

Acts Considered as Terrorism Crimes and Compatibility of Counter-terrorist Measures to International Standards: In Context of Ethiopia

By Petros Fanta Choramo*

Existence of accurate legal definition of terrorism is important for society and for governance to enable successful investigation and prosecution of terrorists within the established judicial system. Without international agreement on a definition of terrorism, it has not been possible to adopt a treaty covering all its forms. In other words, without a clear and precise definition of terrorism, it becomes impossible and impractical to talk about concepts and counter-terrorism measures in one country. Moreover, without a definition for terrorism, how can we define and investigate the correctness of those who practice it are? Further, even though terrorism is a danger to the peace, security and development of the country and a serious threat to the peace and security of the world at large and view of these challenges, the Government of Ethiopia has been exerting the necessary effort to prevent and combat terrorism through enacting and effectively implementing domestic laws, it must in conformity with the human rights law, and international humanitarian law. Thus, the basic objective of this Article was to critically observe and examine definition of terrorism, acts that constitute terrorism and other acts which can be considered as contributory to terrorism crimes under Ethiopian relevant laws adopted to combat terrorism; specially Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020. Under this article author also critically made analyses on the manner how current Ethiopian government adopted the new counter terrorism law and consideration given to it.

Keywords: *Definition of Terrorism, Counter Terrorism Movement, Terrorist Acts, Terrorism Crimes, Sub-Ordinate Crimes, Human Rights Approach*

Introduction

Terrorism and other forms of violent extremism also pose a threat to fragile states by destabilising political systems, creating an inhospitable environment for development, and threatening civil liberties and human rights. Moreover, terrorist groups have exploited vulnerabilities such as porous national borders, weak governance, limited law-enforcement capacities, fragile governments, and local grievances to militancy to emerge or flourish. As such they challenge not only the authority of the state but its ability to provide the necessary security for achieving progress on development objectives.¹ To challenge permissive conditions for

*LL.B, LLM in Law and Lecturer at Mizan - Tepi University in Ethiopia.

Email: Fantapetrosa@gmail.com

¹International Peace Institute, “Global Terrorism,” IPI Blue Paper No. 4, Task Forces on Strengthening Multilateral Security Capacity, New York, at 7, Rosand, Fink & Ipe (2009).

violent extremism, States have the primary responsibility for protecting their populations from the threats posed by terrorism² preventing terrorism and addressing conditions conducive to terrorism are crucial for the achievement of the 2030 agenda for sustainable development. according to African union high-level inter-governmental meeting on the prevention and combating of terrorism in Africa, since terrorism is a violent form of transnational crime that exploits the limits of the territorial jurisdiction of states, differences in governance systems and judicial procedures, porous borders, and the existence of informal and illegal trade and financing networks, Member States reaffirmed their unequivocal rejection of terrorism and need to counter terrorism at both the individual and collective levels.³

Ethiopia is one of the victims of terrorism and terrorist acts, who had lost lives and sustained damage to property through the cruel acts of terror committed at hotels, transport facilities, markets and other civilian spots.⁴ In view of these challenges, the Government of Ethiopia has recently revised its previous Anti - Terrorism proclamation and adopted new Proclamation No.1176/2020 is aimed at preventing and controlling the crime by enabling the security forces to take strong precautionary and preparatory acts centred at the nature of the crime while ensuring perpetrators received penalty proportional to their acts.⁵

Conceptual Understandings on Terrorism and Historical Underpinning of Counter-Terrorism Movement

At its most general level, the term “terrorism” denotes the (generally criminal) use of politically motivated violence. It is typically used to refer to “a special form or tactic of fear-generating, coercive political violence” as well as “a conspiratorial practice of calculated, demonstrative, direct violent action without legal or moral restraints, targeting mainly civilians and noncombatants, performed for its propagandistic and psychological effects on various audiences and conflict parties.”⁶ “At the origin of terrorism stands terror – instilled fear, dread, panic or mere anxiety - spread among those identifying, or sharing similarities, with the direct victims, generated by some of the modalities of the terrorist act – it's shocking brutality, lack of discrimination, dramatic or symbolic quality and disregard of the rules of warfare and the rules of punishment. Terrorist violence is

²See Worcester (2015) at 3. The fight against terrorism is not a job which can be undertaken by one single agency, it requires team work and input from a wide range of national and international organizations including law enforcement agencies, the military, the intelligence services, the financial sector, the diplomatic service and health organizations.

³See preamble of African Union High-Level Inter-Governmental Meeting On The Prevention And Combating Of Terrorism In Africa Algiers, Algeria 11-14 September 2002; Article 10(a) of this convention directs and obliges member States to sign, ratify and fully implement the Algiers Convention on the Prevention and Combating of Terrorism and, where necessary, seek the assistance of other Member States or the international community to amend national legislation so as to align such legislation with the provisions of this Convention.

⁴See Statement by Asgedom (2020).

⁵Ibid.

⁶Stewart (2018) at 6.

predominantly political – usually in its motivation but nearly always in its societal repercussions [and] [t]he immediate intent of acts of terrorism is to terrorise, intimidate, antagonise, disorientate, destabilise, coerce, compel, demoralise or provoke a target population or conflict partly in the hope of achieving from the resulting insecurity a favourable power outcome, e.g. obtaining publicity, extorting ransom money, submission to terrorist demands or mobilising or immobilising sectors of the public.”⁷

However, no single or agreed legal definition exists at the international level. Furthermore, the U.N. has failed to develop a definition for terrorism.⁸ The definition given for terrorism even may vary in case of war and guerrilla warfare.⁹ There are over 109 different definitions of terrorism. U.S. American political philosopher Michael Walzerin defined Terrorism as the deliberate killing of innocent people, at random, to spread fear through a whole population and force the hand of its political leaders.¹⁰

The failure to craft an agreed definition of terrorism at international level has left a vacuum for actors, whether they be state or non-state, to define terrorism in ways that serve their own perceived political and strategic interests, and, in the case of state responses, remits of ‘counter-terrorism’ are often determined accordingly.¹¹ The term is frequently employed to describe a wide range of acts committed in response to varying circumstances and phenomena at both the domestic and international levels. Its use is often politically-charged. In many states the Legal definitions of terrorism are often vague or broad, and applied in a selective, indiscriminate or discriminatory manner. Such definitions may be used to suppress political opposition relative to issues that have no discernible links to security concerns.¹²

Even though, Terrorism is an old tactic, the terrorist attacks of 11 September 2001 in the US,¹³ as well as other similar incidents in different parts of the world have caused profound changes in political, economic, and social relations

⁷Schmid (2011) at 86-87.

