled by the rise of Nazism and deficiencies of the Weimar Republic, the 1949 German Basic Law laid the foundations for a “militant democracy” by placing the limit of “democratic order.”

210 See the Ethiopian Revised Political Parties Registration Proclamation, Proclamation No. 573/2008.

211 UN Security Council Resolution, No. 1373, 2001.

212 See for example the Global Terrorism Index.

Article 25(2) of the ATP stipulates that an organization shall be proscribed as a terrorist organization if it directly or indirectly commits acts of terrorism, prepares to commit acts of terrorism, supports or encourages terrorism, or is involved in terrorism²¹³. For the purpose of designation, the ATP follows a certain definition of international terrorism. In the ATP, the catchphrase "encouraging or participation in terrorism" as a ground for suspension has been left to the executive and legislature to deliver meaningful interpretation²¹⁴. The Ethiopian Federal House of Peoples' Representatives has the power, upon proposal by the government, to proscribe and de-proscribe an organization as a terrorist organization²¹⁵. In 2005, the House designated Al-Qaida and Al-Shabaab as terrorist groups, along with other domestic armed rebel groups, namely the Oromo Liberation Front, the Ogaden National Liberation Front, the Arbegnoch-Ginbot 7, and the Ethiopian Patriotic Front. In June 2018, in the framework of reform by the new Prime Minister, the Ethiopian parliament removed the above three domestic-armed groups from the list of terrorists upon an agreement of peace²¹⁶.

Notably, in line with the international human rights instruments²¹⁷, the FDRE Constitution embraces due process and the right of everyone to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power²¹⁸. However, the crux of the matter lies in the fact that the ATP confers the Federal Parliament with the authority to proscribe an alleged terrorist organization. That would authorize the parliament to decide on individual criminal responsibility²¹⁹. At this juncture, it

213 See ATP, 2009, article 2(4) and article. 25(1).

214 HUMAN RIGHTS WATCH, World Report, 2012.

215 ATP, 2009, article 25, article. 25(1).

216 See MAMDANI, M. *The Trouble with Ethiopia's Ethnic Federalism...*, Op. Cit.

217 See article 7 of the UDHR, article 2(1) of the ICCPR, and article 7 of African Charter on Human and Peoples' Rights.

218 FDRE Constitution, 1995, article 37(1). The pre-designation may hamper the success in blocking terrorist's preparation as well as financial assets, however, the post-designation should be re-evaluated under due process to ascertain whether there is change.

219 As a matter of comparison see for instance TOLLEY, M.C., *Australia's Commonwealth Model and Terrorism*, in VOLCANSEK, M. L. and STACK, JR, J. F., *Courts and Terrorism: Nine Nations Balance Rights and*

cannot reasonably be construed that the House of Peoples' Representatives has any judicial powers whatsoever; neither can it be denied that the proscription process has justiciable elements in it²²⁰. The legality of an association shall be ascertained by an independent judiciary; not by the law-making organ, which tends to be open for abuse. The membership to the designated groups alone (irrespective of the intention), as per the ATP, is enough to prove the person is a terrorist. The said ban makes not only the justifiability of the proscription unassailable²²¹, but it also may lead to a far-reaching punishment for a mere and unintentional membership which might in turn put the constitutional maxim *presumption of innocence* under question²²².

The power of constitutional interpretation falls under the scope of the House of the Federation²²³. As per article 62(1) and 83(1) of the FDRE Constitution, the House of the Federation has the authority to decide on all constitutional disputes. Hence, a declaration deeming an organization to be terrorists could be challenged as unconstitutional before the House of the Federation. However, the House has not passed a decision on this matter. Primarily, members of this institution are elected political representatives of each regional state which naturally makes it subject to partisan politics and partiality²²⁴.

In Australia, the Minister for Home Affairs can sort-out terrorist organizations as may be necessary together with the Parliamentary Joint Committee on Intelligence and Security²²⁵. The High Court of Australia is vested with the power to see the constitutional validity of laws and decisions²²⁶. In the UK, the

Security, Cambridge University Press, 2011, p. 144 -149. Accordingly, the present Australian approach to counter-terrorism is influenced immensely by the UK's Prevention of Terrorism Act of 2005.

