

UNIVERSITY OF ESSEX
SCHOOL OF LAW

DISSERTATION

MA in Theory and Practice of Human Rights

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DISSERTATION TITLE

REGIME CHANGE, LEGAL REFORM AND COMPATIBILITY WITH HUMAN RIGHTS
OBLIGATIONS: An Overview of the reform of the 2009 Ethiopian Anti-Terrorism
Proclamation

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Proclamation**

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Registration Number: 1802267
Number of Words: 17089
Date Submitted: September 25, 2019

Table of Content

Acknowledgement

Introduction

Chapter One: Regulating Terrorism: At a cross-road with human rights

- 1.1. Defining Terrorism: what does it mean?
 - a. The actus reus element
 - b. Indiscriminate and repeated attacks
 - c. Rights affected by the attacks: threats to life, freedom and human well-being
- 1.2. Counter-terrorism and human rights: At cross roads since 9/11
 - a. The Role of the US in shaping counter-terrorism policies
 - b. Violations in the name of Insuring Security
- 1.3. Post 9/11 legislations and human rights
- 1.4. Counter-terrorism in democracies and non-democratic systems

Chapter Two: The 2009 Proclamation: History, Application and Effects on Human Rights in Ethiopia

- 2.1. Legitimate threats to national security: Was there ever a need?
- 2.2. The 2005 Elections and the years to follow
- 2.3. A parliament with consensus: the role of the TPLF led EPRDF
 - a. The History of the TPLF and EPRDF
 - b. Law making in Ethiopia
- 2.4. 2009 Anti-Terrorism Proclamation: a tool of oppression
 - a. Introducing the 2009 Anti-terrorism proclamation
 - b. Rights Affected by a Terrorist act: a unique approach by the 2009 proclamation
 - c. Incitement in the 2009 proclamation
 - d. Other Rights Affected by the Proclamation: Assessing the application of the proclamation
 - i. Crack down on political space: the case of the OLF
 - ii. Journalism shackled: Reeyot Alemu and many more

Chapter Three: Change in Regime: the new administration, its pragmatic approach and what it means for human rights in the country

- 3.1. The Reform Project: the council and its promise for better future

- 3.2. Reversing the effects of the proclamation: Pardons and mass return from exile
- 3.3. A Better parliament or a crumbling nation? The new political demography of the country and what it means for the legislation process
- 3.4. Evaluating the work of the council: advancements for human rights in the new Civil Societies Proclamation

Conclusion

Bibliography

Acknowledgement:

I thank God, my beautiful partner Bezaye Takele Teshome and everyone that was by my side for this achievement. I dedicate this thesis paper my Ethiopian brothers and sisters who died perusing change. To all the Martors!

Introduction:

Riddled with a lack of clarity and numerous grey areas the war on terror rages on without relent since its introduction following the infamous 9/11 attacks. States have sworn to fight the terrorist at all costs – including human rights principles – and the terrorists do not seem to relent. When one victory comes to the states, another challenge comes out of it to torment the states before they commence with celebration. The war on terror – as the first chapter of the present thesis will show – comes with a cost. This cost – among other things – is ignoring or at times utterly disregarding human rights principles in the name of security and peace. Torture, forced disappearances, arbitrary killing, infringement on freedom of expression, refusal of asylum to *prima facie* refugees are some of the minor examples of human right violations in the course of the war on terror.

While this is the human rights cost that is upfront – i.e. the direct violation of human rights principles by the warriors against terrorists – there is an even greater, more systematic and permanent effect that needs attention. This is the matter of counter-terrorism legislations. Since the inception of the war on terror, countries have adopted anti-terrorism legislations at the instruction of the UN through Resolution 1373 which delegates the duty to regulate terrorism to individual States. Without any concrete definition – as will be discussed in the first chapter of the following paper – some countries (mostly non-democratic ones) have went rouge and used such legislations as tools of domestic oppression of dissent and criticism by opposition parties, journalists, civil society actors and other members of the community. The case of Ethiopia is no different. The following paper will discuss the above phenomenon in the context of the 2009 Anti-terrorism proclamation of Ethiopia.

The first chapter of the following thesis has the objective of setting the tone for the discussion on the Ethiopian challenges as it relates to counter terrorism and human rights. It will discuss the general definitional gaps around terrorism and the effect such a lack of definition for human rights, civic space, democracy and rule of law. It will showcase how certain countries have used the gap in international law to devise oppressive and opportunistic legislations that infringe upon the rights of their people.

Following that, the chapter will provide for a definition that – as descriptive as it may be – provides us with a foundation that we will build on in our discussions in the later parts of the following paper. Another important issue raised in chapter one of the paper is the norm that has been set by the ultimate ‘warrior’ in the war on terror: The United States of America. In this section of the chapter we will discuss the norm of benching human rights principles to combat terrorist groups has been introduced by the American government and how that has translated into other jurisdictions. In showcasing this issue, we will consider the role the US has played in shaping the policy on how to combat terrorism as well as the violations it has committed since 9/11 in its effort to combat terrorism.

The Ethiopian case will be presented in the second chapter of the thesis. The chapter begins by asking the question of necessity to have such legislations by considering the domestic, regional and international security risks the country has had. The chapter also gives the reader an understanding about the context in which the proclamation was introduced. The 2005 elections – which is the starting point for the adoption of the draconian proclamation – will be discussed in a brief but sufficient manner before discussing the legislative process that has been put in the country. The compromised legal system will be assessed, and the reader will understand what kind of parliament adopted the proclamation and why that is very relevant for our discussion. Finally, we will discuss the proclamation and discuss areas that are of serious concern from a human rights perspective. The broad and vague definition rendered in the proclamation, the concept of incitement and the issue of freedom of speech will be assessed in the chapter before discussing the reform under the current government in chapter three.

The final chapter of the thesis will discuss the current government’s approach towards human rights principles by discussing the positive changes that have transpired under Prime Minister Abiy Ahmed’s administration. In doing so we will start by discussing the reform council and the composition of the council. Here we will see how the inclusion of qualified persons from different professions promises a brighter future for the country’s counter-terrorism policies, and consequently the human rights situation in the country. Following that, we will see how the efforts by Abiy’s government to reverse the already existing effects of the proclamation shows us that there is in fact a political

will to produce a proclamation that is truly better and more human rights friendly than the one before. In addition to that, the chapter will discuss the changing features of the parliament due to divide between the formerly strong coalition EPRDF as well as the return of strong opposition parties with wide and popular support such as Ginbot 7 and OLF to the political arena. It will present how such a shift may balance the parliament and allow legislations that are not tools of oppression to pass. Finally, we will use the first product of the advisory council – the 2019 Civil Society and Charity Proclamation – as an example to see how the changes in the new are significant. This will help us gauge the political will of the government and predict whether the reformed terrorism proclamation will in fact be an improvement over the existing one.

The thesis concludes that, from the above four tests the government does seem to be on the right track towards successfully reforming the proclamation and producing a terrorism proclamation that is more human rights conducive and less infringing on civic space and the rights of people. However, the paper also notes that the process must be coupled with the government maintaining peace and security in the country so that the process reaches a successful end. In addition to that, the paper also recommends that the council must properly consider the recommendations of the UN, human rights defenders, civil society actors and states in the process of renewing the counter terrorism proclamation.

Chapter One:

Regulating Terrorism: At a cross-road with human rights

1.5. *Defining Terrorism: what does it mean?*

One may argue that one of the most challenging tasks in any discussion related to terrorism is defining it in the first place.¹ This is because, unlike other criminal acts, what constitutes terrorism is not an issue that has consensus in international law.² This issue is particularly crucial in the discussion of counter terrorism in the context of the present paper. This is because the definition of terrorism or the lack thereof has served as an opportunity for states to adopt harsh and oppressive definitions of terrorism in domestic legislations such as the 2009 Ethiopian Anti-Terrorism proclamation.

Before discussing the definition of terrorism however, it is important to understand the effect of the lack of such a definition in international law as is relevant to the present paper. One of the most important implications of the lack of consensus in defining the term terrorism is the fact that international law in many ways has outsourced such definition to domestic legislations.³ Theoretically speaking this phenomenon may seem harmless to many. But in the context of a non-democratic government that faces several oppositions (mostly aimed at political change, rule of law and democracy), the implications of such a gap are fundamental and affect issues such as human rights, political pluralism, freedom of expression, media space and civil society freedom in considerable levels.⁴ This is reflected in different oppressive legislations that, in the name of counter-terrorism, have issued legislations that affect human rights. This is particularly true in authoritarian or dictator governments because most if not all anti-terrorism proclamations attach great responsibilities on individuals while giving governments extraordinary powers to prosecute and take measures.⁵ Without a clear definition of the boundaries of those acts that qualify as terrorism, one can argue that

¹ John Gearson, 'The Nature of Modern Terrorism' in Lawrence Freedman (ed.), *Superterrorism: Policy Responses* (Blackwell Publishing 2002) at pp. 8

² Heloisa Tenello Bretas and Daniel Damasio Borges, *Counter-Terrorism Legislation and Terrorist Attacks: Does Human Rights Have Space* (Brazilian Journal of International Law 2018) at 372

³ Eric Rosand, *Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight against Terrorism* (American Journal of International Law Vol. 97 No. 2, 2003) at 334

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⁵

such extraordinary powers may be abused by certain governments.⁶ The International Commission of Jurists for instance issued a report on such legislations in which it demonstrated with concrete examples that counter terrorism legislations have been used by governments to quash opposition and illuminate anyone that threatens their authority.⁷ Therefore, it is of paramount importance to note that the lack of such a definition in international law presents states – especially oppressive ones – an opportunity to issue legislations that bench human right issues in the name of national security.

Heloisa Tenello Bretas and Daniel Damasio Borges, argue that even though the specific acts of violence are defined in domestic law and may have consensus with minor modifications in different jurisdictions, there is no generally accepted definition to the term terrorism.⁸ For instance – as argued by Bretas and Borges – the act of bombing a building is subscribed as a crime in common law in most if not all jurisdictions.⁹ However, when such an act becomes a terrorist act is an issue that lacks consensus in different settings.¹⁰ This can be illustrated in the fact that compared to the high rate of charging international defendants being persecuted as terrorists in the US context, the number of domestic terrorism charges in against right wing defendants is low. While only 38 were charged on this account since 9/11, more than 500 international defendants have been charged with terrorism in US Federal Courts.¹¹

In her article that defines terrorism Mariona Llobet Angli, provides a descriptive definition for the term terrorism.¹² Claiming that there is no generally accepted definition by the term despite its common use, Angli outlines several properties she believes terrorist attacks share. These properties are the *actus reus*, non-selective nature of the attacks, the repeated nature of the attacks, and the rights affected by the

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⁷ ICJ Report (Find in the article)

⁸ Heloisa Tenello Bretas and Daniel Damasio Borges, *Counter-Terrorism Legislation and Terrorist Attacks: Does Human Rights Have Space* (Brazilian Journal of International Law 2018) at 373

⁹ *ibid* at 373

¹⁰ *ibid* at 373

¹¹ Trevor Aaronson, *Terrorism's Double Standard: Violent Far-Right Extremists Are Rarely Prosecuted as Terrorists* (The Intercept 2019) <https://theintercept.com/2019/03/23/domestic-terrorism-fbi-prosecutions/>

¹² Mariona Llobet Angli, 'What does 'terrorism' mean?' in Aniceto Masferrer and Clive Walker (ed.), *Counter-Terrorism, Human Rights and the Rule of Law: Crossing the Boundaries in Defence of the State* (Edward Elgar Publishing Limited 2013) at 17-37

commission of the attack.¹³ While there are additional characters identified by Angli, in the interest of brevity the discussion in this section will be limited to the three properties identified above.

d. The actus reus element

The first property she identifies is the difference in *actus reus* of those attacks that are acts of terrorism as compared to common crimes.¹⁴ In this regard, she strongly argues that as opposed to crimes committed by common criminals – which usually entail an economic benefit – terrorist attacks are aimed at persuading governments to do or abstain from doing certain activities.¹⁵ In other words, terrorist attacks are characterized by a certain political agenda. For instance, the terrorist group *Boko Haram* which has been operational for nearly two decades in Nigeria has the agenda of ridding the country of western teaching and philosophy at its heart.¹⁶ Another example maybe the ISIS which had the restoration of the caliphate as the reason behind the terrorist attacks it carried on since its establishment as *Islamic State of Iraq* in 2006.¹⁷ The group had even declared that it was a state and had the intention to spread this state across the middle east and beyond.¹⁸ As showcased in the above two examples, terrorist groups as opposed to other criminal organizations have a political motivation that is at the centre their creation, operation and attacks.