⁸Teklu (2014) at 50. The problematic nature of terrorism is not restricted to the absence of a definition. But the argument goes further, concerning at what point terrorist acts constitute crimes under international criminal law, see Cassesse (2008).

⁹Brustolin (2019) at 1.

¹⁰Oluwasey, (2020) at 6.

¹¹Richards (2015) at 3.

¹²The study prepared by the Expert Team comprising of Ms Abigail Hansen and Ms Sylvie Nicole. Operational Human Rights Guidance for EU external cooperation actions addressing Terrorism, Organised Crime and Cyber security, European Commission Instrument contributing to Stability and Peace Expert Support Facility IFS 2014 - LOT 3 Europe Aid/134757/C/SER/multi Request for Services N° 2014/350719/1, 2014, P.17

¹³On 9/11, America experienced the worst terrorist attack on its soil, committed by Al Qaeda (“The Base”). On that fateful day, Al Qaeda killed more people than the Irish Republican Army had killed in thirty-five years. According to a 2006 Gallup poll, involving over 50,000 interviews in various nations, 7% of the 1.3 billion Muslims in the world—90 million people—see the 9/11 attacks as “completely justified.” This incident was base for the current Global War on Terror (GWOT), which was initiated by President George W. Bush (the late president of US), is the most all-encompassing counterterrorist campaign in history and the most important fight since the fall of the Berlin Wall. See Jackson (2005) at 40.

globally.¹⁴ However, counter-terrorism laws existed in many countries prior to 2001, the attacks of 9/11 and the immediate response by the international community served as a catalyst for states to develop new measures and strengthen existing laws. Subsequent attacks and attempted attacks – including in Africa, Asia, Europe, and the US – reinforced states' urgency not only to prevent non-state actors from conducting attacks on their soil, but also to prevent people from undertaking so-called preparatory acts of terrorism, such as attending terrorist training camps, raising or laundering funds for terrorist activities, and inciting terrorist attacks.¹⁵

The United Nations has adopted several counter-terrorism measures to punish individuals and groups engaging in terrorism. UN Security Council Resolution 1267 and subsequent related resolutions require UN member states to freeze funds and other financial resources of the Taliban, al-Qaeda and affiliated individuals and groups, and designate specific individuals and groups as sanctioned.¹⁶ Additionally, resolution 1373 and subsequent related resolutions require states to implement laws and measures to improve their ability to prevent terrorist acts. These measures include criminalising the financing of terrorism; freezing the funds of individuals involved in acts of terrorism; denying financial support to terrorist groups; cooperating with other governments to share information; and investigating, detecting, arresting, and prosecuting individuals and entities involved in terrorist acts.¹⁷

In recent years, Security Council adopted a number of resolutions to eliminate/minimise terrorism, such as resolution 2482 (2019), on threats to international peace and security; resolution 2467 (2019), on women and peace and security and sexual violence in conflict; resolution 2462 (2019), on threats to international peace and security caused by terrorist acts and preventing and combating the financing of terrorism; resolution 2341 (2017), on terrorist threats against critical infrastructure; resolution 2347 (2017), on the destruction of cultural heritage and the smuggling of cultural property by terrorist groups in situations of armed conflict; resolution 2354 (2017), on countering terrorist narratives; resolution 2368 (2017), reaffirming the sanctions regime against Islamic State in Iraq and the Levant (ISIL) (Da'esh); resolution 2370 (2017), on preventing terrorists from acquiring weapons; and resolution 2396 (2017), on terrorist fighters returning and relocating to their countries of origin or nationality, or to third countries. Pursuant to resolutions 2444 (2018) and 2498 (2019), the Office, through the Indian Ocean Forum on Maritime Crime, is mandated to work with Somalia and relevant countries to develop strategies to disrupt the illicit trafficking of charcoal and other goods that finance Al - Shabaab in Somalia.¹⁸

¹⁴Workneh (2019) at 3.

¹⁵Burniske, Modirzadeh & Lewis (2014) at 3.

¹⁶See Country Reports Pursuant to Resolution 1373 (2001) and Resolution 1624 (2005), <http://www.un.org/en/sc/ctc/resources/countryreports.html>.

¹⁷Ibid.

¹⁸United Nations Economic and Social Council, Report of the Secretary-General, Technical assistance in implementing the international conventions and protocols related to terrorism, integration and coordination of efforts by the United Nations Office on Drugs and Crime and by Member States in the field of crime prevention and criminal justice: ratification and implementation of the international instruments to prevent and combat terrorism Commission on Crime Prevention

Conceptual and Legal Frame Works Concerning on Terrorism in Ethiopia

Even though Ethiopia has criminal laws which criminalise acts which are danger to the peace, security and development of the country and a serious threat to the peace and security of the world at large, the comprehensive, special and independent counter terrorism law called “Anti-Terrorism Proclamation No. 652/2009” adopted and entered into force on 28th day of August, 2009.¹⁹ But recently Ethiopia adopted “Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020” with objective to replace the Anti -Terrorism Proclamation No. 652/2009, a Proclamation were enacted to prevent and suppress terrorism, has substantive and enforcement loopholes which produced a negative effect on the rights and freedoms of citizens, with a law that enables adequately to protect rights and freedoms of individuals and prevalence of accountability of law enforcement bodies.²⁰ Under this section an author analyses acts considered as terrorism and ancillary acts to the crime terrorism under Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020 (herein after PSTCP) and its compatibility with general Ethiopian criminal and international principles and jurisprudence.