220 The right to association and access to justice are justiciable.

221 United Nations Counter-Terrorism Implementation Task Force, 2014.

222 In that relationship, unlike the Ethiopian ATP, article 102.3 of the 1995 Australian Criminal Act situates intention as a prerequisite for criminal liability for membership in a terrorist organization.

223 The FDRE Constitution, 1995, article. 83.

224 See MGBAKO, C et al. *Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights*, Fordham International Law Journal. Vol. 32, Issue 1, 2008.

225 Australian Criminal Code Act, 1995, article 102.2.

226 Australian Government Attorney-General's Department, Australia's counter-terrorism laws, Questions and

2006 Terrorism Act has bestowed the power to proscribe political organizations to the Home Secretary²²⁷. In the UK, the affected individual may also appeal to the Court of Appeals as a last resort²²⁸. In Ethiopia, the Federal High Court can cancel or dissolve political parties acting in violation of the provisions of the laws of the country²²⁹. Otherwise, courts have no role whatsoever in challenging the decision to proscribe or de-proscribe an organization as terrorists. The Ethiopian courts can neither declare an organization unconstitutional nor can they review the constitutionality of the actions of the government and the legislation of the parliament²³⁰.

With the above in mind, it suffices to argue that the absence of judicial participation in the proscription of organizations as terrorists has severe impacts on the access to justice, the right to be presumed innocent, and the freedom of association. Since the court of law is expected to be the defenders of human rights, establishing an independent Constitutional Court with oversight ability will also make a significant difference in the protection of human rights.

5. The Draft Anti-Terrorism Law

Due to the non-availability of the bill online, efforts will be made to provide information on the new draft anti-terror law by tracing secondary sources. The draft bill is known as "a Proclamation to Prevent and Suppress Terrorist Crimes" (Bill)²³¹. Regarding the compatibility of the Bill with generally accepted human rights standards, the UNHRC Special Rapporteurs have proposed improvements to the Bill based on the principle of counter-terrorism

Answers Pamphlet, p. 6.

227 UK Terrorism Act, 2006.

228 UK Terrorism Act, 2000, Section 6 (1).

229 See Ethiopian Political Parties Registration Proclamation No 573/2008, article 40.

230 See generally, Consolidation of the House of the Federation and Definition of its Powers and Responsibilities, Proclamation No. 251/2001.

231 ABIYE, Y. Gov't tables draft bill to repeal maligned anti-terrorism bill. *The Reporter*, 8 Jun. 2019, available at <https://www.thereporterethiopia.com/article/govt-tables-draft-bill-repeal-maligned-anti-terrorism-bill> [accessed on 08 Mar.2020].

in accordance with UNHRC Resolutions 34/18, 32/32, 37/2, 37/2, 40/10 and 40/16²³². The Bill consists of six parts with a total of forty-seven articles. It contains new provisions on definitions and provisions relating to human rights and administrative issues. According to the available evidence, the preamble of the draft law aims to prevent and combat terrorism crimes, bring terrorists to justice, and punish them for the extent of their crimes. The Bill also aims to protect human rights, including victim's rights and democratic principles, by ensuring peace and security for the population and the government²³³. Unlike the ATP, which only allows federal courts to prosecute terrorism-related cases, the draft Bill provides state courts jurisdiction to hear cases of terrorist allegations. However, apart from the issue of efficiency, the question of the ability and credibility of state courts to apply the Bill and adequately prosecute suspects poses a potential warning signal.

