

EXPERT'S DECLARATION

I. INTRODUCTION

1. This Expert Declaration is brought under the *actio popularis* principle previously recognized by the African Commission on Human and Peoples' Rights ("Commission") and is intended to assist and support the Commission in its consideration of this case.¹

Ethiopia enacted Proclamation 652/2009 ("Anti-Terror Statute"), in August 2009, to combat the spread of domestic terrorism. The Anti-Terror Statute defines "terrorist acts" as actions done by:

"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."²

These so-called actions range from causing serious damage to property to interference or disruption of any public service.

2. The purpose of this Expert Declaration is to bring to the attention of the Commission concerns that the current Anti-Terror Statute violates the African Charter on Human and Peoples' Rights ("African Charter"). Specifically, the imprecise and vague definition of "terrorist acts" presented by the Anti-Terror Statute is inappropriately broad such that individuals are not provided with fair notice that their actions could be considered terrorist acts. Additionally, it violates the principle of legality, which ensures fairness to the accused, prevent state arbitrariness and ensure effective deterrence in criminal law.³

¹ See for example *301/05 Haregewoin Gebre-Sellaise & IHRDA (on behalf of former Dergue officials) v. Ethiopia*, paras. 61-66.

² Anti-Terrorism Proclamation No. 652/2009, Article 3 No (1) – (7).

³ African Charter on Human and Peoples' Rights (Banjul Charter) art. 7(2), June 27, 1981, 1520 U.N.T.S. 217.

II. BACKGROUND

3. Since 2008, the Government of Ethiopia has implemented a proselytization project aimed at establishing Ahabash as the one state-sanctioned sect of Islam.⁴ This program (*Ahabashization*) has generated significant conflict between the Ethiopian Government and Muslim communities. In July 2011, the government publicly dedicated the Ahabash sect as the officially recognized “traditional Ethiopian Islam” (“2011 Proclamation”).⁵ Following this proclamation, Ethiopian Muslims who failed to pray with a State-appointed Imam, led a congregation without permission from the government, or engaged in religious activities outside the purview of the Ahabash sect were seen as acting in direct violation of Ethiopian law.⁶
4. To support *Ahabashization*, the 2011 Proclamation established mandatory training programs where Lebanese and Ethiopian Ahabash preachers instructed Ethiopian Imams.⁷ An estimated 16,000 to 18,000 religious scholars and leaders were forced to participate in these trainings without their consent and faced retaliation, such as government-imposed economic and social hardships, for noncompliance.⁸ Those who continued to practice under a different sect were labeled as “Salafi / Wahabi” or “Ikhwan” – extremist and terrorist disbelievers prone to violence.⁹ Refusal of citizens to convert triggered government sponsored punishment, or “pinching”, justified under the Anti-Terror

⁴ Haggai Erlich, *Islam and Christianity in the Horn of Africa: Somalia, Ethiopia, Sudan*, P.178 (Boulder, CO and London, UK: Lynne Rienner, 2010).

⁵ The authors of this Expert Declaration have had the benefit of reviewing the submissions made by the Applicants on the Merits (“Submission on the Merits”). Submission on the Merits (Pg 15).

⁶ Ibid.

⁷ Ibid.

⁸ On Abbink, *Religious Freedom and the Political Order: the Ethiopian ‘Secular State’ and the Containment of Muslim Identity Politics*, 8 *Journal of Eastern African Studies* 353 (2014) See also Submission on the Merits (Pg 20).

⁹ Submission on the Merits (Pg 15).

Statute.¹⁰ These activities included heavily regulating religious expression in public spaces and arresting, torturing and prosecuting those who questioned the legality or constitutionality of the government's actions.¹¹

5. Specifically, the government dismissed numerous scholars, teachers and mosque administrators from their private and public sector jobs, expelled Imams and Madque leaders in a purge-like sweep and arrested two hundred religious scholars and leaders.¹² Organizations such as Amnesty International and Human Rights Watch have observed excessive use of force by police ranging from seeing blood-soaked victims on the roadsides outside mosques to witnessing male and female prisoners being loaded into separate trucks, many with broken bones and other serious injuries¹³ One arrestee, Ahmed Mustefe Habib, recalls being punched, kicked, choked, and beaten with the butt of officers' rifles as well as being threatened with sharp metal and glass objects during his arrest and interrogation.¹⁴
6. *Ahbashization* and the subsequent persecution of non-conforming Muslims was poorly received by the Ethiopian Islamic community. Opponents began staging regular, peaceful protests following Friday prayers.¹⁵ By December 2011, members of the Muslim community elected 17 scholars and leaders ("Negotiation Committee") to represent their interests in negotiations with the government.¹⁶ Beginning in January 2012, the Negotiation Committee met with the Muslim community and government officials to

¹⁰ Submission on the Merits (Pg 21).