Definition of Terrorism

Article 2 sub article 2 of PSTCP defined; Terrorism Crime as those criminal acts provided under Articles 3, 5 to 11, 29, and 30 of the Proclamation. In relation to that when we look the stipulation of Article 3 it defines Terrorist Acts as;

*Acts to Causes serious bodily injury to person, Endangers the life of a person, commits hostage taking or kidnapping, causes damage to property, natural resource or environment and/or seriously obstructs public or social service; with the intention of advancing political, religious or ideological causes for terrorising, or spreading fear among the public or section of the public or coercing or compelling the Government, Foreign Government or International Organisation.*²¹

Article 5 criminalises acts to intimidates to commit any of the terrorist acts provided for under Article 3 of the Proclamation; Article 6 criminalises Planning and Preparation for Commission of Terrorist Acts provided for under Article 3 of this Proclamation; Article 7 criminalises conspiracy to carry out or cause to carry out terrorist acts provided for under Article 3 of the Proclamation; Article 10

and Criminal Justice, Thirtieth session Vienna, 17–21 May 2021, Item 6 (c) of the provisional agenda, P.2

¹⁹See preamble of Anti-Terrorism Proclamation No.652/2009. Fourth Paragraph of the preamble of this proclamation provides that adoption of this proclamation has become necessary to incorporate new legal mechanisms and procedures to prevent, control and foil terrorism, to gather and compile sufficient information and evidences in order to bring to justice suspected individuals and organisations for acts of terrorism by setting up enhanced investigation and prosecution systems.

²⁰See the second paragraph of Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020

²¹See Article sub Article of Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020

criminalises causing the commission of one of the crimes provided for in Article 3 of the Proclamation intentionally incites of another person by inducing, promises, money, gift, threat or any other similar means shall be punishable with a punishment provided for the offence provided that the crime was attempted or committed. Article 8 criminalise False Threat of Terrorist Act and Article 9 criminalises knowingly supporting or assisting directly or indirectly the commission of a terrorist act or with the intent to support a terrorist Organisation. Article 10 criminalises intentional inciting of another person by inducing, promises, money, gift, threat or any other similar means shall be punishable with a punishment provided for the offence provided that the crime was attempted or committed while Article 11 criminalises the possession of such property or makes use of it knowing that the property is associated with terrorism crime, or makes use of it.²²

On the other hand Article 29 criminalises the heading of an Organisation proscribed as a Terrorist Organisation as a whole or a part there of while Article 30 criminalises joining with the Organisation as member or took training with knowing that the Organisation is a Terrorist Organisation or should have known such fact.²³

From the above stipulation we may possibly find, understand and analyse especially from article 2 sub article 2 and PSTCP in general that in first place it tried to differentiate “terrorism crimes” from “terrorist acts”. On this it defined “terrorist acts” under article 3 while defined “terrorism crimes” as a synergy of terrorist acts and acts of intimidation, conspiracy, incitement, rendering support, false threat, planning and preparation to commit terrorist act as well as heading and joining with terrorist organisation.²⁴ However, when we cumulatively read Article 2 sub article 2 with article 11, PSTCP provided circular definition for the *terrorism crimes* as knowingly possession of the property that is associated with *terrorism crime* or makes use of it. This creates a confusing legal situation where the definitions are circular, which may give rise to questions as to the certainty and foreseeability of the legislation.

As far as terrorist acts concerned, PSTCP defined acts considered as terrorist acts under article 3 sub article 1. It defined terrorist act as -

Whosoever, with the intention of advancing political, religious or ideological causes for terrorising, or spreading fear among the public or section of the public or coercing or compelling the Government, Foreign Government or International Organisation:

- a. Causes serious bodily injury to person;*
- b. Endangers the life of a person;*
- c. Commits hostage taking or kidnapping;*
- d. Causes damage to property, natural resource or environment; or*
- e. Seriously obstructs public or social service.*

In surprising manner, even though, the caption of Article 3 says “terrorist act”, and under sub 1 seems to define acts what constitute terrorist acts, in fact it is

²²See Art 5 sub 1 and Article 11 sub 1

²³See Article 29 sub 1 and Article 30 sub Article 1(B)

²⁴See, Articles 3, 5-11, 29 and 30, since PSTCP under Article 2 sub article 2 defined “Terrorism Crime” means those criminal acts provided under Articles 3, 5 to 11, 29, and 30 of this Proclamation”

not. It is rather talks about persons who were considered to be participated in terrorist act. Another problem under this definition is that definition stated under this provision was circular by itself. This is envisaged on definition of **Terrorist Acts** that “Whosoever, with the intention of advancing political, religious or ideological causes for **terrorising**...”²⁵ On the word from this definition we observe that Terrorist Acts is **terrorising**... So, this definition of terrorist act provided under this proclamation is circular and it is open for another controversy and difficulty for application regarding on the concept of terrorising. To avoid such and similar problem, The High Commissioner for Human Rights and United Nations human rights mechanisms have consistently recommended that States review their counter - terrorism legislation in order to clarify and narrow the definition of the offences concerned.²⁶ The principles of legal certainty and legality require that criminal laws specify precisely the types of behaviour and conduct that constitute a criminal offence, as well as the consequences of committing such an offence.²⁷ Thus, Criminalising acts without providing foreseeably clear notice of the conduct proscribed poses a risk of breaching obligations such as those enshrined in article 15 of the International Covenant on Civil and Political Rights.²⁸ Article 15 ICCPR also includes the requirements of *nullum crimen sine lege* (all elements of a crime must be defined by the law), *nulla poena sine lege* (all punishments must be defined by the law), accessibility (the law must be publicly available), precision (the line between permitted and prohibited conduct must be clear), and foreseeability (the law must enable an individual to anticipate the consequences of his or her conduct). The safest way to secure compliance with these requirements is to base any definitions of terrorist crimes on an exhaustive list of already defined serious violent crimes. Criminalization of terrorist intent as such, or circular definitions that refer back to the word ‘terror’, or definitions that generally cover crimes against the state, regularly fail the test under Article 15 ICCPR.