The Bill defines terrorism as “spreading fear among the public or a section of the public or coercing or compelling the government” to “advancing political, religious, or ideological causes”. While the OHCHR considers the intention part to be unclear and imprecise, it argued that the objective element is in line with international standards. As already mentioned, the term *compelling the government* can, however, collide with democratic civil activity aimed at putting pressure on the government to change its policy. Moreover, terrorism is considered a “serious threat to peace and security affecting both individuals and property” and therefore, “the government should take strong precautionary and preparatory measures focusing on the nature of the crime”²³⁴. Although the *seriousness* threshold implies a human rights *friendly* nature of the provision, the burden of proof and the legal basis for adverse consequences for individuals to rights and freedoms with regard to precautionary measures are not based on concrete and proven action²³⁵. *Intimidation or coercion* to commit terrorism has also been made a crime as similar to that of the ATP. Nonetheless, the OHCHR considers

232 OHCHR. Internal Communication Clearance Form. Reference: OL ETH 3/2019, available at <https://www.ohchr.org/Documents/Issues/Terrorism/SR/OL_ETH_3_2019.pdf>.

233 *Ibidem*, p. 3.

234 *Idem*.

235 *Idem*.

intimidation as unclear in the sense that the acts which would rise to the level of intimidation creates the possibility of overreach²³⁶. Unlike the ATP, the draft Bill includes a provision on "false threat of a terrorist act." Similarly, due to its uncertainty, the punishment of "false threat" can endanger human rights.

Unlike the term *encouragement* in the ATP, the new Bill includes *direct or indirect support* to terrorism. In the OHCHR's view, *indirect support* for terrorism may cover a range of activities that cannot be adequately or fairly described as a terrorist act. The terminology, in particular, may impede routine work, mere communication, or storage of material or content unless there is an intention to incite a terrorist act²³⁷. The Bill also refers to extremism and the government's role in the prevention of extremism²³⁸. However, the term extremism has not been regulated under binding international legal standards. Extremism as a criminal offense is incompatible with the principle of legal certainty and is *per se* incompatible with the exercise of certain fundamental human rights²³⁹.

With regard to the authority in the draft Bill to outlaw a terrorist organization and the requirements of article 19(3) of the ICCPR, the OHCHR claimed that the Bill represented a broad and expanded interpretation. The OHCHR expressed its concern about a clear and potential violation of the right to associate under article 22 of the ICCPR. According to the draft Bill, no detailed confidential information can be collected; however, the collection of general information on confidential information is allowed. According to the OHCHR, the use of secret information in proceedings not only entails risks of false outcomes but also jeopardizes the right of access to information and freedom of expression²⁴⁰. At this juncture, based on the procedure and freedom of access to information under article 19(2) of the ICCPR, the draft does not adequately protect human rights, the rights of organized groups, and in particular, the rights of individuals.

236 *Ibidem*, p. 5.

237 *Ídem*.

238 Extremism is the term used to imply activities against democratic and constitutional state.

239 OHCHR. Internal Communication Clearance Form, Reference: OL ETH 3/2019..., *Op. Cit.*, p. 8.

240 *Ídem*.

Thus, with the ATP, the draft Bill gives the legislator the power to ban an organization as terrorists without involving the judiciary. As to affiliation, the Bill added the terms “should have known” as a threshold for negligent membership in a terrorist group. However, this is criticized for being a very controversial provision and for showing no necessity or clarity²⁴¹. In summation, the draft Bill leaves open questions on the obligations of states to protect the right to liberty and security, the right to privacy, and the freedom of association under articles 9, 17 and 22 of the ICCPR²⁴².

6. Balancing Counter-Terrorism with Human Rights: Lessons for Ethiopia

6.1 Approaches

Balancing public security with human rights has become the focus of international organizations and laws. International laws such as the UN Security Council Resolution No. 1456 (2003), 1624 (2005), and 2395 (2017)²⁴³; the 2004 African Protocol to the 1999 Convention;²⁴⁴ the 2005 Global Strategy against Terrorism²⁴⁵; and the African Commission on Human and Peoples’ Rights Resolution on Terrorist Acts espouse the balance that must be kept between security and human rights. The recent UN Security Council Resolution A / 73 / L.88 (29 May 2019) reaffirms the strengthening of international cooperation in support of victims of terrorism in a national criminal justice system. It bases the criminal justice system on respect for human rights, and declares the rule of law, due process, and security as the best ways of effectively combating terrorism and ensuring accountability. According to the UN Office of Counter-Terrorism, terrorism can be defeated only when the principles of the UN Charter and international standards of law are respected and enforced²⁴⁶.