However, one must ask at this juncture whether this definition applies to political organizations in a dictatorship fighting for the freedom and rights of the people. For instance, in the case at point one may argue that the Ethiopian government had labelled a number of political organizations as terrorist groups as will be discussed in the latter stages. Angli attempts to answer this question by first recognizing that in oppressive government – where there are no avenues for change through democratic processes – violent organizations that have a political agenda do not suffice as

¹³ *ibid*

¹⁴ *ibid* at 20

¹⁵ *ibid* at 21

¹⁶ Alexander Thurston, *Boko Haram: A History of an African Jihadi Movement* (Princeton University Press 2018)

¹⁷ Vice News Documentary, *The Islamic State (Full Length)* <https://www.youtube.com/watch?v=AUjHb4C7b94> (Last Accessed July 14, 2019)

¹⁸ *ibid*

terrorists.¹⁹ She also claims that while assessing such organizations, due regard must be given to the manner of their attack and the target of such actions.²⁰ She claims that if the organization takes lives of civilians then it can potentially be a terrorist group.²¹ However, when such organizations attack military personnel and security forces, there is no ground to call them terrorists.²² As logical as this approach may seem however, it is important to note that the approach is highly impractical. In conclusion, for the purpose of this thesis at least terrorist organizations have the character of having political motivation as opposed to one guided by economic gain.

e. Non-selective and repeated attacks

The second important property identified by Angli is the non-selective nature of terrorist attacks as opposed to other crimes.²³ She successfully argues in this regard that terrorist attacks are carried out against random citizens as opposed to targeted individuals in the state or other organization.²⁴ It is this character that gives terrorist attacks the ability to cause terror.²⁵ She argues that the victims are merely messengers to the government of the intentions of the terrorist group.²⁶ Therefore, this puts everyone at risk. Therefore, causing mass terror in the society. A practical example for this could be the London bombings in 2005 that claimed the lives of 52 civilians.²⁷ In this scenario, the victims were not targets that were singled out from the community. They were random victims that happened to be there at the time of the attacks. Therefore, this separates terrorist attacks from other common or even political crimes. In conjunction, Angli also argues that terrorist attacks are repeated in nature.²⁸ They are carried out by the group until the driving agenda of the group is fulfilled.²⁹ Therefore, for a group or an individual to be named a terrorist there needs to be a certain level of repetition in terrorist attacks. One may question this statement by

¹⁹ *Supra* note 12 at 31 - 34

²⁰ *ibid*

²¹ *ibid*

²² *ibid*

²³ *ibid* at 22-24

²⁴ *ibid* at 22-24

²⁵ *ibid* at 22-24

²⁶ *ibid* at 22-24

²⁷ BBC News, *July London bombings: What happened that day?* (2015) <https://www.bbc.com/news/uk-33253598> (Last Accessed July 16, 2019)

²⁸ *Supra* note 12, at 22-24

²⁹ *ibid*

claiming that a single attack could have devastating results. However, one must also understand that most terrorist groups do tend to be repetitive until the political agenda is achieved. For instance, since the 1992 Yemen Hotel bombing attacks by Al Qaeda and its different factions have carried out several attacks including the most recent St. Petersburg metro attack that took place in 2017.³⁰ Therefore, most terrorist groups – at least the conventional ones’ – are carried in a repetitive manner until the intended political gain is secured.

f. Rights affected by the attacks: threats to life, freedom and human well being

The other property that must be discussed here is that terrorist attacks are not attacks against property rights.³¹ To the contrary, Angli argues that they are attacks against the life, freedom and physical well-being of the victims.³² This is a fair argument to make. Angli’s argument could be demonstrated by practical examples. The abduction of 276 young girls by Boko-Haram in 2014 is an infringement on the liberty of the victims.³³ Another example is the killing of 52 hostages and police men in a church located in Baghdad in 2011 by an Iraqi faction of al-Qaeda was a violation of the right to life.³⁴ As indicated in the above approach this section built on academic discussions on the term “terrorism” by comparing it with the characters of those organizations whose terrorist natures are not debated by on at an international level. In that light, it is safe to argue this character is of paramount importance while labelling on organization a terrorist group and the other a common criminal organization.

As demonstrated above the above section of this chapter has ventured to come to a descriptive definition to the term terrorism. But like many pieces of academic work in the area, it has merely proposed certain characteristics as opposed to a clear definition

³⁰ Reuters, *Timeline - Major attacks by al Qaeda* (2011) <https://www.reuters.com/article/idINIndia-56711920110502> (Last Accessed July 16, 2019)

³¹ *Supra* note 12, at 24-25

³² *ibid*, at 22-24

³³ Jacob Zenn, *Boko Haram and the kidnapping of the Chibok Girls* (Combating Terrorism Centre at West Point Vol 7 Issue 5 2014) <https://ctc.usma.edu/boko-haram-and-the-kidnapping-of-the-chibok-schoolgirls/> (Last accessed July 16, 2019)

³⁴ [Muhanad Mohammed, Iraq church raid ends with 52 dead](https://www.reuters.com/article/us-iraq-violence/iraq-church-raid-ends-with-52-dead) (Reuters, November 2010) <https://www.reuters.com/article/us-iraq-violence/iraq-church-raid-ends-with-52-dead-idUSTRE69U1YE20101101> (Last Accessed July 16, 2019)

of the term. In other words, the section has merely described what terrorism usually looks like and in that it in no way claims that all forms of terrorism have all the above-mentioned criteria. Therefore, for the purpose of the following paper, a terrorist attack is a politically motivated attack that targets the life, liberty and freedom of random victims for a prolonged period causing a sense of terror and insecurity within the general public or a portion of it.

1.6. Counter-terrorism and human rights: At cross roads since 9/11

The attack against the World Trade Centre and the Pentagon that took place in September 11, 2001 (commonly known as 9/11) is commonly identified as a key moment in the history of counter terrorism.³⁵ Even though terrorism existed in many forms before the 9/11 attacks, the attack carried out by al-Qaeda remains the biggest single terrorist attack claiming the lives of around 3000 people and injuring more than 6000.³⁶ In the years to follow a US led fight against terrorism which would come to be known as the “War on Terror” was introduced.³⁷ In the ensuing weeks, the UN Security Council passed Resolution 1373 which urged for international cooperation to combat terrorism and criminalized the financing of terrorist groups.³⁸ The manner of the response however would have detrimental implications to international human rights law. While this will be shown in the ensuing paragraphs detailing consequences of the War on Terror on human rights, one good indicator to the above fact is that human rights and the respect thereof were not mentioned in the resolution at all.³⁹ This in turn allowed states with questionable human rights records to justify their respective oppressive legislations in the name of international security and the fight against terrorism.⁴⁰ This section of the chapter will briefly consider the development of counter-terrorism by considering the response to 9/11, the policy changes by the west in dealing with such crimes and how it was in many occasions a tool used for oppression. It will do so by considering three major themes. The first section will address the role

³⁵ Kent Roach, *The 9/11 Effect: Comparative Counter Terrorism* (Cambridge University Press 2011)

³⁶ *ibid* at 1

³⁷ Heloisa Tenello Bretas and Daniel Damasio Borges, *Counter-Terrorism Legislation and Terrorist Attacks: Does Human Rights Have Space* (Brazilian Journal of International Law 2018) at 372 – 373 See also Kent Roach, *The 9/11 Effect: Comparative Counter Terrorism* (Cambridge University Press 2011) at 1

³⁸ *ibid* at 1

³⁹ *Supra* note 36 at 2

⁴⁰ *ibid*

of the US in shaping international policies on terrorism while the second section will briefly consider the human rights violations that happened in the course of the war on terror. Finally, the section that is most relevant to the discussion in this paper which is the implementation of legislations that affect human rights will be addressed.

c. The Role of the US in shaping counter-terrorism policies

Though the response to terrorism was an international one which involved several countries, it was spearheaded by the United States.⁴¹ It is important to note this because in discussing counter-terrorism law and how it affects human rights, policies and legislations that were adopted by the US play a key role. The policies that were adopted by the US and its allies during the Bush administration set the tone for the norm of adopting counter-terrorism laws globally. This is true in the context of human rights as well. Executions of suspected terrorists, detaining terrorist suspects without trial, certain aspects of the war on terror in Afghanistan and Iraq, employing different methods of what came to be known as enhanced interrogation techniques, increased surveillance and collection of data through legislations such as the Patriots Act and other aspects of the war on terror in the post 9/11 era presented new challenges to the concept of human rights in the US as well as the global context.⁴²

This is not to say that the employment of measures that were not necessarily in line with human rights to fight terrorist groups was a phenomenon created by the US. This is far from true. In the colonial era for instance – where groups like the National Liberation Front in Algeria were labelled as terrorist groups – acts such as arbitrary killing and torture were employed as a means that was justified in dealing with terrorist groups and actions.⁴³ However, the difference in the context of the post 9/11 era and how it is fundamental in the narrative of state policies in dealing with terrorism lies in

⁴¹ *Supra* note 35

⁴² Paul Hoffman, *Human Rights and Terrorism* (Human Rights Quarterly, Vol. 26, No 4, 2004) at 939-949 See also Peter Bradshaw, *Standard Operating Procedure* (The Guardian 2008) <https://www.theguardian.com/film/2008/jul/18/documentary> (the Guardian article reviews the documentary *Standard Operating Procedures* which details the gross violation of human rights that took place in the Abu Gharab prison in 2003 (though the US does not entirely agree that the suggested violations are illegal))

⁴³ Patrick Harries, 'The Battle of Algiers: Between Fiction, Memory and History,' in Vivian Bickford Smith and Richard Mendelsohn, *Black and White in Colour: African History on Screen* (Oxford University Press 2007) at 212-215

the fact that unlike the example given earlier, I strongly believe that the post 9/11 policies of the US and others that followed transpired in an era where human rights principles and concepts such as democracy had strong foundations and acceptance in international as well as domestic law. Therefore, the policies of the US towards terrorism play an integral role in any discussion around counter-terrorism generally and its relationship with human rights specifically.

d. Violations in the name of Insuring Security

The *War on Terror*, which continues since its utterance by President Bush in 2001 is one of the clearest forms of threat to international human rights law, international humanitarian law and other international law principles.⁴⁴ In response to the 9/11 attacks the US undertook operations that violated international human rights law as well as domestic law.⁴⁵

An example of such human rights violations is the shocking numbers of civilian fatalities in violation of both IHRL and IHL. Until November 2018, the casualties during the ongoing war on terror has reached 480,000- 507,000 of which 244,124- 266,427 were civilians.⁴⁶ This is a very shocking figure. However, in addition to the number of civilians killed in the attempt to combat terrorism, the means used is also questionable. For instance, since 2004 drone strikes (which are supposedly described as targeted killings of terrorists) have claimed the lives of civilians.⁴⁷ As reported by the Bureau of Investigative Journalism, in four countries (namely Afghanistan, Somalia, Yemen and Pakistan) between 769 – 1725 civilians have been killed by drone strikes.⁴⁸ This and other figures attest to the toll counter-terrorism efforts have had on human rights principles generally and the right to life specifically.