¹¹ Submission on the Merits (Pg 15).

¹² Submission on the Merits (Pg 20).

¹³ Submission on the Merits (Pg 51).

¹⁴ Submission on the Merits (Pg 52).

¹⁵ Submission on the Merits (Pg 25).

¹⁶ Ibid.

negotiate a solution.¹⁷ While negotiations were initially productive, the government later adopted a more hardline approach by arresting and intimidating community members. In April 2012, late Prime Minister Meles Zenawi characterized the protesters as “cells in a global network of terrorism” bent on overthrowing the government and establishing an Islamic state.¹⁸ Hostilities continued to escalate in July 2012, when 1,000 protesters were arrested and reports of excessive use of force, torture, beatings and mistreatment of detainees increased.¹⁹ Individuals who were detained for prolonged periods of time have reported instances of physical and psychological torture including being severely and repeatedly beaten until fainting, being forced to stand for long periods of time, forced to do sit-ups, placed in solitary confinement, denied food, and having their families threatened.²⁰

¹⁷ Ibid.

¹⁸ Submission on the Merits (Pg 26).

¹⁹ Ibid.

²⁰ Submission on the Merits (Pg 60).

III. OVERLY BROAD DEFINITION OF TERRORISM

7. Under international law, there are certain internationally accepted elements that help accurately define terrorism and terrorist acts. Most counterterrorism laws make reference to one or more of the following four general categories of harm: (1) Serious physical harm to a person or persons, in other words, killing or injuring one or more people, or damaging public health more broadly; (2) Serious property damage, particularly damage that is likely to cause serious harm to people; (3) Harm to vital infrastructure, such as power, food, or water supplies; medical services; or monetary and electronic systems; and, most broadly; and (4) Harm to national security, defense, or ‘public order.’²¹ In addition to these categories of harm, accepted definitions of terrorism should be narrowly drawn with a purpose or intent to influence or coerce the government or to intimidate, panic, or terrorize the public or a section of the public.²²
8. Since the scope of “terrorist acts” in Article 3 of the Anti-Terror Statute is overly broad, the Anti-Terror Statute violates international best practices and standards and is defective on its face. The text of Article 3 of the Anti-Terror Statute lacks the requisite specificity found in internationally accepted counterterrorism statutes. It is in sharp contrast to the relative specificity found in the International Convention for the Suppression of Terrorist Bombings as well as the International Convention for the Suppression of the Financing of Terrorism.²³ The imprecision found in the Anti-Terror Statute permits deviation from its

²¹ Human Rights Watch, *In the Name of Security: Counterterrorism Laws Worldwide since September 11*. II. Definitions of Terrorism and Terrorist Acts, pg. 18, (June 2012), available at

<https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11>

²² Ibid.

²³ International Convention for the Suppression of Terrorist Bombings, available at

<https://treaties.un.org/doc/db/terrorism/english-18-9.pdf>.

International Convention for the Suppression of the Financing of Terrorism, available at

<https://treaties.un.org/doc/db/terrorism/english-18-11.pdf>

intended purpose and instead it can be used as a pretext to prevent parts of the population from enjoying their protected freedoms.

9. In particular, Article 3 of the Anti-Terror Statute is defective for several reasons. Firstly, though Article 3(1) of the Anti-Terror Statute requires that the terrorist acts “cause a death or serious bodily injury,” subsections (2), (4), (5), (6) and (7) expand the definition to include serious risk of safety or health of the public, serious damage to property, damage to natural resources, and serious interference or disruption of *any* public service.²⁴ According to the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms, compliance with all human rights while combatting terrorism is the best practice since it is not only “a legal obligation of State, but it is also an indispensable part of a successful strategy to combat terrorism”.²⁵ The definition under Article 3(6) of the Anti-Terror Statute is so broad that a nonviolent political protest that disrupts traffic may be labeled a “terrorist act,” and individuals expressing support for a peaceful political protest may be deemed terrorists. Furthermore, absent any link to acts designed to promote terror in the civilian population, the phrase ‘disruption of any public service’ is too imprecise to warrant criminal sanctions. This expansion allows for restrictions on freedom of association, religion, expression, and