241 *Idem*.

242 *Ibidem*, p. 9.

243 Opening statement by the High Commissioner for Refugees at the Thirty-Seventh Session of the Executive Committee of the High Commissioner’s Program, 6 Oct. 1986.

244 Opening statement by the High Commissioner for Refugees, 6 Oct. 1986.

245 See the UN Security Council Resolution No A/RES/60/288, 8 Sep. 2006.

246 The Counter-Terrorism Implementation Task Force (CTITF) and the UN Counter-Terrorism Centre.

Similarly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms affirms that "compliance with all human rights while countering terrorism represents a best practice because not only is this a legal obligation of states, but it is also an indispensable part of a successful medium- and long-term strategy to combat terrorism"²⁴⁷. The Special Rapporteur provided guidelines for states in line with best practices in countering terrorism. Given the profound implications of anti-terrorism legislation, the UN Special Rapporteur on terrorism declared that states have to ensure the broadest possible political and popular support for counter-terrorism laws through an open and transparent process²⁴⁸. The OHCHR Fact Sheet 32 and the African Commission Resolution 88 (2005) on the Protection of Human Rights and the Rule of Law in the Fight against Terrorism oblige the member states to ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples' Rights and other international human rights treaties²⁴⁹.

The 2015 Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa²⁵⁰ highlights that the legal principles such as legal certainty and clarity as well as legal consistency and principles of criminal law, such as legality and the presumption of innocence, are the integral parts of the rule of law that must be adhered to²⁵¹.

Nevertheless, given the nature of human rights, balancing freedom of individuals and the security of the public or the government's ability to set policies and laws is problematic. Since economic, social, cultural, civil, and political rights are interrelated, indivisible, and universal, it may not be plausible to balance one right at the cost of the other²⁵². The above is derived

247 UN Human Rights Commission, Resolution No. A/HRC/16/51, 22 Dec. 2010, p. 6.

248 See UN Resolution A/HRC/16/51, 22 Dec. 2010, p. 7.

249 The African Commission on Human and Peoples' Rights. Meeting at its 37th Ordinary Session held in from 21st November to 5th Dec. 2005, Banjul, the Gambia.

250 It was adopted by the African Commission on Human and Peoples' Rights during its 56th Ordinary Session in Banjul, Gambia, 21 Apr. to 7 May 2015.

251 See General Assembly Resolution No. 60/288, 8 Sept. 2006 Annex.

252 See YASENCHAK, M, A. GIGLIO, J. PAXSON, M. National Security and Human Rights: Conference Proceed-

from the idea that the protection of one right shall not threaten the protection of another.

6.2 Proportionality

Article 2(1) of the ICCPR stipulates that where a state makes any restrictions on a Covenant right, without impairing the essence of the right, it must demonstrate its necessity and proportionality to the pursuance of legitimate aims in order to ensure effective protection of the Covenant rights²⁵³. Regarding freedom of expression, a combined reading of paragraphs 21(1)–34 of the General Commentary No. 34 of the OHCHR shows that any law restricting human rights must have a legitimate aim and must not allow unfettered limitations of human rights, and that the law must be subject to precise and proportionate control²⁵⁴. The state has the burden of proof. The state must “demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”²⁵⁵. Broadly, any restrictions on rights by the application of counter-terrorism law must be necessary, impinge only minimally on rights, demonstrate proportionality between the means used and the clearly stated objective, be consistent with other fundamental rights, and non-discriminatory in purpose and practice²⁵⁶. According to the OHCHR, any measures limiting human rights must be provide the aforementioned together with the scope of application.