⁴⁴ Paul Hoffman, *supra* note 42

⁴⁵ *Supra* note 42 at 939-949

⁴⁶ Neta C. Crawford, *Human Cost of the Post-9/11 Wars: Lethality and the Need for Transparency* (Watson Institute November 2018) at 1

⁴⁷ The Bureau of Investigative Journalism, https://www.thebureauinvestigates.com/projects/drone-war/charts?show_casualties=1&show_injuries=1&show_strikes=1&location=somalia&from=2007-1-1&to=now (Last Accessed August 15, 2019)

⁴⁸ *ibid*

Torture is another theme that dominated the modern counter era.⁴⁹ As mentioned earlier, although using torture to deal with terrorism and terrorists was not an invention of the 9/11 era, its use after 9/11 is unique due to the customary and absolute prohibition of torture in international human rights law.⁵⁰ In modern counter-terrorism, the US introduced one of the most controversial phrases in discussions around torture – *enhanced interrogation techniques*.⁵¹ Other technical terms such as *Standard Operating Procedures* were also used to justify the what many argue is in fact torture of confirmed and suspected terrorists.⁵²

Other violations included inhumane and degrading treatment of prisoners (as showcased in the documentary (*Standard Operating Procedures*),⁵³ detaining of suspected terrorists without trial in holding sites such as *Guantanamo*,⁵⁴ infringements on the right to privacy through mass surveillance of US citizens and foreign nationals⁵⁵, and many more. This is the theme of the war on terror that was spear headed by the US. It was a period of outright violation of human rights in some of occasions and sheer confusion in others (such as the status of the detainees in *Guantanamo* as POWs or not⁵⁶). In many occasions, most countries commit similar violations in the name of national security and counter-terrorism. Therefore, one can make an the conclusion that modern counter-terrorism efforts represent one of the biggest threats to international human rights law – both in terms of introducing opposing regimes and justifying human rights violations in the process of fighting terrorism.

⁴⁹ Sue Grand, *Sacrificial Bodies: Terrorism, Counter-Terrorism, Torture* (Psychoanalytical Dialogues Vol. 18 Issue 5 2008) at 673 See also Ruth Blakeley, *Dirty Hands, Clean Conscience? The CIA Inspector General's Investigation of "Enhanced Interrogation Techniques" in the War on Terror and the Torture Debate* (Journal of Human Rights Vol. 10 Issue 4, 2011) at 544

⁵⁰ *supra* note 42 at 939-949

⁵¹ Ruth Blakeley, *Dirty Hands, Clean Conscience? The CIA Inspector General's Investigation of "Enhanced Interrogation Techniques" in the War on Terror and the Torture Debate* (Journal of Human Rights Vol. 10 Issue 4, 2011) at 544-561

⁵² *ibid*

⁵³ *supra* note 42

⁵⁴ *ibid* at 941

⁵⁵ *ibid*

⁵⁶ *Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights* (International Commission of Jurists 2009) at 32

1.7. Post 9/11 legislations and human rights

One of the questionable approaches taken by the UN Security Council while adopting Resolution 1373 was the delegation of the definition and combat against terrorism to individual countries.⁵⁷ The reason behind the decision of the UNSC to take this approach in dealing with the phenomenon is speculated yet not certainly understood.⁵⁸ While the reasoning of the UNSC is not relevant to this paper and therefore will not be discussed further, the effect of such an approach by the UNSC was unprecedented and is key to the primary theme of this paper.

The primary effect of the decision by the UNSC to rely on domestic legislation in order to combat terrorism is the broad definition of terrorism and who a terrorist is by the ensuing legislations. Countries such as the UK whose legislation has influenced several other legal regimes such as the Canada issued laws that defined a terrorist activity in broad manners.⁵⁹ Kent Roach in his book *The 9/11 Effect* describes the effect of the position adopted by the UNSC as follows:

“For whatever reason, the Security Council delegated the difficult task of defining terrorism to member states and lost an unparalleled opportunity to promote international agreement on a restrained definition of terrorism”⁶⁰

In addition to broad definitions however, in countries with questionable records of human rights the one can observe that the effect of delegation by the UNSC had additional implications. Oppressive governments and dictatorships such as Ethiopia started using this regime of law to quash and at times illuminate domestic political opposition and critic in the name of national security as will be discussed later. Many imprisoned their political oppositions. Some forced persons that posed questions of freedom, right and liberty into exile. Others tortured and killed alleged terrorists with national anti-terrorism legislations as their justification. Labelling political parties that

⁵⁷ *Supra* note 35 at 51

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ *ibid*

presented clear threats to their autonomy as terrorists became a common strategy by autocratic governments. Countries like Russia, Colombia, Uganda and Nepal are key examples of the effect of delegation to national legislations.⁶¹ In a report done by the International Commission of Jurists in 2009, has shown that countries have used the post 9/11 era and the popular support to the war on terror to label long lasting conflicts within their borders in the ambit of terrorism.⁶² The example of Russia labelling the Chechnian conflict as an operation that is part of the efforts against international terrorism is a key example of the effect.⁶³ In Uganda, the Lord's Resistance Army (LRA) which was part of a long standing conflict in the northern parts of the country was labelled as a terrorist organization following the popularization of the war on terror.⁶⁴ Though the labelling of the LRA may not have a considerable effect on human rights situation in the country, in my opinion the phenomenon is a demonstration a norm that presents serious threats to key human rights principles. While the LRA may be an organization with questionable methods for many, not all the organizations labelled as terrorists in Uganda were like LRA. There is evidence that opposition organizations that did not have any connection with the LRA were labelled as terrorist groups in Uganda.⁶⁵ This has detrimental effects on human rights, civic space, good governance and democracy. Therefore, it is safe to conclude that counter-terrorism efforts (specifically the manner of counter-terrorism efforts and operations as well as the decision to delegate legislation to individual countries) has led to human rights violations both at an individual level (with the mistreatment of suspected terrorists and the human cost of counter-terrorism and systematically through oppressive legislations by dictatorships).

1.8. Counter-terrorism in democracies and non-democratic systems

Another important discussion warranted before the main thesis of this paper is the considerable difference in the effect (or the extent thereto) of counter-terrorism on human rights in democratic and non-democratic countries. This section argues that while the effect of legislations and other counter-terrorism efforts is considerable in

⁶¹ *Supra* note 56

⁶² *ibid* at 31

⁶³ *ibid* at 31-32

⁶⁴ *ibid*

⁶⁵ *ibid* at 32

countries such as the US and UK, it is – in most cases – directed towards third parties (terrorists, other states, refugees etc.) as opposed to affecting the democratic system or any abuse towards their own citizens. However, in non-democratic countries such as Ethiopia, the effect of counter-terrorism is not limited to those that commit terrorism or are suspected of the same crime. Instead, there are gaps in the system that allow States to oppress many members of the community in their own interests. This is the main concern of this thesis. Therefore, it is important to consider this idea before moving on to the Ethiopian context.

As catered in the first sub-section of this chapter dealing with the definition of terrorism, it was argued that the initiative behind a terrorist attack or an organization thereto is one that is political. With random, non-selective and repeated attacks terrorists attempt to persuade governments into changing their policies, laws or ideologies.⁶⁶ But one must ask at this juncture if all politically motivated movements that have a violent approach should be considered as terrorist organizations. This lies in the fact that, unlike democratic countries with legitimate avenues to political change, in dictatorships and other forms of non-democratic governments the use of violence may be the only approach in order to effect change.⁶⁷ A demonstration of this fact can be the very definition of a revolution which the forceful removal of a government or other social orders to bring about change. In the wake of 9/11 labelling of rebels and other political parties by states as terrorist organizations in the ambit of the international peace and security became a common move. In India for instance the government has labelled groups fighting for succession in the north eastern part of the country as terrorists.⁶⁸ Another recent example is Saudi Arabia. In the country led by Crown Prince Mohammed Bin Salman, counterterrorism legislations are reportedly used to oppress and crack down on local opposition.⁶⁹ In Egypt, the *Muslim Brotherhood* – described rightfully as the only democratically elected party in the history of Egypt – has been labelled as a terrorist organization by the administration of its successor President

⁶⁶ See Section 1.1 above

⁶⁷ Mariona Llobet Angli, *supra* note 12 at 31

⁶⁸ Hans J. Giessmann, *Human Rights in Non-International Armed Conflicts: A Counter-Terrorism Issue?* (Sicherheit und Frieden Vol 31 No. 2, 2013) at 7

⁶⁹ Al Jazeera, *Saudi Arabia using 'terror' laws to stifle dissent: UN experts* <https://www.aljazeera.com/news/2019/03/saudi-arabia-terror-laws-stifle-dissent-experts-190305032840542.html> (Last Accessed July 23, 2019) See also Mat Nashed, *The New War on Terror – Arab Style* (OZY website) <https://www.ozy.com/fast-forward/the-new-war-on-terror-arab-style/95725> (Last Accessed July 23, 2019)

Abdel-Fattah el-Sissi.⁷⁰ In the same country, members of the *Socialist Democratic Party* including founding member Zyad Elalaimy were arrested and charged with the crime of terrorism recently for alleged relations with the Muslim Brotherhood.⁷¹ In Uganda, though later suspended opposition leader Kizza Besigye was arrested and charged with terrorism allegations just months before the general elections were about to take place in the country.⁷²

In conclusion, this section has showcased that in addition to the effects counter-terrorism has had in terms of human rights globally, such effects vary in democratic and non-democratic countries. It has shown that unlike democratic countries with strong avenues for change and reform without violence, in dictatorships states have used the counter-terrorism discourse in order to trump local opposition and legitimate movements for freedom and a more human rights conducive environment. It is my strong opinion it is of paramount importance to understand this issue in relation to the topic in discussion. I say this because like many of the above examples, Ethiopia (at least in the period of the adoption of the proclamation) was a dictatorship which had similar opposition parties and critics and took similar steps to the examples above.

To wind up the chapter, this section of the thesis has shown the challenges that relate to the definition of terrorism, the effect as a result of an absence of such a definition, the custom of utter disregard for human rights principles introduced by the US and followed by the rest of the world and many more challenges in relation to the concept of countering terrorism. In more proximate relevance to this paper, the chapter also dedicated space to define terrorism which will be the basis of our discussion in later stages. In addition, as Ethiopia is on the non-democratic spectrum of governance and respect for human rights, the chapter also discussed the difference in the effect of the counter-terrorism on human rights in democratic and non-democratic countries.

⁷⁰ Mat Nashed, The New War on Terror – Arab Style (OZY website) <https://www.ozy.com/fast-forward/the-new-war-on-terror-arab-style/95725> (Last Accessed July 23, 2019)

⁷¹ *ibid*

⁷² VOA, *Ugandan Opposition Politician Faces Terrorism Charges* (October 2009) <https://www.voanews.com/archive/ugandan-opposition-politician-faces-terrorism-charges> Last Accessed July 23, 2019

Chapter Two:

The 2009 Proclamation: History, Application and Effects on Human Rights in Ethiopia

Now that there has been enough discussion on terrorism, effects to counter it and the effect it has had in relation to human rights, it is time to delve into the main topic at hand. The second chapter of this thesis will discuss different aspects of the 2009 Ethiopian anti-terrorism proclamation. Issues such as the need to adopt such a legislation in relation to the geo-political realities of the country, the context of the adoption, important features of the proclamation, how it was used as a tool by the government against different forms of opposition, examples of how it was applied and many more features of the proclamation. The aim of this chapter is to introduce to the reader the content, context and application of the proclamation.