²⁴ See Proclamation No. 652/2009, Article 3(1)-(7) (unofficial) 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, causes serious interference or disruption of any public service; or
- (7) threatens to commit any of the acts stipulated under sub-articles (1) to (6) of this Article;

²⁵ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), para. 12.

assembly – both criminalizing innocent acts as well as compromising citizens’ rights to due process.

10. Additionally, the overbroad application of the Anti-Terror Statute has violated the principle of legality. This principle requires that criminal law be formulated clearly and precisely such that individuals have notice as to what constitutes a crime. References to the principle of legality are found throughout the African Charter and similar provisions can be found in other international and regional instruments.²⁶
11. The principle of legality has been addressed in relation to the Anti-Terror Statute by the UN Human Rights Committee. States have the right and duty to protect individuals, both their citizens and others, from violence including terrorist attacks.²⁷ Individual rights may be limited only to protect certain enumerated purposes: national security, public order (*ordre public*), public health and morals and the rights and freedoms of others.²⁸ Thus, the UN Human Rights Committee has called on Ethiopia to ensure that its legislation constrains the definition of “terrorist acts” to such crimes as warranting the grave consequences associated with terrorism, provides citizens with adequate notices regarding illegal activities, and prevents the undue restriction of protected rights.²⁹
12. Ethiopia’s obligations under the International Convention of Civil and Political Rights (“ICCPR”) are discussed later but it is important to note that Article 15 of the ICCPR codifies the Principle of Legality. It requires that, for a conviction to be valid, the criminal offence with which the person is charged must have constituted a criminal

²⁶ See, e.g. African Charter Arts. 6, 7(2), 27. See also ICCPR art. 15; UDHR art. 2; ECHR art. 7; ACPHR art. 9; ArCHR art. 15.

²⁷ Office of the United Nations High Commissioner for Human Rights, *Human rights, terrorism and counter-terrorism*, (OHCHR, Fact Sheet No. 32, 2008).

²⁸ G.A. RES. 2200A (XXI), International Covenant on Civil and Political Rights, art. 19(3), (Dec. 16, 1966).

²⁹ Report of the Human Rights Committee, 102nd Session, CCPR/C/ETH/CO/1, para. 15.

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offence under national or international law at the time when the act was committed.³⁰ The practical implication of this is that ordinary crimes may not be re-characterized as terrorist acts under subsequent legislation to incur heavier penalties. The European Court of Human Rights has also indicated that the principle of legality implies certain qualitative requirements, including accessibility and foreseeability. An individual must know from the wording of the law what acts and omissions will make him or her criminally liable.³¹

³⁰ See G.A. Res. 217 (III)A, Universal Declaration of Human Rights (Dec. 10, 1948).

³¹ Environmental Defender Law Center, *Ethiopia's Anti-Terrorism Law: A Tool to Stifle Dissent*, (2015) (citing *SW and CR v UK* (1995) 21 EHRR 363, § 44-46; *Kafkaris v Cyprus*, at par. 140).

IV. ETHIOPIA'S EXISTING LEGAL OBLIGATIONS

13. Application of the Anti-Terror Statute is in direct conflict with Ethiopia's Constitution.

Whilst it is recognized that the Commission cannot make findings on the violation of constitutions *per se* it is submitted that the following analysis goes to support the weak standing the Anti-Terror State enjoys even when compared to Ethiopia's own constitution which Ethiopia is obliged to uphold. First, the Constitution's Preamble mandates that the State must respect citizens' fundamental freedoms and rights without any religious discrimination.³² Applying a law such that sanctions the persecution of an entire religious group directly violates this principle. Furthermore, Article 11 of the Constitution mandates that Ethiopia remain a secular state and that the government/state should not interfere with religious affairs.³³ The initial *Ahbashization* project contravenes this idea as the government employed its influence and resources to establish an "official" Islamic sect. The subsequent arrest, detention, and torture of numerous Ethiopian Muslims demonstrates direct government interference in religious affairs.