The proportionality principle is an important principle that impacts positively not only on the interpretation of constitutional and human rights issues,

ings: Moscow, Russian Federation, Kennan Institute, 29 Jun. 2006. The interrelatedness of human rights is recognized in the Universal Declaration on Human Rights and the 1993 Vienna Declaration and Plan of Action. It was noted that in some regional instruments, such as the African Charter, no differentiation is made between the two sets of rights.

253 See also ICESCR, article 2(2).

254 See OHCHR. Internal Communication Clearance Form. Reference: OL ETH 3/2019

255 See <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

256 OHCHR. Internal Communication Clearance Form. Reference: OL ETH 3/2019.

but also regarding the legislative and adjudication process²⁵⁷. The principle helps to strike a balance between the essential international human rights standards and public security so that citizens are not exposed to the unlimited and arbitrary power of the state²⁵⁸. Human rights are determined to be in congruence with the legitimate aims of a given government measure only when the aims are acceptable in a democratic society. Whether something is acceptable in a democratic society is determined by using suitability (in which the measure must be appropriate to achieve the aim), necessity (the measure must be absolutely necessary and there should not be other milder means to achieve the aim), and proportionality tests (the search for a balance in weight of private and public interest or the extent of the burden on the individual rights must be proportionate to the benefits to the public at large)²⁵⁹. In other words, the lower the value of individual rights would mean that the more intensive the interference with the fundamental right of the individual can be justified. As the value of the rights becomes higher, their limitation can only reasonably be expected to be strictly justified. The proportionality test prohibits the excessive exercise of power during the promulgation and the application of laws, including the daily inspections by security personnel on the streets.

Whether the ATP is a milder legal measure than Ethiopia's existing penal code, which can be used to criminalize terrorism, is a matter of dispute. Nevertheless, the question must be whether the ATP is a deviation from the constitutionally guaranteed fundamental rights and does it harm individual freedom disproportionately to the security interests of the general public. Despite the fact that the ATP is not proclaimed in response to an imminent terrorist threat to

257 See also YORK, J. C. Proposed Anti-Terror Law in France Would Erode Civil Liberties. Electronic Frontier Foundation, 12 Sept. 2014. See also RAUE, F. Müssen Grundrechtsbeschränkungen wirklich verhältnismäßig sein? Archiv des öffentlichen Rechts. Vol. 131, No. 1, 2006, pp. 79-116. The proportionality principle is well developed in German administrative and constitutional law. As per article 20 (3) of the Basic Right, in Germany, proportionality principle is binding for all authorities in the country. See BVerfGE, 15 Dec. 1965 and BVerfGE, 5 Mar. 1968.

258 See BVerfGE 194 June 10, 1963.

259 The execution of the ATP must be abridged to the protection of democratic principles and the sovereign rights of individuals.

the life of the nation and its existence is officially proclaimed, as provided for in article 4 of the ICCPR, it nevertheless reveals a profound deviation from the substantive and procedural content of existing laws in Ethiopia. Unlike derogations as per article 4 of the ICCPR that temporarily suspend individual rights in situations of public emergency proclaimed by law²⁶⁰; the FDRE Constitution consists of perpetual limitation on almost all rights. Furthermore, it does not deal with proportionality as a fundamental principle of the state function. These are limitations on individual rights by laws and deviations from specific human rights provisions. What makes the situation difficult to make use of the proportionality principle is the fact that the FDRE Constitution embodies the “claw-back” clauses which are namely a method of limiting human rights obligations in the FDRE Constitution by giving the parliament higher latitude and flexibility. The right to life, liberty, bail, privacy, freedom of expression, and freedom of association can be curtailed within the phrases such as “in accordance with specific laws”, “as are prescribed by the law”²⁶¹ or “as established by the law”²⁶². The “claw-back” clauses create the difficulty of having different grades of justification being presented to limit different categories of rights differently. It follows that the clause may lead parliament to arbitrarily restrict constitutional rights categorically by law (i.e., a parliamentary dictatorship). Importantly, however, when proportionality takes place, the kind of human right at stake is essential. Some human rights are not subject to relativism. These include the right to life, protection against torture and slavery, the principle of legality, and freedom of thought²⁶³.