Even though this weakness of law maker, according to their intention, terrorism acts are; Causes serious bodily injury to person, Endangers the life of a person, Commits hostage taking or kidnapping, Causes damage to property, natural resource or environment; or Seriously obstructs public or social causes for

²⁵See Article 3 Sub Article 1

²⁶See for example, A/HRC/28/28, para. 22; A/HRC/43/46/Add.1, para. 60 (a); CCPR/C/GNQ/CO/1, paras. 22–23; CCPR/C/BEL/CO/6, paras. 11–12; CCPR/C/FIN/CO/7, paras. 10–11; CCPR/C/KEN/CO/4, paras. 16–17; CCPR/C/TUN/CO/6, paras. 31–32; and CCPR/C/BHR/CO/1, paras. 29–30.

²⁷2021 Report of the Secretary-General on Terrorism and human rights, Seventy-sixth session, Item 75 (b) of the provisional agenda at 5.

²⁸Ibid. As per Article 15/1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. See, for example, CCPR/C/ETH/CO/1, para. 15; CCPR/C/KOR/CO/4, para. 20; CCPR/C/BEL/CO/6, para. 11; CCPR/C/KEN/CO/4, paras. 16–17; CEDAW/C/CHL/CO/7, paras. 30–31; and p. 6 of communication SAU 12/2020. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25726>

terrorising, or spreading fear among the public or section of the public or coercing or compelling the Government, Foreign Government or International Organisation.

Inchoate Acts That Considered as Terrorism Crimes

Inchoate crimes, also called incomplete crimes, are acts which involve the inclination to commit, or indirect participation in, a criminal offense or acts just began but not completed. On the other word inchoate offences refers to those crimes which were initiated/began but not completed and acts that assist in commission of another crime.²⁹ Such category of acts are; preparation, attempt, conspiracy, aiding and abiding and others.

When we come to Ethiopian PSTCP, Articles 6, 7, 9 and 10 incorporated inchoate offences and criminalised inchoate offences which are attributable to terrorist act as defined under Article 3 of the same proclamation.³⁰

Thus, Article 6 criminalised; Planning and Preparation for Commission of Terrorist Acts. It states that;

1. *Whosoever undertakes act of plans to commit any of the terrorist acts provided for under Article 3 of this Proclamation shall be punishable with rigorous imprisonment from three years to seven years.*
2. *Whosoever makes preparation to commit any of the terrorist acts provided for under Article 3 of this Proclamation shall be punishable with rigorous imprisonment from five years to twelve years.*

As per this provision PSTCP criminalised a mere plan and preparation to terrorist act because of injurious nature of act of terrorism which is a serious threat to peace and security of our Country and International Community causing serious damage to human and property. However, the punishment provided for these crimes seems not proportional or it is more aggravated. On one hand plan and preparation by itself is broad concept and even difficult to fix or determine the exact starting point to say something planned or started preparation. As result this may open a wide road for executive to prosecute certain persons for their political or other motive and this may hamper the human rights of the subjects. On the other hand punishing a person for a mere plan or preparation for seven year or twelve years rigorous punishment respectively is not seems proportional.

Another category of inchoate offences criminalised under this proclamation are; intimidates to commit any of the terrorist acts,³¹ committing conspiracy to carry out or cause to carry out terrorist acts,³² knowingly supports or assists directly or indirectly the commission of a terrorist act or with the intent to support a terrorist Organisation by Preparing, providing or hands over documents or information, by Providing technical, counselling or professional support, Prepares, makes available, by providing, or selling any explosive, dynamite, inflammable

²⁹<https://www.justia.com/crimina/offenses/inchoate-crimes/>,

³⁰See Articles 5, 6, 7, 9 and 10 of Ethiopian PSTCP.

³¹See Article 5.

³²See Article 7.

substances, firearms or other lethal weapons or poisonous substances; or by Providing training or recruits members,³³ and also intentional inciting another person by inducing, promises, money, gift, threat or any other similar means shall be punishable with a punishment provided for the offence provided that the crime was attempted or committed.³⁴ In short it criminalised inchoate offences, such as; intimidation, plan, preparation, conspiracy, rendering supports or assists and incitement for the commission of a terrorist act.

Sub-Ordinate Acts That Constitute Terrorism Crimes

On this Article when an author saying Sub-ordinate acts that constitute terrorism crimes; it is to mean acts which are by it considered neither terrorist act nor inchoate crimes. Rather this category of offences was considered as terrorism crimes by the reason of its disturbing community and may pave the way for terrorist acts. The types of acts considered as this category of acts are:

1. False Threat of Terrorist Act

Article 8 of the Ethiopian PSTC proclamation reads: *Whosoever while knowing that it is false, causes shock, fear, anxiety, or worry in the public or in the society or certain section of the society by expressing through any means or performing false act that a terrorist act has been or is being or will be committed shall be punishable with simple imprisonment or if the act caused damage rigorous imprisonment from three years to ten years*

2. Possessing Property Associated with Terrorism Crime

Article 11 of the Ethiopian PSTC proclamation reads:

1/ Whosoever, knowing that the property is associated with terrorism crime, is found in possession of such property or makes use of it shall, without prejudice to the confiscation of the property, be punishable with rigorous imprisonment from three years to ten years.