14. The application of the Anti-Terror Statute also violates Articles 10 and 14 of the Constitution. Article 10 states that human rights and freedoms are inviolable and inalienable and that said rights shall be respected by the government.³⁴ Article 14 elaborates in stating that every person has the right to life and the security of person and liberty.³⁵ As applied, the Anti-Terror Statute clearly violates these rights, described by the Constitution as inviolable and inalienable. Therefore, the application of the law is unjust. Furthermore, the statute violates citizens' specific rights against arbitrary arrest;

³² Constitution of the Federal Democratic Republic of Ethiopia Aug. 21, 1995, pmb1 ("Constitution").

³³ Constitution art. 11

³⁴ Constitution art. 10

³⁵ Constitution art. 14

protection from cruel, inhuman or degrading treatment or punishment; and to assemble and demonstrate peacefully.³⁶ Arresting individuals pursuant to a statute that fails to provide adequate notice as to what actions are illegal is arbitrary. The beating and torture of several individuals while detained is cruel, inhuman and degrading. The police force halting peaceful protests following Friday prayers is not justified under the caveats listed in Article 30(2) of the Constitution. Therefore, the actions taken by the police pursuant to the Anti-Terror Statute were in direct violation of the Constitution. Finally, Article 9 states that Ethiopia's Constitution is controlling law.³⁷ Any law, customary practice or decision of the State contravening the Constitution has no legal effect.³⁸ As stated, the actions taken by police and government agents in applying the Anti-Terror Statute directly violate citizens' constitutionally protected rights.

15. Apart from upholding its Constitution, Ethiopia is obligated to adhere to its adopted international human rights standards and instruments.³⁹ International best practice dictates that there should be no latitude for states to disregard human rights standards based on a subjective condemnation of terrorist activities. The Global Counter-Terrorism Strategy condemns all forms and manifestations of terrorism, but specifically states that "measures to ensure the respect for human rights for all and the rule of law are the fundamental basis for the fight against terrorism."⁴⁰ United Nations Security Council Resolution 2178 emphatically notes that "Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in

³⁶ Constitution arts. 17, 18, 30

³⁷ Constitution art. 9.

³⁸ Ibid.

³⁹ Constitution art. 13(2).

⁴⁰ G.A. Res. 60/288, Global Counter-Terrorism Strategy (Sep. 8, 2006).

particular international human rights law underscoring that respect for human rights, fundamental freedoms and the rule of law.⁴¹

16. The international human rights instruments and covenants adopted by Ethiopia include the African Charter, the ICCPR, and the Convention Against Torture (“CAT”). The current definition of terrorism under each of these instruments and covenants will be examined below.

17. States which are party to the Charter are obligated to “recognise the rights, duties, and freedoms in the Charter, and shall undertake to adopt legislative or other measures to give effect to them.”⁴² Ethiopia is bound to the African Charter but has failed to give effect to many of the rights, duties, and freedoms guaranteed by the Charter through the passage and application of its Anti-Terror Statute.⁴³

a. The Anti-Terror Statute’s broad definition of terrorism violates several sections of the Charter and has been applied in such a way as to sanction arbitrary arrests for non-terrorist acts and the subsequent torture and/or cruel, inhumane or degrading treatment of detainees.⁴⁴ In *Monim Elgak et al. v. Sudan* and *Interights et al. v. Mauritania*, the Commission held that limitations in accordance with Article 27 of the African Charter must meet four criteria:

(1) Prescribed by Law – The law must be sufficiently accessible to individuals and adequately precise to provide notice regarding what actions are proscribed and what rights are limited

⁴¹ S.C. Res. 2178 (Sep. 24, 2014).

⁴² See African Charter, art. 1 (unofficial translation) “The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.”

⁴³ Ibid. art. 2; Ethiopia Proclamation No. 652/2009 § (3).

⁴⁴ G.A. Res. 3452 Convention against Torture art. 1(1)-(2), 1987; African Charter on Human and Peoples’ Rights (Banjul Charter) art. 5.