2.5. Legitimate threats to national security: Was there ever a need?

While the intent, content and application of the proclamation remains in question, it is important to ask the question of necessity while dealing with the proclamation as well. At this juncture there is a need to discuss whether there is a security risk to Ethiopia caused by terrorism in within the country, in the East-African region and the international terrorism context. To begin with the basics, terrorism is one of the key challenges to international peace and security and human rights in the period we live in. Therefore, it requires no further justification that it is a necessity to adopt national terrorism legislation in the absence of an international framework to combat terrorism apart from the ones discussed in the previous chapter. The content of such a proclamation however, is another discussion which will be addressed in the sections that follow.

From a regional perspective, asking whether there are legitimate security risks in Ethiopia requires an analysis of the geo-political positioning of the country as well as the history of terrorist attacks in the country. In terms of geo-politics, Ethiopia is located in one of Africa's most volatile regions: Eastern and the Horn of Africa. Surrounded by terrorist hotspots such as Somalia and Eritrea and hosts of boiling conflict such as

South Sudan and Darfur, Ethiopia is in one of the riskiest regions of the continent.⁷³ In addition to that, due to Ethiopia's leading role in combating groups such as al-Shabab in Somalia it finds itself becoming a target for attacks in numerous occasions.⁷⁴ Another threat comes from Eritrea. Though 'solved' now, there was decades of tension between the Ethiopia and its northern neighbour. Reported as hosting different terrorist groups including al-Shabab and accused of repeated attacks on Ethiopia (though not confirmed), the government claims that there have been high levels of terrorist activity in Eritrea and that the primary target for such operations is disrupting the peace and security in Ethiopia. Therefore, for this and many reasons it can arguably be stated that Ethiopia finds itself in need of regulating terrorism.

Like many states in the world, Ethiopia has also been targeted by terrorist organizations. Examples of such acts of terrorism include the assassination attempt on the then president of Egypt – President Hosni Mubarak – in June 1995⁷⁵ where the motorcade of Mubarak was attacked by gunmen with Arab roots. Explosions on a public transportation minibus on May 2009 in Addis Ababa and the attack on the Ethiopian consulate in Somalia in October 2009 by suicide bombers which claimed the lives of 20 people. According to the website World Data info, there are at least four terrorist organizations operating in the Ethiopia namely al-Shabab, Tepi Youth, Benishangul Gumuz People's Liberation Movement and the Afar Revolutionary Democratic Unity Front.⁷⁶ However, the data hub also concludes that the risk of terrorism in Ethiopia is one that is categorized as low.⁷⁷

In conclusion this section has assessed whether there was ever a need for an anti-terrorism proclamation. The answer to this question according to my analysis is yes. This conclusion comes from the importance of having frameworks capable of addressing the international threat of terrorism (the global argument), the regional geopolitics of the East and Horn Africa region (the regional argument) and practical

⁷³ United States Department of State, *Country Reports on Terrorism 2017 - Ethiopia*, 19 September 2018, available at: <https://www.refworld.org/docid/5bcf1fa728.html> [accessed 24 September 2019]

⁷⁴ *ibid*

⁷⁵ Chris Hedges, *Egyptian leader survives attack* (June 1995) <https://www.nytimes.com/1995/06/27/world/egyptian-leader-survives-attack.html> (Last Accessed July 24, 2019)

⁷⁶ World Data website, *Terrorism in Ethiopia* <https://www.worlddata.info/africa/ethiopia/terrorism.php> (Last Accessed July 24, 2019)

⁷⁷ *ibid*

examples of attacks on Ethiopian soli (the practical argument). Therefore, while my assessment of the content of the active proclamation is not kind to the government, I strongly believe that there is a need to adopt counter terrorism legislations and take the proper steps to combat terrorism in Ethiopia. Is the proclamation in question the right legal instrument to do it? No. The reason behind my conclusion as such will follow.

2.6. *The 2005 Elections and the years to follow*

In what was the country's third election in history, the Ethiopian elections of 2005 can be described as one of the most important landmarks in the country's electoral, human rights as well as counter-terrorism history.⁷⁸ The pre elections forecasts, unlike the preceding ones where the opposition had only won 12 seats in the House of Representatives (HPR), featured opposition leaders and parties with significant number of seats in Addis Ababa as well as in different regions of the country.⁷⁹ This is reflected by the fact that in the earlier stages of the election, the results suggested that opposition parties (mainly the *Coalition for Unity and Democracy (CUD)* and the *United Ethiopian Democratic Forces (UEDF)* had an overwhelming lead in the elections (especially in the one for the 22 seats in Addis).⁸⁰ However, the election would eventually lead to a win for *Ethiopian Peoples' Revolutionary Democracy Front (EPRDF)* which went against initial reports by the CUD and UEDF that they had won majority in the Ethiopian parliament. At the end of the elections, the results showed that EPRDF (a coalition between Tigrayan People's Liberation Front (TPLF), Oromo Peoples' Democratic Organization (OPDO), Amhara National Democratic Movement (ANDM) Southern Ethiopian People's Democratic Movement (SEPDM) and other affiliated parties) had won the majority seats in the parliament.⁸¹ The reports showed that the coalition had won 327 of the 546 seats (59.8%) in the parliament with CUD winning only 109 (19.9%) and the UEDF securing 51 seats (9.5%) of the house of

⁷⁸ Jan Abbink, *Discomfiture of Democracy? The 2005 Election Crisis and its Aftermath* (African Affairs, Vol 105, Issue 419, April 2006) at 182

⁷⁹ *ibid* at 184

⁸⁰ *ibid* at 182, 184

⁸¹ *ibid* at 185

parliament. This result would allow the ruling party, EPRDF, to form a government and lead the country for an additional 5-year term.⁸²

However, the election had far reaching implications. When the preliminary results were issued by the election board on May 15, 2005, it showed that the ruling party had won the election by a narrow margin while opposition parties had fallen short of a few votes and lost majority.⁸³ The CUD immediately issued a statement claiming that the votes had been rigged and that it will not accept the results of the election in their current form.⁸⁴ The government – which made recurrent claims that certain opposition parties wanted to change the government by force – issued a state of emergency immediately banning any forms of public assembly or protest at the same time replacing the Addis Ababa police with specialized army units and the prime minister assuming control over all security forces.⁸⁵ This tension was unprecedented in the nation and was not welcomed by election observers such as the EU and the Carter Foundation.

The period that followed was a dark period in the history of the country. Citizens in Addis Ababa and other parts of the country took to the streets in protest to the results of the election and were met with fatal responses by the security forces which to date is rightfully described as an example excessive use of power by many stakeholders. The first protests took place in early June where people came out in numbers in Addis Ababa to express their dissatisfaction with the results of the election.⁸⁶ On those dates, at least 36 Ethiopian citizens were killed by security forces while hundreds were injured and many arrested. Another incident took place in November following the lack of agreement in the negotiation between the ruling party and opposition leaders. In the November protests, 46 people lost their lives while nearly 4000 were arrested in the capital and other parts of the country. In the period following the election, police arrested nearly 10,000 protesters including around 2000 university students.⁸⁷ CUD and UEDF refused to take their seats and following continued tension between the ruling party and opposition leaders in the months to follow, the ruling party ordered the

⁸² *ibid* at 185

⁸³ *ibid* at 185-187

⁸⁴ *ibid*

⁸⁵ *ibid*

⁸⁶ Human Rights Watch, *World Report 2006: Ethiopia (Events in 2006)* <https://www.hrw.org/world-report/2006/country-chapters/ethiopia> (Last Accessed July 27, 2019)

⁸⁷ Amnesty International, *Amnesty International Report 2006 - Ethiopia*, 23 May 2006, t: <https://www.refworld.org/docid/447ff7a62f.html> [Last accessed July 27 2019] See also Human Rights Watch Report, *ibid* 86

arrest of opposition leaders, civil society actors, human rights defenders and journalists claiming that such individuals would be charged with treason and conspiracy to remove the government by violence. A total of 131 defendants of which 86 were in custody were charged with the above serious crimes in December 2005.⁸⁸ 55 of the 131 defendants were opposition leaders registered to the CUD.⁸⁹

In 2007, 35 of the defendants arrested following the 2005 elections were sentenced to life in prison for charges relating to attempts to incite violence and to overthrow the government.⁹⁰ Other members of the group detained following the elections were sentenced to different terms of prison ranging from 18 months to 18 years.⁹¹ Among those sentenced were opposition leaders Birtukan Mideksa, Berhanu Nega, Hailu Shawl and Andargachew Tsige who were prominent opposition leaders at the time.⁹² Amnesty International reported that there were arbitrary killings and detentions by security forces in the Oromia and Somali regions of the country.⁹³ Some of these defendants were released during the terms of both Prime Minister Meles Zenawi and Prime Minister Hailemariam Desalegn. The remaining prisoners have been released by current Prime Minister Abiy Ahmed as well.

One may conclude following an illustration as detailed as the one above that the 2005 elections and the months to follow were one of the most brutal periods in the lengthy rule of the current government. There were mass human rights violations, clear attempts to quash opposition leaders and a crackdown on Civic Space and media freedom. However, the effects of the 2005 elections are far reaching and yielded more permanent effects that superseded the period in question. The major political opposition parties disintegrated following the elections – with their leaders either in prison or in exile. Though those in exile founded other opposition parties such as Ginbot 7 but were quickly labelled as terrorist organizations in 2009. Different journalists, bloggers and activists were neutralized, and their outlets closed. But, the

⁸⁸ *ibid*

⁸⁹ *ibid*

⁹⁰ *ibid*

⁹¹ *ibid*

⁹² *ibid*

⁹³ *ibid*

most tasking effect of the elections and the violence that followed was the introduction of different legislations regulating matters pertaining to terrorism, media, civil society action and other key sectors of law. These legislations later came to be known as the *post 2005 election legislations*. With these legislations, came a period of systematic human rights violations in the name of countering terrorism and preserving the security of the country.

The legislations adopted in this period were the 2009 Anti-Terrorism Proclamation No. 652/2009, the Charities and Societies Proclamation No.621/2009 and the Freedom of the Mass Media and Access to Information Proclamation No. 590/2008. I strongly believe that these legislations were put in place in a response to the election and the period that follows. This lies in the fact that the content of these proclamations leads to such a conclusion. Their timing is suspicious and leads one to believe they were a direct response to the events of the 2005 general elections in Ethiopia. For instance, Wondwossen Demissie Kassa argues that in the first years of the war on terror, the Ethiopian government claimed that its criminal law provisions would suffice to combat terrorism on repeated occasions.⁹⁴ Why did this change? Did the criminal law of the country fail in countering terrorism? I would say no. As Wondwossen correctly points out when justifying the adoption of the special anti-terrorism law at an electoral debate in August 2013, the representative from EPRDF cited attacks that had transpired decades before the date of the debate.⁹⁵ This would completely negate the government's position until the post 2005 period that the criminal law was enough to combat terrorism without the need for a special legislation. This and other evidences suggest that the government took steps to adopt the legislation with an intent to not let the events of 2005 aspire again. It was devising a tool that would allow it to stay in power for the coming years.

The justification for discussing the 2005 elections and the period that followed is because it captures the context of the drafting, adoption, and implementation of the counter terrorism proclamation of Ethiopia. It showcases the realities of the country at the time of the introduction of the proclamation. The contents of the proclamation and

⁹⁴ Wondwossen Demissie Kassa, *Examining some of the raison d'être for the Ethiopian Anti-Terrorism Law* (African Journal Online Vol 7, No 1 2013) at 52

⁹⁵ *ibid* at 53

the human rights implication of such a content will be discussed in the coming sub-sections of the paper.