2/ Where they provided under sub-article (1) of this articles committed by negligence; the punishment shall be rigorous imprisonment from one year to three years.

3. Crimes Committed Against Whistleblowers and Witnesses

Article 12 of the Ethiopian PSTC proclamation reads:

1/ Whosoever interferes to prevent a person who may be whistle-blower or witness or who has evidence of crime provided under this proclamation from giving information or evidence to justice authorities or being a witness in an investigation or judicial proceeding by using sabotage, violence, threat or by extending undue advantage, by inducements or getting involved in any other way against such person or a person who has close relationship with him shall be punished with rigorous imprisonment from three years to seven years.

2/ Whosoever assaults, threats, suppresses or harms any person or a person who has close relationship with such person, who gave information or evidence to justice authorities or appeared as witness in an investigation or judicial proceeding of

³³See Article 9.

³⁴See Article 10.

crime provided for in this Proclamation shall be punishable with rigorous imprisonment from three years to seven years.

3/ Where the crime mentioned in Sub-article (1) or (2) of this Article entailed grave harm to the body or health of the victim or his death, the relevant laws related to these crimes shall apply concurrently.

4. Crimes Committed Against the Judiciary and Executive Organs

Article 13 of the Ethiopian PSTC proclamation reads:

1/ Whosoever obstructs the functions of a person who is engaged in the prevention, investigation, prosecution or judicial proceeding proper to his office concerning crimes provided for in this Proclamation or prevents him from carrying out his duties by using intimidation, coercion, violence or any other means of intimidation against him or a person who has close relationship with him or causing the performance or omission of an act in violation of his duty, shall be punishable with rigorous imprisonment from three years to seven years.

2/ Whosoever causes bodily injury, threatens or use violence against an individual who assists a person engaged in the prevention, investigation, prosecution or judicial proceedings of crime provided under this Proclamation shall be punishable with rigorous imprisonment from three years to seven years.

3/ Where the crimes provided for under Sub-article (1) and (2) of this Article entailed grave harm to the body or health of the victim or his death, the relevant laws related to these crimes shall apply concurrently.

5. Crimes Committed By Destroying Evidence

Article 14 of the Ethiopian PSTC proclamation reads:

1/ Whosoever destroys, damage, or hide any evidence to be used in the course of investigation or judicial proceedings of crime provided under this proclamation shall be punishable with one year to three years rigorous imprisonment.

2/ Where the acts provided for under Sub-article (1) of this Article committed in grave manner or where the evidence considered as substantial in the investigation or judicial proceeding of terrorism crime and to be used to prove such crime, the punishment shall be rigorous imprisonment from three years to ten years.

6. Failure to Notify and Aiding a Suspect

Article 8 of the Ethiopian PSTC proclamation reads:

1/ Whosoever without justifiable cause fails to immediately notify to the police or appropriate law enforcement organ knowing that any act provided for in Articles 3, 6, 7, 9 to 10 of this Proclamation is about to be committed, being committed or committed or the identity of the suspect shall be punishable with rigorous imprisonment from one year to three years.

2/ Where the failure to notify is grave and in particular where the notification made in advance could have prevented or contained the commission of the crime, the punishment shall be rigorous imprisonment from three years to seven years.

3/ Whosoever knowingly saves from prosecution, a person who is suspected or accused of committing one of the crimes provided for under Sub-article (1) of this Article whether by warning him or hiding him, by concealing or destroying the traces, by misleading the investigation, or in any other way, shall be punished with rigorous imprisonment from three years to five years.

4/ Notwithstanding the fact that it has been possible to prevent the crime or to cause the punishment of a suspect by successfully carrying out investigation or to arrest the suspect the provisions of (1), (2) and (3) of this Article shall be applicable.

5/ Sub-article (1) of this Article shall not be applicable to a person who has a legal right or obligation not to disclose confidential information. Provided, however, a person who has the information that a crime is about to be committed or is being committed shall not raise such right or obligation as a defence.

From the above provision we can understand that, since terrorism is illegal criminal act which injures purpose of public safety and disturbs international community and which is manifested in the form of violence or threat of violence against the natural or legal persons; destruction (damage) or the threat of destruction (damage) of the property and other material objects, endanger people's lives; causing significant property damage or approach of other socially dangerous consequences; encroachment on life of a state or public figure,³⁵ an Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020 criminalised subordinates acts to terrorist acts as terrorism crimes, such as; false threat of terrorist act, possessing property associated with terrorism crime, crimes committed against whistleblowers and witnesses, crimes committed against the judiciary and executive organs, crimes committed by destroying evidence and failure to notify and aiding a suspect.³⁶ This is basically to prevent; citizens, state or other political institution from such a terrorist activity or from attack targeted on a representative of a foreign state or an employee of an international organisation, which are having the use of international protection, as well as other generally recognised international legal instruments aimed at fighting the terrorism.

Participation of Juridical Person in the Commission of a Terrorism Crime

Recently, developments have been made in criminal law with respect to wrong doings by legal persons. In law, personality is manifested not only in natural persons but also in juridical persons. The application of the doctrine that juridical persons are legal persons separate from the individual persons involved in its operations, is that a company can commit many crimes of strict liability. In relation to that Article 34 stipulates as:³⁷ A juridical person other than, the administrative bodies of the State is punishable as a principal criminal, an instigator or an accomplice where it is expressly provided by law. A juridical person shall be deemed to have, committed a crime and punished as such where one of its officials or employees committed a crime as principal criminal, an instigator or an accomplice in connection with the activity of the juridical person with the intent of promoting its interest by an unlawful means or by violating its legal duty or by unduly using the juridical person as means.