- (2) Law Must Be Based on Legitimate Public Interest – The law must be made pursuant to an aim listed in the Charter, case law, or treaty
 - (3) Law Must Be Necessary – The law must be necessary to attain said legitimate aim or necessitated by a “pressing social need”
 - (4) Limitation must be Proportional to the Nature of the Objective – The law should not be more restrictive than what is necessary to achieve the legitimate aim.⁴⁵
- b. As already discussed, the Anti-Terror Statute fails to satisfy the first criterion as it fails to provide individuals with adequate notice that their actions would be considered criminal. It fails the second and third criteria as it violates Article 11 of the Ethiopian Constitution, mandating that the state not interfere in religious affairs.⁴⁶ Finally, the fourth criterion is clearly violated as the detention and torture of these citizens is grossly disproportionate to their actions.
- c. Additionally, specific components of the Anti-Terror Statute violate the African Charter. First, Article 6 of the African Charter states, “...no one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”⁴⁷ The Commission has previously found that a deprivation of liberty falling outside the strict confines of the law or for reasons that are not acceptable violate of Article 6 of the Charter.⁴⁸ However, under Article 3(6) of the Anti-Terror Statute, “whosoever or a group intending to advance a political, religious or ideological cause by coercing the

⁴⁵ Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan, African Commission on Human and Peoples’ Rights, Comm. No. 379/09 (2014) Par. 118; Interights, Institute for Human Rights and Development in Africa, and Association Mauritanienne des Droits de L’Homme v. Mauritania, Comm. No. 242/01 (2010) Par. 78.

⁴⁶ Constitution, art. 11(3). See also Articles 2 and 8 of the African Charter allowing for freedom of religion.

⁴⁷ African Charter on Human and Peoples’ Rights (Banjul Charter), art. 6.

⁴⁸ Elgak et al v. Sudan, para. 103 (decided Mar. 10 2015).

government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional, or economic or social institutions of the country... causes serious interference of any public service,” may be charged with committing an act of terrorism.⁴⁹ Not only is this definition of a terrorist act contrary to domestic and international best practices, but it fails to provide notice as to what constitutes a terrorist act. UN Security Council Resolution 1566 calls on States to refrain from, “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public,” when combatting international terrorism.⁵⁰

- d. Second, ongoing prosecution pursuant to Article 3(4)-(7) of the Anti-Terror Statute conflicts with Article 5 of the African Charter because those actions can be classified as torture.⁵¹ For example, under Article 3(4) of the Anti-Terror Statute, “whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country...causes serious damage to property,” can be convicted of committing a terrorist act.⁵² Article 3(5) outlines that “...causes of damage to [the] environment” can be classified as terrorist acts as well. In addition, an act of terrorism under the Anti-Terror Statute, “is punishable with rigorous imprisonment from 15 years to life

⁴⁹ Ethiopia Proclamation No. 652/2009 §3(6).

⁵⁰ S. C. Res. 1566 ¶3 (Oct. 8, 2004).

⁵¹ Ethiopia Proclamation No. 652/2009 §3(1)-(7).

⁵² Ibid. at §3(4).

- or with death.”⁵³ The Terrorist Bombing Convention is clear on this point. Article 5 of the Terrorist Bombing Convention specifically notes that the substantive terrorist offenses must be criminalized and that defendants cannot under any circumstances justify their conduct by recourse to “considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.”⁵⁴ Thus, the State is free to punish all terrorists using severe sanctions, but must do so with full respect for that defendant’s basic rights to non-arbitrary enforcement of the law. Even if the citizen’s actions could be characterized as criminal pursuant to Article 3(4) or 3(5) of the Anti-Terror Statute, punishments ranging from 15 years to life *or death*, are severely disproportionate to the alleged crime committed.⁵⁵ The disproportionate sentencing provision is both gravely unreasonable and a manifestation of torture, cruel and inhuman or degrading treatment. Article 5 of the African Charter expressly prohibits these forms of punishment.⁵⁶ Therefore, actions taken by the government under the authority of the Anti-Terror Statute violate international law
- e. Third, the Commission defines Article 7(2) of the African Charter as guaranteeing the right of individuals to be sentenced only for actions or omissions previously provided for by the law.⁵⁷ Article 7(2) of the African Charter also constitutes a general prohibition on retroactivity, ensuring that citizens are fully aware of the laws under

⁵³ Ibid. at §3(5).

⁵⁴ Newton, Michael, *A Legal Assessment of the Penal Law for Terrorism and its Financing*, para. 9, (June 2015). (citing International Convention for the Suppression of Terrorist Bombing, Art. 5, (1998)), *entered into force* (May 23, 2001) “Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.”