260 During exceptional circumstances, article 4 of the ICCPR and article 93 of the EPRDF Constitution ordain that an action of the state shall not go beyond what is necessary to the goal that must be achieved.

261 See for example the FDRE Constitution, article 27(5).

262 See in the African context MAPUVA, L. *Negating the Promotion of Human Rights Through “Claw-Back” Clauses in the African Charter on Human and People’s Rights*. International Affairs and Global Strategy. Vol 51, 2016.

263 HUMAN RIGHTS WATCH, 23 Feb. 2018. Following Prime Minister Hailemariam Desalegn’s decision to resign, the state of emergency suspends fundamental rights guaranteed in the Constitution, the African Charter on Human and Peoples’ Rights (the African Human Rights Charter), and International Human Rights Treaties. During the previous state of emergency, which lasted from October 2016 until August 2017, security forces

6.3 Human Dignity

The absolute protection of human dignity is another mechanism crafted to balance the need to guarantee security and the protection of human rights. The origin of human dignity goes back to the view that the human being is created in the image of God and any outrageous act susceptible to reducing the parable of God's quality shall be prohibited. Immanuel Kant's principle of treating a person as an end, not as a means, has been accepted by moral and political philosophy as the basis for the concept of human rights. The attainment of human dignity is the highest goal of human rights assertion. No man should be treated or regarded as an *instrument* or *object*. The *object formula* indicates that the human dignity is injured, "when a human being is degraded to the object, to a mere means, to a justifiable grade"²⁶⁴.

The UDHR's preamble proclaims that "the recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world". Article 1 of the UDHR stipulates once again that "all human beings are born free and equal in dignity and rights"²⁶⁵. The preambles of ICCPR and ICESCR have also mentioned the concept of human dignity. Its primary purpose is embodied in the preamble of major human rights instruments to make it serve as the prime guiding principle. Human dignity has intersectional value for being situated at the center of all other human rights²⁶⁶. The respect of the dignity inherent in a human being has also been anchored under article 5 of the 1986 African Charter on Human and Peoples' Rights.

The FDRE Constitution does not denote the term human dignity until article 21(2) on the rights of persons in custody and article 29(5). This does not, however, mean that human dignity is not a supreme good of the FDRE Constitution. To some extent, human dignity is contained in the expression of inviolable

arrested more than 20,000 people and committed widespread rights violations.

264 See MARHAUN, A. Menschenwürde und Völkerrecht. Mensch, Gerechtigkeit, Frieden. Broschiert. Medienverlag Köhler; 1. Aufl, 2001. See NETTESHEIM, M. Die Garantie der Menschenwürde zwischen metaphysischer Überhöhung und bloßem Abwägungstopos. Archiv des öffentlichen Rechts. Band 130, 2005.

265 See UDHR, article 1.

266 However, the right to dignity as an independent human right is controversial.

and inalienable right to life, the prohibition of torture and inhuman treatment, the prohibition of slavery, and the right to physical and mental security²⁶⁷. Mindful of the above assertions, pursuant to the ATP, security officers can take “‘any measure’ that enables to prevent or reduce the danger [...] if necessary”. Such a compelling measure questions not only the subjective quality of the suspects, but also the general people in the supposed crime scene. A legal authorization to take any wary measures to neutralize a danger on *reasonable grounds* turns human beings into mere objects of state operation for the protection of others. Over the past few decades, Ethiopia has lost thousands of its citizens to gunshots on the streets by security forces both during regular time and during state of emergencies²⁶⁸. It is, therefore, essential that respect for human dignity be the yardstick for all executive actions. In Ethiopia, even if the determination of a particularly serious measure or factors influencing the judgments of a police officer depends on the state of the nature of the individual case, there must be a matrix or unbiased threshold. Furthermore, there must be training with which the police officer can believe or accept what is right/honest, beyond a mere idea of the realization of a particular crime. State or judicial supervision should also be integrated into the scheme.