2.7. *A parliament with consensus: the role of the TPLF led EPRDF*

Another key context one must understand before any discussion on the anti-terrorism proclamation is the general nature and the internal structure of the EPRDF – Ethiopia’s ruling party for the past three decades. This is important in two manners. First, it is useful to understand the circumstances in which the proclamation was introduced. Second, a discussion on the matter helps test the argument made in the earlier chapter regarding anti-terrorism proclamations in non-democratic countries. In as much brevity as possible this section will talk about the TPLF led EPRDF and its three-decade rule in Ethiopia. This section will give a brief account of the history of the TPLF and EPRDF, the absolute control over legislative matters enjoyed by the party in recent years and finally will analyse the legislative process in the country and how such a structure has allowed the state to pass oppressive legislations such as the *Post 2005 Ethiopian Legislations* with little to no opposition.

c. *The History of the TPLF and EPRDF*

Before the EPRDF came to power, Ethiopia was led by a party known as the Provisional Military Government of Socialist Ethiopia or otherwise commonly known as the *Derg*.⁹⁶ The Derg was a military government that ruled Ethiopia between 1974 and 1987.⁹⁷ A communist party that came to power after toppling the Ethiopian monarchy in 1974, the Derg put in place one of the most oppressive regimes in the history of Ethiopia. Because of such oppression, different rebel groups – mostly composed based on ethnicity – fought for their freedom in different areas of the country. At the heart of the struggle, however, was the TPLF – a party formed in 1975 by students from the Tigray region.⁹⁸ The group – with popular support among the peasants of Tigray – initially aimed to create a separate state by the name *The Republic*

⁹⁶ Christophe Van der Beken, *Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia* (Ghent University) at 4-6

⁹⁷ *ibid*

⁹⁸ *ibid* at 6

of *Tigrai*.⁹⁹ However, in the course of the struggle the party changed such policies and sought out partnership with other ethnic based rebel groups in different parts of the country.¹⁰⁰ This was motivated by a commitment by the group to completely annihilate the *Derg* regime from power.¹⁰¹ Since then the EPRDF has led the country with little to no concrete opposition – than the one discussed earlier of course. In the interest of brevity and preserving the flow of this paper there will not be a more in-depth analysis of the rule by EPRDF. Instead, this section will highlight on two major themes of the EPRDF administration. However, it is important to take away from the above section, the central role of the TPLF in the struggle against the *Derg* and the three decades rule the party implemented in the country.

Another footnote to the above account of the history and rule of the TPLF led EPRDF is the absolute autonomy it has enjoyed in all the country's recent elections. In relation to this a study of the history of the Ethiopian elections shows that there has been absolute domination by the EPRDF in all five elections. In the elections held in 2000, EPRDF won 89% of the seats in the House of Peoples' Representatives.¹⁰² In the next election which took place in 2005, the ruling party was able to win 56% of the seats in the parliament.¹⁰³ Finally, in the most recent election held in 2015, EPRDF won 499 seats in the parliament which allowed the party to have autonomous control in the parliament.¹⁰⁴ This absolute control by the party has allowed the party to issue laws that are oppressive of political space and human rights principles. In order to understand the above conclusion, it is pertinent to understand the legislative process of the Ethiopian government. The following section will discuss the legislative process as follows.

d. Law making in Ethiopia

⁹⁹ Christophe Van der Beken, *Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia* (Ghent University) at 7

¹⁰⁰ John Young, *Ethnicity and Power in Ethiopia*, (Review of African Political Economy 1996) at 535

¹⁰¹ John Young, *Ethnicity and Power in Ethiopia*, (Review of African Political Economy 1996)

¹⁰² Dessalegn Rahmato and Meheret Ayenew, *Democratic Assistance to Post Conflict Ethiopia: Impacts and Limitations* (Forum of Social Studies, Addis Ababa 2004) at 31

¹⁰³ Terrence Lyons, *Ethiopian Elections: Past and Future* (International Journal of Ethiopian Studies Vol. 5 No. 1, 2010) at 108

¹⁰⁴ The Guardian, *Ethiopia's ruling party wins by landslide in general election* (2015) <https://www.theguardian.com/world/2015/jun/22/ethiopias-ruling-party-win-clean-sweep-general-election> (Last accessed August 1, 2019)

The current political system in Ethiopia is an ethnic based federalism system with nine ethnically divided regions¹⁰⁵ of the country making up the federation.¹⁰⁶ Within the Federal system, the Ethiopian state has a head of state which is the president of Ethiopia¹⁰⁷ and a head of government who is the prime minister¹⁰⁸ of the country. In the Ethiopian parliamentary system, there are three branches to the government that make up the legislator, an executive branch headed by the council of ministers¹⁰⁹ and a judiciary that is independent from both branches.¹¹⁰

The Ethiopian parliament has two chambers.¹¹¹ These two chambers are the upper chamber which is the House of Federations (HoF hereinafter) and the lower chamber which is the House of Peoples' Representatives (HPR hereinafter).¹¹² The HPR is composed of 547 members elected by a *first-past-the-post* electoral system while the

¹⁰⁵ These regions are Addis Ababa, Afar, Gambela, Amhara, Benishangul/Gumuz, Dire Dawa, Somali, Harar, Oromia, Southern Nations, Nationalities, and Peoples Region (SNNPR) and Tigray. The Addis Ababa and Dire Dawa regions are administered by the Federal government while the others have autonomous state governments that are under the *FRDE Constitution*

¹⁰⁶ <http://www.ethiopar.net/>

¹⁰⁷ It is important to understand that the president of Ethiopia, according to the *FRDE Constitution* has no real powers. Like many monarchy symbols such as the Queen of Britain or the King of Norway, the Ethiopian president merely serves a symbolic purpose. The powers of the president are detailed under Article 71 include receiving foreign delegates, granting medals and military titles upon recommendation by the prime minister or other government bodies, issue pardons upon the completion of the relevant procedures by the relevant authorities, signing and declaring new legislation in the *Negarit Gazette* (the state publication of legislations) and other ceremonial powers. The president is elected by a two-third majority and loses his/her seat in the parliament upon election as president of the state (*See further at Articles 69-71 of the FDRE Constitution*). **See also Kahsay Mehari, *The Legislative Process in Ethiopia: Challenges and Prospects* (Addis Ababa University 2013) at 44-49**

¹⁰⁸ The Prime Minister of the country holds the highest level of power in the FDRE structure. He/she is a member of parliament and comes from the party with majority seats in the House of Peoples' Representatives (Article 73 of FDRE Constitution). The Prime Minister serves for a period of five terms. According to Article 74 of the *FRDE Constitution*, the Prime Minister is the head of the Executive as well as the Commander in Chief of the National Army. He exercises power over the supervision of national and foreign policies, follow up of the implementation of national legislations and the appointment of judges and other key government officials (*see further at Article 72-74 of the FDRE Constitution*).

¹⁰⁹ The Council of Ministers is the highest executive body in the Ethiopian structure of government. It is comprised of the Prime Minister (who is the head of the council), all nineteen ministers within the Federal Structure and other state bodies such as the Attorney General's Office. The council has important roles defined under Article 77 of the constitution. These powers include the power to submit draft laws (*See Article 77 (11) of the FRDE Constitution* and Article 6(2) of *House of Peoples' Representatives Working Procedure and Members' Code of Conduct (Amendment) Proclamation no. 470/2005*), to follow up the implementation of legislations passed by the HPR (*See Article 77 (1) of the FRDE Constitution*), draft as well as implement different policies (Article 77 (6) of the *Constitution*), draft and implement foreign policies (*See Article 77 (8) of FRDE Constitution*) ensure the observance of law and order (*See Article 77 (9) of the FRDE Constitution*) and also has the power to declare a state of emergency which shall be approved by the HPR (*See Article 77 (10) of the FRDE Constitution*). The Council reports and is accountable to the HPR. *See further Articles 76-77 of the FRDE Constitution*

¹¹⁰ Article 79 of the *FRDE Constitution*

¹¹¹ Ethiopian parliament website <http://www.ethiopar.net/> (Last Accessed August 1, 2019)

¹¹² *ibid*

HoF has 108 members that are chosen and delegated by the state assemblies in order to guarantee proper representation of all states in the Federation.¹¹³ However the Ethiopian parliamentary system is not either like the US and Swiss where the upper house is a co-legislator and shares the legislative powers with the lower house (meaning that draft legislations require the approval of both houses) or the German system where the upper house plays a subsidiary role which allows it to guarantee the interest of the states.¹¹⁴ In contrast, the HoF has no legislative powers. The legislative powers are solely monopolized by the HPR rendering the system as a unicameral parliament as opposed to a bicameral one.¹¹⁵ This is ascertained by Article 55(1) of the *FDRE Constitution* which clearly states that the HPR has exclusive law-making powers in the Ethiopian federation.¹¹⁶

This monopoly in the legislator in turn has serious implications. While there are a number of effects of such a monopoly identified by different authors, I will only discuss one that relates to the present paper. This effect is one that relates to tyranny and absolute control of the law-making process. This is because of structural realities as well as political circumstances. Structurally, the HPR assigns more seats to those regional states with more population. This is showcased by the fact that out of the 550 seats in the house 304 is under the sole control of the two biggest ethnicities in the country: the Oromo (34.4%) and the Amhara (27%).¹¹⁷ This is more than two thirds of the house and suffices the quorum required to pass a legislation.¹¹⁸ However, this is not the reality because – until recently at least – the TPLF which represents only 6.2% of the Ethiopian populations exercised absolute control in Ethiopian politics. This is where the political circumstances argument comes in. It can be concluded that the legislative structure of the country allowed the TPLF led EPRDF to pass legislations without any checks and balances by the upper house.

One can clearly understand the realities of a parliament with little to no opposition when one considers the absolute control exercised by the EPRDF in all the five

¹¹³ Sileshi Zeyohannes, *Constitutional Law II: Text Book* (Justice and Legal System Research Institute 2009) at 127-128

¹¹⁴ *ibid* at 127-128

¹¹⁵ *ibid* at 129-130

¹¹⁶ FDRE Constitution, *Article 55(1)*

¹¹⁷ Countries of the World, *Ethiopia* (February 2019)

https://theodora.com/wfbcurrent/ethiopia/ethiopia_people.html (Last Accessed August 1, 2019)

¹¹⁸ *Supra note 113*

elections where it won most seats in the parliament. This is the context in which legislations was introduced. This is no different in the case of the 2009 Anti-Terrorism Proclamation. It was also a legislation passed by a parliament controlled by the TPLF led EPRDF allowing it to pass legislations that are oppressive yet justified in the name of national security.

2.8. *The 2009 Anti-Terrorism Proclamation: a tool of oppression*

Now that we have tried to understand the context in which the anti-terrorism proclamation was adopted in, we can discuss the proclamation in detail. In this section, the content of the proclamation will be discussed. In addition to that we will also study the application of the proclamation by scrutinizing different cases that have transpired throughout the years.