⁵⁵ Ethiopia Proclamation No. 652/2009 §3.

⁵⁶ African Charter, art. 5.

⁵⁷ Ibid. art. 7.

which they are living.⁵⁸ The overly broad definition of terrorism contained in the Anti-Terror Statute prevents citizens from evaluating the legality of their actions in clear violation of the African Charter.

18. Additionally, the definition of terrorism violates Articles 7 and 9(1) of the ICCPR and Articles 1 and 2 of the CAT.^{59, 60} Similar to Article 5 of the African Charter, Article 7 of the ICCPR and Article 2 of the CAT both prohibit any acts of torture under any circumstances.⁶¹ In addition, Article 9(1) of the ICCPR states that "...[n]o one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."⁶² The Anti-Terror statute is in direct violation of this article, just as it violates Article 6 of the African Charter. Therefore, as the application of the Anti-Terror Statute has led to consequences in direct violation of Ethiopia's international obligations, the current

A. International Definitions of Terrorism

19. While there is no international consensus on a single definition of terrorism, many countries' definitions feature common elements absent from the Anti-Terror Statute.

⁵⁸ *Jawara v. The Gambia*, para. 63.

⁵⁹ G.A. RES. 2200A (XXI), International Covenant on Civil and Political Rights, art. 7 (quote "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."); art. 9(1) (quote "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.") (Dec. 16, 1966)

⁶⁰ G.A. Res. 3452 Convention against Torture art. 1. ("For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.") (1987).

⁶¹ *Ibid.*

⁶² G.A. RES. 2200A (XXI), International Covenant on Civil and Political Rights art. 9(1), (Dec. 16, 1966).

These elements include acts of a transnational nature, congruence with regional and international best standards, and the protection of peaceful dissent.

20. At the international level, the Special Tribunal for Lebanon (“STL”) defines terrorism as:

“(a) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act; (b) with the intent to spread fear among the population (which would generally entail the creation of a public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; and (c) when the act involves a transnational element.”⁶³

Here, the conduct must either intend to cause fear or directly/indirectly coerce the government. This is distinguishable from the Anti-Terror Statute as the latter contains no intent requirement outside of advancing a political, religious or ideological cause.⁶⁴ The STL also mandates that the conduct involve a transnational element.⁶⁵ The Anti-Terror Statute incorporates no such distinction. Failure to do so may allow domestic conduct to be classified as terrorism.

21. At the domestic level at least 15 governments have enacted counterterrorism laws that specifically protect peaceful political dissent such as protests or advocacy. The Australian Criminal Code narrowly states that “advocating, protesting, dissenting or taking industrial action are not terrorist acts where the person doing the activity does not intend to cause serious harm to a person or create a serious risk to public safety.”⁶⁶

⁶³ Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, at 85., (2011).

⁶⁴ Ethiopia Proclamation No. 652/2009 § (3).

⁶⁵ STL-11-0/1, at 85., (2011).

⁶⁶ *In the Name of Security: Counterterrorism Laws Worldwide since September 11*. pg. 25, (June 2012). (citing Australia Criminal Code Act, No. 12, 1995, (5.3)(100.1)(3)).

22. The Canadian Criminal Code also includes a narrow provision mirroring the protection of peaceful political dissent seen in the Australian Criminal Code. Specifically, the Canadian Criminal Code protects the “serious interference with or serious disruption of an essential service, facility or system...as a result of advocacy, protest, dissent or stoppage of work that is not intended to...cause death or serious bodily harm to a person by the use of violence, endanger a person’s life, [or] cause a serious risk to the health or safety of the public or any segment of the public.”⁶⁷
23. The Anti-Terror Statute contains no such exemption and its broad application prohibiting “serious interference or disruption of *any* public service” does not limit offenses that are indisputably terrorist offenses.