The Juridical person is punishable with fine under sub-article (3) or sub-article (4) of Article 90 of this Code; and, where necessary, an additional penalty may be imposed to suspend, close or wind up the juridical person.

³⁵Baisagatova, Kemelbekov, Smagulova & Kozhamberdiyeva (2016) at 5905.

³⁶See Article 8, 11, 12, 13, 14 and 15.

³⁷The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Article 34

And accordingly, when we look Article 90(3 and 4) it provides fifty thousand Ethiopian birr as maximum limit of punishment. However when we look Article 17 and 18 of the proclamation it increased punishment for juridical person which have participated in the terrorism crimes in whatever capacity shall be punished up to one million five hundred thousand Ethiopian birr depending on the nature or seriousness of the act. The basic reason was aimed at preventing and controlling the crime by enabling the security forces to take strong precautionary and preparatory acts centred at the nature of the crime while ensuring perpetrators received penalty proportional to their acts.

Counter-Terrorism Measures Vis a Vis Human Right Approach

Human right approach is also called right based approach. The rights-based approach is a 'conceptual framework,' which means that its proponents work to change the context within which decisions are made. This approach is based on international human rights standards and is directed towards promoting, enforcing and protecting the presence of human rights.³⁸ In theory, the rights-based approach aims to integrate established human rights standards into the discussions, policies, conventions, and processes that address sustainable development.³⁹

According to 2021 Report of the Secretary-General on Terrorism and human rights, Acts of terrorism have a detrimental effect on the full enjoyment of human rights and fundamental freedoms, destabilise Governments, jeopardise peace and security, undermine democracy, good governance and civil society, threaten social and economic development, and disproportionately affect specific groups, including women and children.⁴⁰ In some cases, women and children endure most of the violence inflicted by terrorist groups, including a high number of violations involving sexual violence, including rape and forced marriage.⁴¹ Indeed, The Security Council, in its resolution 1373 (2001), empowered States to take a number of measures to prevent and counter terrorism. But in its subsequent resolutions the Security Council harnessed and restricted this power by obliging them to act in light with human right approach.⁴² On these the Council stressed that States must ensure that any measures taken to combat terrorism comply with all of their obligations under international law and adopt such measures in accordance with international law, in particular international human rights law,

³⁸Choondassery (2017) at 17-23.

³⁹Jonson (2010). The atrocities of World War II put an end to the traditional view that states have full liberty to decide the treatment of their own citizens. The signing of the Charter of the United Nations (UN) on 26 June 1945 brought human rights within the sphere of international law. The Charter contains a number of articles specifically referring to human rights. Indeed all UN members agreed to take measures are there really such large number of articles in UN Charter which deals with human rights protection to protect human rights. subsequent to UN Charter the multiple of human right instruments were adopted by international states and obliged member states to adopt human right approach on their affairs based on their respective treaties.

⁴⁰Report of the Secretary-General on Terrorism and human rights, Seventy-sixth session, Item 75 (b) of the provisional agenda.

⁴¹Ibid

⁴²Ibid

refugee law and humanitarian law.⁴³ The Security Council also directed states that, the effective counter terrorism measures must be in complementary to the respect for human rights, fundamental freedoms and the rule of law are, mutually reinforcing and an essential part of a successful counter -terrorism effort.⁴⁴ The central idea of these Security Council resolutions were that, state must use balanced approach, on one hand it must take counter measures on terrorism to prevent citizens from violent acts and on other side such counter measure on terrorism must not violate rights citizens, recognised under international human right and related instruments. In order to fulfil their obligations under human rights law to protect the life and security of individuals under their jurisdiction, States have a right and a duty to take effective counter-terrorism measures, to prevent and deter future terrorist attacks and to prosecute those that are responsible for carrying out such acts.⁴⁵ At the same time, the countering of terrorism poses grave challenges to the protection and promotion of human rights.⁴⁶ So, Effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing objectives which must be pursued together as part of States' duty to protect individuals within their jurisdiction.

When we look the Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation, it points Ethiopia to prevent and suppress terrorist acts, in cooperation with countries having Anti-Terrorism it is believed to be necessary as their objectives and to implement International treaties to which Ethiopia is a party and accepted in particular Treaties and resolutions adopted by the United Nations and African Union.⁴⁷ Furthermore, the proclamation provided replacing the Anti-Terrorism Proclamation No. 652/2009, a Proclamation were enacted to prevent and suppress terrorism, has substantive and enforcement loopholes which produced a negative effect on the rights and freedoms of citizens, with a law that enables adequately to protect rights and freedoms of individuals and prevalence of accountability of law enforcement bodies, as one of its core objective.⁴⁸ From these stipulations it seems observable that, the current Ethiopian counter- terrorism law planned to adopt human right approach. This is clearly observed as on one hand proclamation empowers state to cooperate with other state to take counter measure over terrorist act while on the other side it obliges state to act in light with Treaties and resolutions adopted by the United Nations and African Union⁴⁹ and avoid the negative effect of counter- terrorist measure on the rights and freedoms of citizens. Thus, at least on theoretical level Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation recognised human right approach as its basic

⁴³Ibid, See Security Council resolutions 1456 (2003), annex, para. 6, 1535 (2004), and 1624 (2005), para. 4

⁴⁴See Security Council resolutions 2129 (2013), 2170 (2014), 2178 (2014), 2395 (2017) and 2396 (2017).

⁴⁵Office of the United Nations High Commissioner for Human Rights on Human Rights, Terrorism and Counter-terrorism (Fact Sheet No. 32) at 7.

⁴⁶Ibid. at 8

⁴⁷See Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020, Para. 3 of preamble.