The anti-terrorism proclamation has numerous critics.¹¹⁹ From subjects of the oppression such as journalists, activists, political oppositions and other citizens to international NGOs and human right defenders the proclamation has been hauled with criticism regarding its content and application.¹²⁰ However, before discussing such critics and analysis on the provisions of the proclamation vis a vis human rights implication of its application, it is important for one to be familiar with the proclamation. The following section gives a brief account of the proclamation.

e. Introducing the 2009 Anti-terrorism proclamation:

Known by its full nomenclature as the *Anti-Terrorism Proclamation no. 652/2009*, the proclamation was adopted on the 28th of August 2009. The proclamation has seven major parts which are:

- Part one: General (which introduces the proclamation and defines key terms within the proclamation)
- Part two: Terrorism and Related Crimes (which defines the scope of the crime as well as attempt and pre-attempt thereof)

¹¹⁹ Center for International Human Rights Law and Advocacy, *Divide, Develop and Rule: Human Rights Violations in Ethiopia* (University of Wyoming) at 17

¹²⁰ *ibid*

- Part Three: Preventive and Investigative measures
- Part Four: Evidentiary and Procedural rules
- Part Five: Measures to control terrorist organizations and Property
- Part Six: Institutions that follow up cases of terrorism
- Part Seven: Miscellaneous provisions

The definition of the term terrorism rendered in the proclamation is one of the key problems with the proclamation. Prior to its adoption, the Human Rights Watch issued a report in June 2009 that noted on the particularly vague and concerning definition of the term terrorism. The Human Rights Watch described the then draft anti-terrorism proclamation as follows:

“The draft Proclamation provides an extremely broad and ambiguous definition of terrorism that could be used to criminalize non-violent political dissent and various other activities that should not be deemed as terrorism.”¹²¹

The definition rendered in Article 3 for what constitutes as a terrorist act in the proclamation reads as follows:

“Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country:

- 1. causes a person’s death or serious bodily injury;*
- 2. creates serious risk to the safety or health of the public or section of the public;*
- 3. commits kidnapping or hostage taking;*
- 4. causes serious damage to property;*
- 5. causes damage to natural resource, environment historical or cultural heritages;*
- 6. endangers, seizes or puts under control, cause serious interference or disruption of any public service; or*

¹²¹ Human Rights Watch, *An Analysis of Ethiopia’s Draft Anti-Terrorism Law* (June 2009) https://www.hrw.org/sites/default/files/related_material/Ethiopia%20CT%20Law%20Analysis%20June%202009_2.pdf (Last Accessed August 23, 2019) at 3

7. *threatens to commit any of the acts stipulated under sub-articles (1) to (6) of this Article.68*”¹²²

Additionally, a terrorist organization is defined as follows in the 2009 anti-terrorism proclamation:

“Article 1(4):

“terrorist organization” means:

- a) *a group, association or organization which is composed of not less than two members with the objective of committing acts of terrorism or plans, prepares, executes or cause the execution of acts of terrorism or assists or incites others in any way to commit acts of terrorism; or*
- b) *an organization so proscribed as terrorist in accordance with this Proclamation*”¹²³

There are many points of criticism to the proclamation. This paper will limit its discussion to the broad definition adopted by the proclamation and its effect as well as incompatibility in with the constitution, regional jurisprudence at the African Union level and international obligations coming out of the UN.¹²⁴ While the proclamation shares similar levels of vagueness with many definitions of terrorism across the world, this paper will achieve the above goal by discussing certain peculiar features of the definition rendered in the proclamation below.

f. Rights Affected by a Terrorist act: a unique approach by the 2009 proclamation

As can be seen in the text of the proclamation excerpted above, the proclamation adopts a particularly broad definition of what a terrorist organization is and what constitutes a terrorist act. While the UN and other regional organizations call for countries to limit the scope of what constitutes a terrorist act to acts that affect the life and liberty of individuals¹²⁵, the Ethiopian proclamation has chosen to adopt another

¹²² *Ethiopian Anti-Terrorism Proclamation No. 652/2009, Article 3*

¹²³ *Ethiopian Anti-Terrorism Proclamation No. 652/2009, Article 1(4)*

¹²⁴ Asmelash Yohannes Teklu, *Striking the Balance between Conforming to Human Rights Standards and Enacting Anti-terrorism Legislation: A Challenge of the 21st Century (An Ethiopian Perspective)* (University of Lincoln 2014) at 52-56

¹²⁵ ARTICLE 19 Report, *Comment on Anti-Terrorism Proclamation 2009 of Ethiopia* (March 2010) at 5

approach. In this approach, the proclamation has included damage to property, disruption of public services and even attacks against historical and environmental properties to the list acts that qualify as a terrorist act.¹²⁶ This has a number of implications among which an unnecessarily broad definition that allows the state to label a larger pool of people as terrorist is one of them.¹²⁷ Many human rights defenders and NGOs have asserted that such a definition allows the state to apply the proclamation in most circumstances of dissent.

For instance, according to the Oakland Institute the definition in the 2009 proclamation would allow the government to label a peaceful protest that disrupts transportation temporarily or a political gesture that might result in minor property damage such as breaking a police car window, or an office building owned by the government as a terrorist attack¹²⁸. This presents a critical problem to the human rights situation in the country as well as good governance and democracy. Another report by *Article 19*, claims that the inclusion of the disruption of any public services can interfere with many forms of legitimate protest that may not necessarily be violent towards citizens.¹²⁹

In my opinion, in a country with questionable human rights records like Ethiopia, such a broad definition can and is being used to oppress the Civil Society, opposition leaders and the media in Ethiopia. Therefore, the inclusion of rights other than individual rights to life, person and liberty has significant implications to the situation of human rights. Especially, coupled with the dictatorship rampant in Ethiopia this broad definition has had countless implications. One must ask at this juncture if there were no other legal instruments such as the Criminal Code of the country that can deal with minor disruptions of public order and damage to property.

In addition to the human rights implications however, we must also note at this point that the inclusion of property rights and disruption of public order is completely incompatible with international and regional declarations ratified by the country as well

¹²⁶ *Supra* note 119

¹²⁷ *ibid*

¹²⁸ Lewis Gordon (ed), *Ethiopia's Anti-Terrorism Law: A tool to Stifle Dissent* (The Oakland Institute and Environmental Defender Law Centre 2015) at 9

¹²⁹ *Supra* note 125 at 4

as the *FDRE Constitution*.¹³⁰ Ethiopia has ratified international and regional resolutions that limit the definition of terrorism to acts of violence against citizens for political gain.¹³¹ An example to such treaty ratified by the country is the 2003 Organisation of the African Union Convention on the Prevention and Combating of Terrorism (Algiers Convention) which defines terrorism as such.¹³² And according to Article 9 of the *FDRE Constitution*, international and regional treaties form a key part of the national law. Therefore, one may argue that despite this is a contradiction if not violation of the obligation deriving out of the regional convention to which Ethiopia is a part of.¹³³ The same holds true for UN resolutions that specifically limit the scope of terrorism to actions against civilians for a political end.¹³⁴

Therefore, to conclude this section, despite the existence of an understanding that terrorist attacks are limited to mostly crimes against the life, person and freedom of civilians, the Ethiopian approach includes crimes that affect property as well as public order. This may seem precautionary to some. However, in the application of the proclamation – as will be discussed below – the implication of such a broad definition is quite crucial.

g. Incitement in the 2009 Proclamation

Another problematic issue in the proclamation is the concept of incitement. Incitement is dealt with by Article 6 of the counter-terrorism proclamation which reads as follows:

*“Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3 of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years.”*¹³⁵

¹³⁰ Asmelash Yohannes Teklu, *Supra note 124* at 55

¹³¹ *ibid*

¹³² *ibid*

¹³³ *ibid*

¹³⁴ *ibid*

¹³⁵ Anti-Terrorism Proclamation no. 652/2009, *Article 6*

In relation to the above provision, Harun Hassen Korosso claims that there are several terms that are unclear in the definition of what incitement is.¹³⁶ Korosso singles out terms such as ‘direct or indirect’ and ‘encouragement’ while discussing the adverse impact on different human rights defenders, civil society actors and journalists have faced as a result of the above definition of incitement.¹³⁷ He further argues that such a provision has made it near to impossible to protest against the government because of the fear of persecution on counts of terrorism.¹³⁸ Testimonies from members of the media and other human rights actors shows a culture of censorship on pieces of publication or broadcast that include critical ideas against the government. While this will be addressed along with other rights violated by the proclamation in the coming section, the definition of incitement is clearly problematic and allows a compromised judiciary to interpret the vague terms in the article to target critical members of the community.

h. Other Rights Affected by the Proclamation: Assessing the application of the proclamation

iii. Crack down on political space: the case of the OLF

In discussing the cases of the OLF it is important to understand the concept of Ethno-nationalist terrorism.¹³⁹ Ethno-nationalist terrorism is a form of terrorism that is based on salvaging ethnic identity to bring together groups that fight for their freedom against oppressive governments.¹⁴⁰ Important examples of such types of groups may be the IRA¹⁴¹ or even the EPRDF itself who came to power by fighting for the freedom of oppressed ethnic groups in different parts of the country. In my analysis the OLF shares the above defined definition of ethno-nationalist terrorism (though caution must be taken here as I do not intend to conclude on whether the OLF is a terrorist group at this point in my argument). Though membership in the OLF has been illegal since 1991, the Ethiopian government proscribed OLF as one of the parties that are

¹³⁶ Harun Hassen Korosso, *The Act of Ethiopian Anti-Terrorism Law on Human Rights Defenders: A Difficult Balancing Act?* (International Institute of Social Studies, December 2016) at 52

¹³⁷ *ibid*

¹³⁸ *ibid*

¹³⁹ Daniel Bayman, *The Logic of Ethnic Terrorism* (Studies in Conflict and Terrorism Vol 21 1998) at 150 and Asmelash *supra* note 130 at 57

¹⁴⁰ *ibid*

¹⁴¹ *ibid*

considered as terrorist groups in June 2011.¹⁴² Since then, there have been claims and counter-claims in relation to terrorist attacks in the country.¹⁴³ In the Tigray Hotel bombing of 2002 (that killed five and injured thirty-eight) and the Bishoftu bombing in May 2004 (killed one and injured three), the government blamed the OLF for the attacks. However, in both occasions the OLF denied any involvement claiming that the government is intentionally attempting to tarnish the name of the OLF by associating it with such attacks. In relation to the Tigray Hotel attacks for instance the OLF issued the following statement in response to allegations of involvement in the attack:

*“The Executive Council of the Oromo Liberation Front [OLF] clearly stated its policy on terrorism, condemning any and all acts of terror against peaceful civilians. In the statement, we warned the international community and all peoples in Ethiopia that the regime in Addis Ababa was desperately trying to jump on the anti-terrorism bandwagon to use it as a political ticket to stay in power, to deceive the international community and to blackmail opposition forces that are struggling for legitimate causes ...”*¹⁴⁴

To the contrary, the OLF has always assumed responsibility whenever the attack was targeted at government body or the military.¹⁴⁵ Therefore, it is important at this juncture to question whether OLF is in fact a terrorist group or not. I argue that its not. I will propose two arguments for my conclusion as such. First, I argue that the OLF is a freedom fighter for some and a terrorist group for others (mainly the government). One can successfully argue that there is little to no difference between the actions of the TPLF and the other members of the EPRDF coalition during their struggle against the Derg and the actions of the OLF against the current government.¹⁴⁶ With similar popular support within the ethnic group it represents and an identical agenda of liberating the ethnic group and achieving succession, one must question the difference between the TPLF and the OLF. In my opinion, there is none. And with little to no concrete evidence as to OLF having a policy of killing and harming civilian populations, it is not sufficient enough to persuade me to argue otherwise.

¹⁴² *ibid*

¹⁴³ *ibid*

¹⁴⁴ Asmelash *supra* note 130 at 61

¹⁴⁵ *ibid* at 62

¹⁴⁶ *ibid* at 58

The second argument relates to the compromised parliament that has proscribed the OLF and other entities as terrorist groups.¹⁴⁷ With a parliament dominated by the TPLF led EPRDF and a culture of backlash against opposition groups with the use of anti-terrorism laws in many jurisdictions including Ethiopia, it is important to question the intentions of the government in proscribing groups such as OLF as terrorist organizations. In conjunction, one must also consider the fact that many of the OLF members and leading personnel have successfully acquired asylum in western countries that are determined to combat terrorism at all costs. The OLF claims that this is tacit acceptance by the West and shows that the OLF is in fact not necessarily a terrorist group, but a freedom fighting group with violent inclinations (which is the only way to date for all Ethiopian leaders to power).¹⁴⁸ In conclusion, the above two arguments lead us to ascertain that the OLF is not necessarily a terrorist group as is claimed by the government.

iv. Journalism shackled: Reeyot Alemu and many more

Another right significantly affected by the proclamation is the freedom of expression. In the years of the proclamation's application since 2009, the media space has been significantly affected by the proclamation with closing down media outlets, jamming signals of critical TV and radio stations and arrest and prosecution of journalists with critical voices on many occasions. In assessing the approach taken by the Ethiopian government, we will focus on the imprisonment of journalists, the closing of outlets and the duty to disclose sources.