B. Continental Definitions of Terrorism

24. The proposed statute of the African Court on Justice and Human Rights defines terrorism as:

“Any act which is a violation of the criminal laws of the African Union or a regional economic community recognized by the African Union, or by international law, and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to: (1) Intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon any particular standpoint, or to act according to certain principles; or (2) Disrupt any public service, the delivery of any essential service

⁶⁷ Canada Criminal Code, (83.01)(1)(b)(ii)(E).

to the public or to create a public emergency; or (3) Create general insurrection in a State.”⁶⁸

25. The limits placed on this definition are largely grounded in customary domestic and international law.⁶⁹ Here, intent is also a major limiting factor as actors must intend for the conduct to create fear, or compel government or public action, to be classified as terrorism.⁷⁰ The higher standard placed on the disruption of public service is also distinguishable from that in the Anti-Terror Statute.⁷¹ The Anti-Terror Statute is not read in conjunction with criminal laws of the African Union or regional economic community recognized by the African Union or by international law, expanding its reach past regional and international best practices.⁷²

26. African continental norms mandate a narrow definition of “public services” for their disruption to be considered a terrorist act. Out of 10 anti-terrorism laws banning the disruption of public services (nine national laws⁷³, and the African Union Model Anti-Terrorism Law⁷⁴), eight restrict covered services. The AU Model Anti-Terrorism law⁷⁵ mirrors the definitions of “disruption of services” in four other states⁷⁶, which cover the provision of services directly related to communication infrastructure, banking and

⁶⁸ Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, Art. 28(G)(A), 2014.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, Ethiopia Proclamation No. 652/2009 § (3).

⁷² Ethiopia Proclamation No. 652/2009 § (3).

⁷³ Ghana Anti-Terrorism Act, 2008 Act 762 (2)(g), Kenya Prevention of Terrorism Bill, 2012 Part 1 (2)(a)(viii)-(ix), Tanzania Prevention of Terrorism Act, 2002, Part II (3)(g)-(h), Zambia The Anti-Terrorism Act, No. 21 of 2007, Part 1 (2)(1)(h)-(i), South Africa Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33, 2004 (1)(xxv)(a)(vi), Mauritius Prevention of Terrorism Act, No.2 of 2002, (3)(2)(a)(viii), Nigeria Prevention of Terrorism Act, No. 10 of 2011, (1)(2)(c)(vii); Mauritania No. 35 of 2010, Art. 5 (3) (Sasho Todorov, trans. 2016); Namibia Prevention and Combating of Terrorism Act, No. 12, 2012, (1)(1)(a)(2).

⁷⁴ AU The African Model Anti-Terrorism Law §§ (4)(xxxix)(g)-(h), 2011.

⁷⁵ *Id.*

⁷⁶ Kenya Prevention of Terrorism Bill, 2012 Part 1 (2)(a)(viii)-(ix), South Africa Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33, 2004 (1)(xxv)(a)(vi), Tanzania Prevention of Terrorism Act, 2002, Part II (3) (g)-(h), Zambia The Anti-Terrorism Act, No. 21 of 2007, Part 1 (2)(1)(h)-(i).

financial services, utilities, transportation, or other key infrastructure. Of the other five, Ghana's definition is close to the Model Law, covering transportation, utilities, communications, and "other essential services".⁷⁷ Mauritius and Nigeria limit disruption to fundamental natural resources, such as water or electricity, and require the disruption's effect to endanger human life.⁷⁸ Mauritania bans disrupting "any public service", yet requires that the disruption either put human lives in danger or cause considerable economic or material loss.⁷⁹

27. Only Namibia bans the disruption of any public service without qualifiers,⁸⁰ like Ethiopia.⁸¹ However, Namibia bans the disruption of public services in the same series that bans the delivery of essential services and the creation of a public emergency.⁸² When read as a whole, the structure of this series points to a higher standard of "public services" than Ethiopia's Anti-Terror Statute permits.

28. Continental norms also require that conduct be intended to either disrupt the services, cause fear, or compel government action. Seven of the 10 anti-terrorism laws covering disruption require that the act be intended to cause the disruption.⁸³ Nigeria requires a higher standard – malice aforethought – meaning that not only must the act have been intended to cause the harm, it must have been planned in cold blood.⁸⁴ Four require the

⁷⁷ Ghana Anti-Terrorism Act, 2008 Act 762 (2)(g).

⁷⁸ Mauritius Prevention of Terrorism Act, No.2 of 2002, (3)(2)(a)(viii); Nigeria Prevention of Terrorism Act, No. 10 of 2011, (1)(2)(c)(vii).

⁷⁹ Mauritania No. 35 of 2010, Art. 5 (3) (Sasho Todorov, trans. 2016).