⁴⁸Ibid, see Para. 4 of preamble

⁴⁹This may also include resolutions passed by Security Council, like cited on above notes.

principle which has to be observed during enforcement of counter-terrorist measure.

However, some of the substantive part of the proclamation deviates from afore mentioned principles incorporated under preamble of the same proclamation. For example Art 3 sub Article 2 of the proclamation provides death penalty as one of punishment which can be provided for an offender of terrorism crime. Even though Ethiopia does not adopt an ICCPR second optional protocol on abolition of death penalty,⁵⁰ international trend moved to abolish death penalty. For example, Article X(2) of Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism provides that, under no circumstances may a person convicted of terrorist activities be sentenced to the death penalty; in the event of such a sentence being imposed, it may not be carried out.⁵¹ In addition as discussed in detail on above at ch. 3.1, the proclamation defined the word terrorism in circular manner as “definition of *Terrorist Acts* that “Whosoever, with the intention of advancing political, religious or ideological causes for *terrorising*...” This definition clearly contradicts with Article 15 ICCPR⁵² which provides the requirements of nullum crimen sine lege (all elements of a crime must be defined by the law), nulla poena sine lege (all punishments must be defined by the law), accessibility (the law must be publicly available), precision (the line between permitted and prohibited conduct must be clear), and foreseeability (the law must enable an individual to anticipate the consequences of his or her conduct). This definition may lead someone wrong interpretation and this may highly endanger a fundamental/ human rights of suspect.

Conclusion

Since terrorism has a direct impact on the enjoyment of human rights, which is why, under international law, States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. Effective implementation of the international legal framework requires states to make every effort to prevent terrorist attacks via legislation, regulations and investigation techniques have to reflect a proactive approach, while ensuring respect for human rights and fundamental freedoms. The UN General Assembly and securitycouncil empowered States to take measures to counter terrorism and violent extremism conducive to terrorism and to preserve national security were in compliance with the obligations of States under international law, in particular international human rights law, international refugee law and international humanitarian law. States have taken considerable steps to hold perpetrators of terrorism -related offences to account. Since there was no universally accepted definition for the term terrorism state has

⁵⁰United Nation Human Right Treaty Bodies Data Base, Ratification status of Ethiopia.

⁵¹Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism adopted by the Committee of Ministers at its 804th meeting (11 July 2002), X(2)

⁵²Ethiopia ratified and adopted international convention on civil and political rights on 11 Jan 1994. United Nation Human Right Treaty Bodies Data Base, Ratification status of Ethiopia, <http://treaties.un.org>

a mandate to enact its own legislation that define terrorism, provides counter terrorism measures and related issues in detail. However, in enacting legislation states has obligation to consider two basic international obligations. In first place the laws and measures to take counter terrorist measures must conforms to the principles of legality that requires legal certainty and legality require that criminal laws specify precisely the types of behaviour and conduct that constitute a criminal offence, as well as the consequences of committing such an offence. In second place, all measures taken to combat terrorism must themselves also comply with States obligations under international law; in particular international human rights, refugee and humanitarian law.

Even though Ethiopia has criminal laws which criminalise acts which are danger to the peace, security and development of the country and a serious threat to the peace and security of the world at large, the comprehensive, special and independent counter terrorism law called “Anti-Terrorism Proclamation No.652/2009” adopted and entered into force on 28th day of August, 2009. Furthermore Ethiopian Government recently adopted “Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020” with objective to replace the Anti -Terrorism Proclamation No. 652/2009, a Proclamation with motive to prevent and suppress terrorism, to fill a number of substantive and enforcement loopholes which produced a negative effect on the rights and freedoms of citizens and to adopt a law that enables adequate protection of rights and freedoms of individuals as well as to bring prevalence of accountability of law enforcement bodies. 2020 counter terrorism legislation defined acts that constitute terrorism such as completed acts, attempts, inchoate terrorist offences, subsidiary and accessory after facts in relation to the commission of terrorist acts. In addition this new proclamation tried to adopt human right based approach in better manner than its predecessors. But this proclamation is not free from legal loopholes and criticisms. On one hand, definition of terrorist act provided under this proclamation is circular, lacks clarity and it is open for another controversy and difficulty for application regarding on the concept of terrorising. To avoid such loopholes and similar problem, Ethiopia should review its counter - terrorism legislation in light with the requirement of the principle of legality. On other hand, even though new proclaimed come in to force to the law address some of the gaps in the previous Anti-Terrorism Proclamation in conformity with the country’s obligation under international law, particularly the Charter of the United Nations, human rights law, and international humanitarian law and this was also observed from the preamble from the proclamation, the substantive part of the proclamation deviates from international human right instruments; for example, it provided death penalty for the crime of terrorism crime, provided disproportional punishments, recognised counter- terrorist measures which are not least restrictive to human rights (permission of sudden investigation, interrogation, interception, surveillance and others without court warrant). So, it is recommendable that Ethiopia must revise its proclamation in conformity with international human and humanitarian instruments, constitution and at least the general practices of democratic societies accepted/adopted as international custom.