The period where the proclamation was implemented represents a period of absolute infringement of the freedom of expression in Ethiopia. In order to understand the context of media freedom in Ethiopia, it is important to be familiar with the nature of media during the EPRDF regime. It was a period of monopoly of the media by pro-government media station that are closely monitored by the government in the messages they disseminate.¹⁴⁹ In addition to the monopoly of the media by pro-government or government or government owned media outlets, any other media

¹⁴⁷ *ibid* at 63

¹⁴⁸ *ibid* at 61

¹⁴⁹ Human Rights Watch Report, *Journalism is not a Crime: Violation of Media Freedom in Ethiopia* (2018) at 11

outlets that were critical of the government were also targeted, threatened, arrested or closed.¹⁵⁰ However, in the context of the following paper we will focus on the contribution of the application of the 2009 proclamation to the oppression of civic space in Ethiopia in the period of its application.

Targeted since the infamous 2005 elections, the media along with political leaders and human rights defenders has been one of the commonly targeted civic voices in Ethiopia. Starting from the Zone 9 bloggers to Reeyot Alemu many were targeted by the government for their critical voice.¹⁵¹ Reeyot Alemu, an English teacher who was arrested and charged with several counts of terrorism in 2011 is a key example of the oppression laid down by the government with the use of the proclamation.¹⁵² Reeyot Alemu was charged with these crimes for her articles on the magazine *Feteh*.¹⁵³ She was known to be critical of the government in her articles.¹⁵⁴ Following her trial she was initially sentenced to 14 years in prison.¹⁵⁵ Her sentence was then reduced to five years and her charges reduced to the promotion of terrorist activities until she was released in 2015 before the arrival of former President of the United States, President Barack Hussain Obama.¹⁵⁶ This was not a case peculiar to Reeyot. Many journalists have suffered at the hands of the government for decades. This has led to self-censorship by many journalists in fear of persecution contrary to the guaranteed right against censorship under Article 29(3) of the *FDRE Constitution* guaranteeing the freedom of press without any form of censorship.

Another important issue worth noting in the proclamation is the issue of encouragement of terrorist acts provided for under Article 6 of the proclamation. The provision reads as follows:¹⁵⁷

“Article 6: Encouragement of Terrorism

¹⁵⁰ *ibid* at 14

¹⁵¹ Lewis Gordon (ed.), *supra* note 128 at 7

¹⁵² *ibid*

¹⁵³ *ibid*

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*

¹⁵⁶ *ibid*

¹⁵⁷ Husen Tura, The Impact of Ethiopia's Anti-terrorism Law on Freedom of Expression (2017) https://www.researchgate.net/publication/314428680_The_Impact_of_Ethiopia's_Anti-terrorism_Law_on_Freedom_of_Expression (Last Accessed August 13, 2109)

Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3 of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years.”¹⁵⁸

The above provision has been singled out and criticized by the UN, international NGOs and many other human rights actors for being too vague and giving the government the licence to oppress the media and force self-censorship at the expense of the constitutionally guaranteed freedom of expression. In a comment by the NGO *Article 19* regarding the proclamation, the NGO stressed that while terms such as *encouragement* and *inducement* are vague enough, the other terms such as *indirect encouragement* and *other inducements* are vague to the point where they have no meaning.¹⁵⁹ This has allowed the government to control the media and silence critical voices.

To conclude, the second chapter has introduced the anti-terrorism proclamation and the context in which it was adopted. It has also shown the effects of the proclamation towards political organizations, journalists and civil society actors. It's been a decade since the above proclamation was introduced during which it has affected the human rights development in the country and narrowed the civic space to the point of non-existence. Until the change in personnel in the government, the critics of the proclamation fell on deaf ears. However, the current administration has taken several steps to ensure it changes the proclamation into a more human rights conducive legislation by tasking a special council with the duty to draft the legislation. The next chapter will assess these efforts in length and reach a conclusion on the possible outcomes of the council's work.

¹⁵⁸ *Supra* note 135

¹⁵⁹ Article 19 Report, *Supra* note 125 at 9

Chapter Three: Change in Regime: the new administration, its pragmatic approach and what it means for human rights in the country

Following a lengthy protest led primarily by the young organized group from the Oromia region by the name *Qero*, the then leader of the country Prime Minister Hailemariam Desalegn resigned in February 2018.¹⁶⁰ This was a unique period in the country's history. The prime minister is the only head of state to peacefully hand over power without any form of violence employed. Following his resignation, there was a period of vacuum while the EPRDF deliberated on choosing a new leader for the party which would be sworn as Prime Minister for the remainder of the five-year term. Finally, in April 2018, current Prime Minister Abiy was elected chairperson of the EPRDF as well as the Prime Minister of the Ethiopia.¹⁶¹

His introduction to the scene introduced a new sense of unity and optimism in the country. With his slogan “እንደሞራ” which translates to mean let's come to unity he started his regime with a staggering amount of popular support as demonstrated by many rallies that were held to support him in different parts of the country as well as the diaspora.¹⁶² Since then, he has taken steps that are commendable and positive to the overall human rights, democracy and rule of law development of the country. The establishment of a committee working with the Attorney General, the release of political prisoners in masses, the return of many political leaders from exile and the peace agreement with Eritrea are some of the encouraging signs that have been seen since the introduction of the new Prime Minister to the scene.¹⁶³

In this third and final chapter of the paper we will discuss how the new positive developments in Ethiopia under the Abiy regime have translated to the 2009 Proclamation and whether one should expect positive outcomes in relation to the reform of the 2009 proclamation in Ethiopia. In doing so we will consider the formation

¹⁶⁰ Al Jazeera, *Ethiopia prime minister Hailemariam Desalegn resigns* (February 2018) <https://www.aljazeera.com/news/2018/02/ethiopia-prime-minister-hailemariam-desalegn-resigns-180215115215988.html> (Last Accessed August 23, 2019)

¹⁶¹ Mohammed Ademo, *Abiy's year one: Ethiopia's best hope for stability* (Al Jazeera April 2019) <https://www.aljazeera.com/indepth/opinion/abiy-year-ethiopia-hope-stability-190331151858910.html> (Last accessed August 23, 2019)

¹⁶² *ibid*

¹⁶³ *ibid*

and operation of the reform committee, the significant changes seen in the reformed civil society proclamation, the actions of Abiy's administration in righting the wrong of the former government before concluding on the matter.

3.5. *The Reform Project: the council and its promise for better future*

Only two months into assuming power, the new administration took a bold step in taking on the project of reforming the draconian legislations that were in place since 2008 and 2009.¹⁶⁴ The legislations that were identified as requiring reform were the anti-terrorism proclamation, the mass media legislation and the civil societies and charities proclamation. All the proclamations were identified by the national human rights actors, individual states and the international community as infringing on several human rights provisions in the years of their joint application. They were the primary tools of the government and the menace of human rights defenders, opposition leaders and journalists in the country as showcased in the previous chapter.

It was very encouraging to learn that the government had taken it upon itself to reform the legislations that it had been criticized over and it earnestly supported for decades. However, the establishment of the "*The Advisory Council for Legal & Justice Affairs*" (the Council) in order to support the Attorney General's Office in reforming the above-mentioned legislations was truly a step forward by the current government. Composed of 13 members¹⁶⁵, the council provides an excellent opportunity – if taken of course – to achieve true reform in the country. It is also a significant deviation by the new administration from an EPRDF dominated legislative process to a legislative process that involves non-politician members of a council selected by their merit as opposed any other politically motivated reason is an encouraging sign for the country's future in human rights, media development, political space, civil society openness and counter terrorism policies.

Before considering the composition of the council, it is important to commend the new administration for taking proactive measures in order to reform the legislations discussed above. The fact that the new administration of EPRDF took it upon itself to reform the legislations is an indication of the intentions of the new administration to

¹⁶⁴ Behailu Ayele, *Ethiopia: Council Arise to Reform Anti-Terrorism, Media Law* (Addis Fortune, June 2018) at <https://allafrica.com/stories/201807030771.html> (Last Accessed August 23, 2019)

¹⁶⁵ *ibid*

adopt new legislations that confirm with human rights obligations of the country in response to decade long calls for reform during the former regime. One may describe this as a U-turn in the country's history. Therefore, it is important to commend the administration for taking such proactive measures at this juncture.

The composition of the council is another important positive sign in the current reform process in the country.¹⁶⁶ This is because as indicated earlier the council is composed of members elected on a merit-based method which allowed it to assemble members from different tracks of life and expertise on the matter at hand.¹⁶⁷ The members include Zewdneh Beyene (a renowned legal practitioner), Belachew Mekuria (commissioner of the Ethiopian Investment Commission), Professor Tilahu Teshome (lecturer at Addis Ababa University, School of Law and renowned lawyer), Meaza Ashenafi (founding member and director of the Ethiopian Women Lawyers Association), and Mamo Mihretu (from the Ethiopia Trade Logistic project at World Bank).¹⁶⁸ Looking at the above composition alone is a key indicator of the diversity that is apparent in the council. This is an encouraging sign and promises real reforms if the Attorney General and the new administration follow the recommendation of the council in producing the final document on each of the above legislations.

However, there are also critics to the council. The main critics single out the secretive nature of the election of the council members as problematic and suggest a more public appointment of the council members would have been a reassurance to the public that awaits a new set of legislations that do not infringe on its human rights entitlements.¹⁶⁹ This is a fair point to bring forth. Though one might respond to this by claiming that the appointment of the members was not based on public opinion, but merit based in order to successfully argue with such critics. While I agree with the above statement, it is also true that in the interest of transparency and ensuring the public's trust in the system it is important to make such proceedings more open as they are conducted.

Another caution – which I fully support – is related to the current political tension that is ensuing in the country. This is the biggest threat to the country's progress in reforming the proclamations. Though the tension is not directly related to the current

¹⁶⁶ *ibid*

¹⁶⁷ *ibid*

¹⁶⁸ *ibid*

¹⁶⁹ *ibid*

reform of the legislations, the problem will present direct threats to stability in the country if not dealt with in time by the new administration. If not, the reform process might end before even starting. The current tension is multifaceted. With the Oromia region requiring special benefits from Addis Ababa (this is because historically the region belonged to the region), the TPLF refusing to cooperate with the government in Addis on a number of issues and many political uncertainties in different parts of the region.¹⁷⁰ This tension was culminated by a coup attempt on the Amhara regional government on June 22, 2019 with the assassination of the head of the Amhara state Ambachew Mekonnen and his advisor as well as the chief of staff General Seare Mekonnen, the coup was an attempt to seize the Amhara region of the country.¹⁷¹ However, the attempt was unsuccessful and ended with the killing in cross fire of the architect of the coup, General Asamnew Tsige and the arrest of his partners in the coup attempt.¹⁷² This is only an example of the at time unstable nature of the new administration's rule. Other incidents include ethnic clashes in the southern region of the country, an assassination attempt on the prime minister himself in a rally held in Addis¹⁷³, the sudden death of the head engineer of the *Hedase Dam* (Ethiopia's biggest project that builds a dam on the Nile)¹⁷⁴ and the recurrent threats of succession from the Tigray region as TPLF grows impatient towards the approach taken by the new administration. Therefore, for the successful completion of the process that promises a new chapter for the country, it is important to address these gaps and ensure a sustainable governance structure in the country.

In conclusion, while the initiative taken to reform the legislations as well as the choice to include experts outside the political arena, it is also very much important for the government to make sure there is a sustainable peace and stability for the democratic reform to be completed and for citizens to enjoy the fruits of such a reform.