⁸⁰ Namibia Prevention and Combating of Terrorism Act, No. 12, 2012, (1)(1)(a)(2).

⁸¹ Ethiopia Proclamation No. 652/2009 § (3)(6).

⁸² Namibia Prevention and Combating of Terrorism Act, No. 12, 2012, (1)(1)(a)(2).

⁸³ Ghana Anti-Terrorism Act, 2008 Act 762 (2)(g); Kenya Prevention of Terrorism Bill, 2012 Part 1 (2)(b)(ii), Tanzania Prevention of Terrorism Act, 2002, Part II (3) (g)-(h), South Africa Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33, 2004 (1)(xxv)(a)(vi), Nigeria Prevention of Terrorism Act, No. 10 of 2011, (1)(2); Mauritania No. 35 of 2010, Art. 3 (Sasho Todorov, trans. 2016), Namibia Prevention and Combating of Terrorism Act, No. 12, 2012, (1)(1)(a)(2); AU The African Model Anti-Terrorism Law §§ (4)(xxxix)(g)-(h), 2011.

⁸⁴ Nigeria Prevention of Terrorism Act, No. 10 of 2011, (1)(2).

act to be intended to cause fear or compel the government to take, or refrain from doing, an act.⁸⁵ Ethiopia's law stands alone in failing to require the accused to intend to have either caused the disruption, or its effects.⁸⁶

29. Continental best practices prevent a nation from considering protests as terrorist acts solely on the basis of a disruption of services. Botswana strictly excludes lawful protests from being considered terrorist acts, unless they are performed in conjunction with espionage, sabotage, or terrorist activity.⁸⁷ While Botswana does not have a formal definition of terrorist activity, its next definition of "national threat" clearly points to violent, unlawful harm, and does not include disruption of services.⁸⁸ Five other nations protect the disruption of public services due to protest or work stoppage, as long as the protest is not intended to result in serious bodily harm to a person, the endangering of a person's life, cause serious damage to property, or a serious risk to the health or safety of the public.⁸⁹ The Model Law mirrors this language in its own protest clause protecting disruption.⁹⁰

⁸⁵ Kenya Prevention of Terrorism Bill, 2012 Part 1 (2)(b)(ii); Mauritius Prevention of Terrorism Act, No.2 of 2002, (3)(2)(a); Nigeria Prevention of Terrorism Act, No. 10 of 2011, (1)(2)(b); Zambia The Anti-Terrorism Act, No. 21 of 2007, Part 1 (2)(1).

⁸⁶ Ethiopia Proclamation No. 652/2009 § (3).

⁸⁷ Botswana, Volume IV Intelligence and Security Service, Ch. 23:02(2)(a)

⁸⁸ *Id.* (c).

⁸⁹ Ghana Anti-Terrorism Act, 2008 Act 762 (3), South Africa Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33, 2004 (3); Nigeria Prevention of Terrorism Act, No. 10 of 2011, (1)(3); Tanzania Prevention of Terrorism Act, 2002, Part II (4), Zambia The Anti-Terrorism Act, No. 21 of 2007, Part 1 (2)(3).

⁹⁰ AU The African Model Anti-Terrorism Law § (4)(xl)(a), 2011.

V. CONCLUSION

30. The definition of terrorism contained in Ethiopia's Anti-Terror Statute is overbroad in both its definition and application. First, the definition is in direct conflict with the Principle of Legality in that it fails to provide citizens with notice regarding the acts criminalized by the Statute. Not only is the Principle of Legality an integral part of customary international law, it is also seen in the spirit of the African Charter and codified in the ICCPR, both of which Ethiopia is bound to follow. Second, the application of the Anti-Terror Statute is in direct conflict to Ethiopia's obligations under its Constitution, the African Charter, the ICCPR and the CAT in that the Statute has sanctioned the inappropriate detainment and treatment of citizens. Third, Ethiopia's definition of terrorism is in conflict with trends and themes seen throughout other internationally accepted definitions. These definitions all incorporate narrowing mechanisms that Ethiopia's definition lacks, indicating that the Ethiopian definition is overly broad.

VI. RECOMMENDATION

31. The Commission should strike down the Anti-Terror Statute as it is in direct violation of governing domestic and international human rights instruments. The detention and mistreatment of thousands of citizens cannot be justified under the current structure and application of this law.