References

- African Union High-Level Inter-Governmental Meeting On The Prevention And Combating Of Terrorism In Africa Algiers, Algeria 11-14 September 2002. <https://www.peaceau.org/uploads/au-anti-terrorism-plan-of-action.pdf>
- Asgedom. L.D. (2020), Counselor of the Federal Democratic Republic of Ethiopia to the Six Committee on Measures, 6 October 2020. https://www.un.org/en/ga/sixth/75/pdfs/statements/int_terrorism/02mtg_ethiopia.pdf
- Baisagatova, D.B., Kemelbekoy. S.T., Smagulova, D.A. & A.S. Kozhamberdiyeva. (2016). 'Correlation of concepts "extremism" and "terrorism" in countering the financing of terrorism and extremism' in *International Journal of Environmental & Science Education* 11(13): 5903-5915.
- Brustolin, V. (2019). 'Criteria For Defining War, Terrorism, And Guerrilla Warfare Based on Clausewitz's Concepts Of The Nature And Essence Of War' in *R. Esc. Guerra Nav.* 25(3):643-673. DOI 10.21544/1809-3191.v25n3.p643-672.
- Burniske, J., Modirzadeh, N. & D. Lewis (2014). 'Counter-terrorism laws and regulations: what aid agencies need to know' in *Humanitarian Practice Network (HPN)* 79:1-15.
- Cassese, A. (2008). *International Criminal Law*. Oxford: Oxford University Press.
- Choondassery, Y. (2017). 'Rights Based Approach: The Hub of Sustainable Development', in *Discourse and Communication for Sustainable Education* 8(2):17-23.
- Discourse and Communication for Sustainable Education,
Discourse and Communication for Sustainable Education,
- Jackson, R. (2005). *Writing the War on Terrorism: Language, Politics and Counter-Terrorism*. Manchester, UK: Manchester University Press,
- Jonson, U. (2010). A human rights-based approach to development and programming based on capacity Development. <https://hd-ca.org/jonsson>
- Oluwasey, B.R. (2020). "An Attempt to define Jihad: Terrorism as a Focal Point" in *A Journal of the African Centre for the Study and Research on Terrorism* 9(1):1-14.
- Richards, A. (2015). *Conceptualising Terrorism*. Oxford: Oxford University Press.
- Rosand, E. Fink, N.C. & J. Ipe (2009). *Countering Terrorism in South Asia: Strengthening Multilateral Engagement*. New York: International Peace Institute.
- Schmid, A.P. (Ed.). (2011). *Handbook of Terrorism Research*. London: Routledge.
- Stewart, D.P. (2018). *Terrorism And Human Rights - The Perspective of International Law. Policy paper 2018-4*. The Middle East Institute, Washington, D.C.
- Teklu, A.Y. (2014). *Striking the Balance between Conforming to Human Rights Standards and Enacting Anti-terrorism Legislation: A Challenge of the 21st Century (An Ethiopian Perspective)*. A thesis submitted in partial fulfilment of the requirements of the University of Lincoln for the degree of Doctor of Philosophy
- vol. 8, no. 2, pp. 17ñ23, 2017
- vol. 8, no. 2, pp. 17ñ23, 2017
- Worcester, M. (2015). *Combating Terrorism in Africa*. Berlin: ISPSW .
- Workneh, T.W. (2019). 'Counter-terrorism in Ethiopia: manufacturing insecurity, monopolizing speech' in *Internet Policy Review* 8(1):1-22. <http://dx.doi.org/10.14763/2019.1.1394>.

Legal Instruments

Charter of the United Nations. 26.6.1945.

- Constitution of Federal Democratic Republic of Ethiopia proclamation No. 1/1995, Negarit Gazette, 21.8.1995.
- Criminal code of Federal Democratic Republic of Ethiopia proclamation No_414/2004, Negarit Gazette, 2005.
- Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020, Negarit Gazette, 25.3.2020.
- Ethiopian Anti-Terrorism Proclamation No.652/2009, Negarit Gazette, 28.8. 2009.
- International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by United Nation General Assembly resolution 2200A(XXI) of 16 December 1966. Entered into force 23.3.1976.
- United States, National Security Council, “National strategy for countering domestic terrorism”, June 2021

Other Sources/Materials

- Communication SAU 12/2020. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25726>
- Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism adopted by the Committee of Ministers at its 804th meeting (11 July 2002) and Counter-terrorism (Fact Sheet No. 32), Palais des Nations, Geneva. Switzerland
- Office of the United Nations High Commissioner for Human Rights on Human Rights, Terrorism and Counter-terrorism,(Fact Sheet No. 32) Palais des Nations, Geneva, Switzerland
- Report of the Secretary-General on Terrorism and human rights, Seventy-sixth session, Item 75 (b) of the provisional agenda (2021). Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, A/76/273,
- United Nation Human Right Treaty Bodies Data Base, Ratification status of Ethiopia. <http://treaties.un.org>
- United Nations Economic and Social Council, Report of the Secretary-General, Technical assistance in implementing the international conventions and protocols related to terrorism, Integration and coordination of efforts by the United Nations Office on Drugs and Crime and by Member States in the field of crime prevention and criminal justice: ratification and implementation of the international instruments to prevent and combat terrorism Commission on Crime Prevention and Criminal Justice, Thirtieth session Vienna, 17–21 May 2021, Item 6 (c) of the provisional agenda,

United Nation Security Council (UNSC) Resolutions

- UNSC resolution 1267 (1999).
- UNSC resolution 1373 (2001) [adopted by the Security Council at its 4385th meeting, on 28 September 2001].
- UNSC resolution 1566 (2004) [adopted by the Security Council at its 5053rd meeting, on 8 October 2004].
- UNSC resolution 1624 (2005).
- UNSC resolution 2341 (2017) on terrorist threats against critical infrastructure.

UNSC resolution 2347 (2017) on the destruction of cultural heritage and the smuggling of cultural property by terrorist groups in situations of armed conflict.

UNSC resolution 2354 (2017, on countering terrorist narratives.

UNSC resolution 2368 (2017) reaffirming the sanctions regime against Islamic State in Iraq and the Levant (ISIL) (Da'esh).

UNSC resolution 2370 (2017) on preventing terrorists from acquiring weapons.

UNSC resolution 2396 (2017) on terrorist fighters returning and relocating to their countries of origin or nationality, or to third countries.

UNSC resolution 2462 (2019) on threats to international peace and security caused by terrorist acts and preventing and combating the financing of terrorism.

UNSC resolution 2467 (2019) on women and peace and security and sexual violence in conflict.

UNSC resolution 2482 (2019) on threats to international peace and security.