¹⁷⁰ Ezega.com, *TPLF Issues a Strong Statement Criticizing Abiy Ahmed Leadership* (2019) <https://www.ezega.com/News/NewsDetails/6962/TPLF-Issues-a-Strong-Statement-Criticizing-Abiy-Ahmed-Leadership> (Last Accessed August 23, 2019)

¹⁷¹ The Guardian, *Suspected mastermind of Ethiopia coup attempt shot dead, says official* <https://www.theguardian.com/world/2019/jun/24/suspected-mastermind-of-ethiopia-coup-attempt-shot-dead-says-official> (Last Accessed August 24, 2019)

¹⁷² *ibid*

¹⁷³ BBC News, *Ethiopia attack: Five charged for trying to kill PM Abiy Ahmed* (September 28, 2018) <https://www.bbc.com/news/world-africa-45678760> (Last Accessed August 24, 2019)

¹⁷⁴ Al Jazeera News, *Ethiopian engineer of controversial renaissance dam found dead* (July 26, 2018) <https://www.aljazeera.com/news/2018/07/ethiopian-engineer-controversial-renaissance-dam-dead-180726151150589.html> (Last Accessed August 24, 2019)

3.6. *Reversing the effects of the proclamation: Pardons and mass return from exile*

Another commendable step taken by the new administration is the efforts it has made to right the wrongs of the former administration. This includes – among other things – reversing the direct effects the anti-terrorism proclamation has had in the country in its application throughout the years. While there were several direct and indirect efforts, we will discuss three major decisions made by Abiy's administration that point towards a more human rights friendly environment.

The first one is the release from jail of all journalists and political leaders that had fell victim to the 2009 proclamation.¹⁷⁵ This is a remarkable step taken by the government and promises that the new administration will not follow such draconian approaches to dealing with criticism and opposition. Currently, there are no journalists held in prison.¹⁷⁶ Compared to the culture of imprisoning everyone with a critical voice in the previous administration, this is an excellent step taken by the government. In addition to the release of political prisoners and journalists alike the government has also extended an olive branch for opposition leaders that were in exile as a result of persecution by the government with the direct or indirect application of the 2009 proclamation. Opposition leaders that had been in exile for more than a decade have returned to Ethiopia to participate in free and fair elections and to fight for change in a peaceful manner. These leaders include Andargachew Tsige and Birhanu Nega (Ginbot 7 and formerly CUD)¹⁷⁷ and Dawud Ibsa and other leaders¹⁷⁸ of the poster 'terrorist group' for the former government – OLF. These are encouraging signs and the parties are expected to partake in the next general elections which are scheduled for 2020. In an even more impressive step by the new administration some of the released and returned leaders have also been given a chance to lead key government organizations such as Birtukan Mideksa (former opposition leader who was arrested on counts of terrorism and fled the country upon release) who has been appointed the head of the Election Board ahead of the anticipated 2020 elections of Ethiopia.¹⁷⁹ The

¹⁷⁵ Al Jazeera, *Supra note 160*

¹⁷⁶ *ibid*

¹⁷⁷ Fana Broadcasting Corporate, *Patriotic Ginbot 7 Leaders Return To Ethiopia* (September 10, 2018) <https://fanabc.com/english/2018/09/patriotic-ginbot-7-leaders-return-to-ethiopia/> (Last Accessed August 24, 2019)

¹⁷⁸ Reuters, *Exiled leader of Ethiopian rebel group returns home amid reforms* (September 15, 2018) <https://www.reuters.com/article/us-ethiopia-politics/exiled-leader-of-ethiopian-rebel-group-returns-home-amid-reforms-idUSKCN1LV0GP> (Last Accessed August 24, 2019)

¹⁷⁹ BBC News, *Ethiopian's Birtukan Mideksa appointed election boss* (November 22, 2018) <https://www.bbc.com/news/world-africa-46301112> (Last Accessed August 24, 2019)

closing down of Maikelawi – the infamous detention and torture centre of the former administration is another key step in the right direction by the new administration.¹⁸⁰ Known for its horrifying infrastructure and being used by the government as a tool of duress to salvage confessions from many Ethiopian citizens charged with terrorism and related crimes, the detention centre was closed in an effort that promises a brighter future for the country.

In conclusion, the efforts taken by the new administration in reversing the effects of the application of the 2009 proclamation show us that the Abiy's regime has serious convictions to erect a human rights conducive, transparent and democratic government. However, while very much optimistic in light of these developments, again it must be stressed that the reform must be seen through and these requires continued conviction by the new administration and ensuring unity, stability and peace in the country during these pressing times.

3.7. *A Better parliament or a crumbling nation? The new political demography of the country and what it means for the legislation process*

Though not an intentional effort by the Abiy's administration another important feature of his regime is the crumble in one of the strongest coalitions in the country's history – the EPRDF. The coalition has had several disagreements between the four major members. There have been several instances where the TPLF was for instance unhappy with the policies and has repeatedly expressed dissatisfaction through its leader Dr Debretsion Gebremichael.¹⁸¹ For instance, a case in point is the dissatisfaction by the TPLF following what the party described as a disrespectful arrest of former *METEC* (a government owned industrial company responsible for most infrastructure in the country) head General Kifle on corruption charges.¹⁸² Dr Debretsion expressed utter disappointment at the treatment rendered by the central government and hinted that the Tigray people may look for succession as an option if they continue to be marginalized.¹⁸³ Other instances have also transpired that suggest that the coalition is not as strong as it once was.

¹⁸⁰ Salem Solomon and Tsion Girma, *Ethiopia Closes Infamous Prison, But Activists Await Deeper Reforms* (April 8, 2019) <https://www.voanews.com/africa/ethiopia-closes-infamous-prison-activists-await-deeper-reforms> (Last Accessed August 24, 2019)

¹⁸¹ *Supra* note 170

¹⁸² Borkena News, "People of Tigray have developed sentiment for secession", *Debretsion* (June 12, 2019) <https://borkena.com/2019/06/12/people-of-tigray-have-developed-sentiment-for-secession-debretsion/> (Last Accessed August 24, 2019)

¹⁸³ *ibid*

This coupled with an opposition that has popular support such as the OLF in the Oromia region and Ginbot 7 with popular support in Addis Ababa, there is hope that in the coming years there could be a parliament that is more balanced and capable of deliberating and debating on laws in the HPR before passing legislations. This is further strengthened by the fact that the election board is led by a former opposition leader which would promise a more free and fair election that could result in a more diverse and active parliament. Therefore, this is a great opportunity for the country to correct its wrongs. Again, stability and peace must be maintained by the government in a more efficient manner than it has been doing thus far.

3.8. Evaluating the work of the council: advancements for human rights in the new Civil Societies Proclamation

In what was the first reformed legislation by the council, the Ethiopian parliament adopted a revised civil society proclamation in February 2019. The new proclamation has been hailed with commendations by local and international bodies. However, there are also critics of the new law that, while not denying the importance of the improvements in the new legislation, suggest that there is still room for improvement. The purpose of the following section is to analyse the reform in the civil society proclamation and understand to what extent the council has successfully adopted a more human rights conducive document. In the absence of any data concerning the work done thus far by the council regarding the anti-terrorism proclamation, this will give us an idea about the ability of the council as well as the political will of the government in the context of the reform.

The reformed legislation has several positive aspects. Some will be discussed below. The first positive step that one can identify in the new legislation is the removal of the barrier put by the former legislation on foreign NGOs and local NGOs established by non-Ethiopians. While the former legislation did not allow such NGOs to participate in matters that relate to human rights and advocacy, the current legislation allows such activities to be performed by all NGOs.¹⁸⁴ The only restriction is lobbying with parties, electoral training and election observation which has been identified by some as a

¹⁸⁴ Dina Townsend, *Ethiopia's new civil society law* (Include March 11, 2019) <https://includeplatform.net/blog/ethiopias-new-civil-society-law/#targetText=The%202009%20Charities%20and%20Societies%20Proclamation&targetText=Under%20this%20law%2C%20Ethiopian%20charities,their%20revenue%20from%20foreign%20sources.&targetText=The%20law%20required%20CSOs%20to,and%2030%25%20to%20administrative%20activities.>

problematic position that must still be addressed.¹⁸⁵ In my observation, the new legislation removes a huge barrier for the development of human rights principles by allowing all NGOs to participate in matters that relate to human rights and advocacy. Dina Townsend, in an article she wrote for *Include* even claims that the new proclamation not only allows involvement in human rights matters; it goes to the extent of encouraging it.¹⁸⁶ This is a commendable achievement and the council as well as the new administration must be given due credit for such a step. Other improvements include the

While this and other developments indicate the good work being done by the council, there are also provisions that have introduced harsher and more restrictive rules on civil society actors. For instance, Dina identifies the expansion of the power of the Charities and Civil Societies Agency to include the power to dissolve a CSO organization.¹⁸⁷ This was a right formerly reserved for the CSO itself and for the Federal Court. The inclusion of the Agency in the power to dissolve is problematic and may open doors to corruption and other bureaucratic complications. In addition, UN human rights experts have also expressed its delight with the new proclamation while expressing that there is still space for more change. The experts have highlighted the same issues as areas of concern stating that:

“However, a number of worrying provisions were added to the text during its revision by Ethiopia’s Council of Ministers, including changes to the Civil Society Agency Board, compromising its independence and granting it additional powers to dissolve organisations. This power was initially granted only to founders of organisations or the Federal High Court”¹⁸⁸

Though premature, as the above chapter has showcased there is real promise of change in the country. This change has to be seen through and this opportunity must not be wasted by the government, opposition leaders and civil society. While maintaining its current pace, the government must take steps to mend tensions in different areas of the country by taking measures of reconciliation and where necessary by using force within the ambit of the law. The council on the other hand

¹⁸⁵ *ibid*

¹⁸⁶ *ibid*

¹⁸⁷ *ibid*

¹⁸⁸ UNOHCHR, Ethiopia: UN experts commend civil society law reforms, but concerns remain, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24443&LangID=E> (Last Accessed August 27, 2019)

must take steps to carefully consider the countless critics of the proclamation in carrying out the tasking role of reforming one of the most oppressive legislations in the country's history. Civil society must also lend a helping hand in the reform process. Civil society actors must continue to advocate for the reform of the proclamation and recommend key areas of improvement to the council as opposed to merely commenting on the approved law. With a combined effort of all actors, it is my educated prediction that we will see a legislation that creates far more human right conducive situations than the one in place at the moment.

Conclusion

The above paper started its discussion with theoretical definitions of the term terrorism and discussed major challenges at the international level related to counter terrorism and its correlation with human rights principles. In doing so, we discussed the lack of definition at the global level and how that has allowed states generally and non-democratic ones specifically to oppress criticism and infringe on a number of human rights principles within the ambit of law. In conjunction, we discussed the decision by the UN to delegate the legislation of counter terrorism laws and how that has also contributed to the current tension between human rights and counter terrorism efforts. The chapter also provided a definition – descriptive as may be – to terrorism in the interest of setting the stage for further discussions in the chapters that followed.

The second chapter was concerned with introducing the 2009 anti-terrorism proclamation of Ethiopia. In addition to providing the problematic sections of the anti-terrorism proclamation that are of concern to the present paper, the chapter also successfully provided the reader with an understanding of the context in which the proclamation was adopted. Finally in the last chapter, we discussed the reform efforts that are taking place in the country and provided three major arguments to suggest that there are in fact positive signs for the country to achieve its hopes of adopting legislations that confirm with international standards as well as guarantee all the fundamental rights that had been affected by the draconian terrorism proclamation of 2009.

To conclude, one must commend the efforts being taken by the new administration to remove oppressive legislations and erect more human rights conducive legislations. There is no denying that the country is going through positive changes that can translate into creating space for opposition parties, journalists, civil society actors and human rights defenders that were crippled during the reign of the former administration of EPRDF. However, the paper has also shown that stability and peace are the major challenges to the country's efforts to properly reform the legislations it has deemed in need of such a reform. The government must therefore maintain its political will and make sure that the process reaches its conclusion before being aborted by ethnic

centred movements that may not necessarily appreciate the changes taking place in the country.

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