7. Conclusion

In summation, adopting measures to address national security procedures and the protection of human rights leaves many questions unanswered. The attitude of governments in downgrading human rights arises not only from the control of different laws, but also from the socio-legal strategies deployed to create a “culture of fear”²⁶⁹.

The ATP has resulted in expanded power for the executive that brings it into conflict with the object and purpose of both the FDRE Constitution as

267 See FDRE Constitution, 1995, Chapter Two.

268 See VOA News, Ethiopia Arrests Ex-Head of Army Firm as Crackdown Targets Security Services, 13 Nov. 2018.

269 Similarly see for example Cheng, 2004, p. 6. See also ALTHEIDE, D. L. Terrorist and the Politics of Fear, 1st ed, Oxford. Altamira Press, 2006.

well as the international human rights obligations pertaining to freedom of expression and association, right to liberty, access to justice, and the protection against torture²⁷⁰. Due to the normative inadequacy, fear as a manifestation of the anti-terror law, and accompanied by a lack of accountability, it has been a long time since Ethiopia has embattled the free press or obstructed the domestic opposition with the help of anti-terror legislation²⁷¹. The snowball effect of the vagueness of the ATP poses enormous threats to human rights. Although these weaknesses have overarching implications for different categories of human rights, their negative impact on the expression of the right to object is noteworthy and requires separate treatment, as terrorism is not a purely legal concept, but rather a political hybrid concept. An authorization of the state machinery to take whatever measure it wants on account of "reasonable grounds" denies the respect of people as a subject of responsibility. Such a possibility has also created a far-reaching menace on other rights, such as the protection against torture²⁷².

Against this background, unless the current counter-terrorism legal framework is framed adequately by defining the crime of terrorism clearly and concisely, the state's power to ensure peace and security can be misused evermore. That calls for a law to be framed clearly and precisely and applied consistently and accountably for the intended legitimate purpose²⁷³. Bearing in mind the crucial controlling and monitoring role of the UN Human Rights Committee and the UN counter-terrorism bodies, namely the Security Council and the General Assembly, the compliance with international human rights obligations is more responsive to domestic forces such as the existence of independent courts

270 The Ethiopian government has confirmed the fact that arbitrary detention and torture are a major problem in Ethiopia.

271 See AMNESTY INTERNATIONAL. Ethiopia: Release journalists arrested on unsubstantiated terrorism charges, 4 October 2019. See also MATFESS, H. *Ethiopia: Counter-Terrorism Legislation in Sub-Saharan Africa*. Small Wars Journal, available at <https://smallwarsjournal.com/jrnl/art/ethiopia-counter-terrorism-legislation-in-sub-saharan-africa>, [accessed on 06.10.2019].

272 The new Prime Minister of Ethiopia, Dr. Abiy Ahmed, confirmed the fact that arbitrary detention and torture are a major problem in Ethiopia. See PM Dr Abiy Ahmed Speech in Parliament – FULL, available at <https://www.youtube.com/watch?v=wJnC2aX4jP8>.

273 The UN Human Rights Commission Resolution No. A/HRC/16/51, 2010, p. 7.

and the national constitutional culture than to any global culture pressing for compliance with international human rights norms²⁷⁴. The core problem lies not only with the weakness of laws but also a weak commitment to abide by the law in good faith²⁷⁵. Besides having a firm stance to amend the ATP, forming an independent judiciary and a responsible legislature and executive organ play the first-hand role in hampering the violation of human rights. The prudent application of laws depends upon the government's institutional commitment to act legitimately and accountably. It is also advisable, to have public and private institutions that can identify, educate, and treat the process of radicalization. Finally, this article suggests for a wise deployment of peremptory human dignity, principles of the rule of law, and a careful application of the proportionality principle in balancing security measures with human rights.

274 See HENKIN, L. *International Law: Politics, Values and Functions*, in: STEINER, H.J. and ALSTON, P. *International Human Rights Context: Law, Politics, Morals*; Text and Materials, Clarendon Press. Oxford, 1996, pp. 350-354.

275 See Amnesty International's Report, 8 Jun. 2018.