

A Comparative Review of Ethiopian and Western Anti-Terrorism Legislations

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Ever since its promulgation in August 2009, Ethiopia's anti-Terrorism proclamation has been a subject of criticisms from western activists.

Even though the proclamation was intended to provide adequate legal framework to ensure the right of the people to live in peace, freedom and security, it has been accused of doing the opposite by domestic politicians and western groupings.

The routine and categorical criticisms of the proclamation has become to be considered as factual that even those who never read the proclamation boldly denounce it as “draconian”.

Therefore, it appears necessary to point out the main features of Ethiopia's anti-Terrorism proclamation are similar or better than the anti-Terrorism legislations in western democracies.

I will present you, in eight sections, a brief comparison between the anti-Terrorism legislations of Ethiopia and nine western countries.

Ethiopia's Anti-Terrorism Law [Proc. No. 652/2009]

The first target of such criticisms is the definition of terrorism provided in the proclamation. Ethiopia's anti-Terrorism legislation provides a

descriptive definition in Article 3 as:

An individual or a group "intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country: causes a person's death or serious bodily injury; creates serious risk to the safety or health of the public or section of the public; commits kidnapping or hostage taking; causes serious damage to property; causes damage to natural resource, environment, historical or cultural heritages; endangers, seizes or puts under control, causes serious interference or disruption of any public service; or threatens to commit any of these acts."

This definition of terrorist acts often gets criticized as "too broad" by western activists and local opposition politicians. However, a look into the anti-terrorism laws of other democratic countries shows similar even broader definitions.

Let's compare the Ethiopian definition with those provided in the laws of Australia, Spain and France, and United Kingdom as examples:

The Australian law defines a terrorist act as: "an action or threat of action that causes serious physical harm or death to a person, or endangers a person's life or involves serious risk to public health or safety, serious damage to property or serious interference with essential electronic systems; and the action is done or threat is made with the intention of

advancing a political, religious or ideological cause and to coerce or influence by intimidation an Australian or foreign government or intimidate the public or a section of the public."

Spanish law states that an act constitutes a terrorist offense where the purpose of the act is to subvert the constitutional order or to effect serious disturbances of public order.

In France, acts of terrorism are those acts "undertaken by an individual or collective with the purpose of seriously disturbing the public order through intimidation or terror by means of: willful attacks on life,...money laundering or insider trading relating to terrorist activities; being unable to account for resources corresponding to one's lifestyle when habitually in close contact with a person or persons who engage in terrorist activities.

Under Italian laws, the definition of a terrorist act includes "promoting, constituting, organizing, managing or financing organizations which intend to carry out violent activities, or assisting any individual who participates in such organizations".

In United Kingdom, the definition of terrorism include any "political, religious or ideological" cause that uses or threatens violence against people or property, including offenses of inciting terrorism.

Another often criticized part of Ethiopia's anti-terrorism legislation is its provisions regarding individuals who take part in a terrorist act at different stages or any form.

Ethiopia's anti-terrorism proclamation provides that:

[Art. 4]

"Whosoever plans, prepares, conspires, incites or attempts to commit any of the terrorist acts [defined as terrorist acts under the Proclamation] is punishable."

[Art. 5]“ Rendering Support to Terrorism”:

Whosoever, knowingly or having reason to know that his deed has the effect of supporting the commission of a terrorist act or a terrorist organization: provides, prepares or gives forged or falsified document; provides a skill, expertise or moral support or gives advice; provides, collects or makes available any property in any manner;.....is punishable.

[Art.6].“Encouragement of Terrorism” as:

"whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism."

These provisions are frequently cited and criticized by Ethiopian politicians who have been charged for the same acts and their supporters at home and abroad.

In actuality, however these provisions in the Ethiopian anti-terrorism law are no stronger than their counterparts in western laws.

Let's compare these provisions in the Ethiopian anti-terrorism law with those provided in the laws of Italy, United Kingdom, Sweden, Canada, Germany, and United States:

Italy's law punishes individuals found to promote, constitute, organize, lead or finance organizations which promote violence for terrorist ends or to upset the democratic order. It also provides for imprisonment of individuals who associate with such organisations and for those harboring or assisting terrorists.

In USA, the Federal Supreme Court established in two landmark rulings that the constitutional right to freedom of expression (a.k.a., the First Amendment) does not apply where the speech is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

United Kingdom's anti-terrorism legislations punishes the "glorification" of terrorism.

In Sweden, any attempt, preparation or conspiracy to commit a terrorist offense or failure to disclose such an offense is also deemed an offense.

Canada's anti-terrorism legislation contains provisions on incitement to hatred and incitement or fomenting terrorism.

In Germany, the government can issue banning orders against terrorist organization by citing either written material produced by the groups or speeches by their leaders as evidence of their breach of the law.

Proscribing an organization as a terrorist is another element of the Ethiopian anti-Terrorism law that is contested by some commentators. However, both the definition and procedure is better than its counterparts.

Ethiopia's Anti-Terrorism law defines, in Article 2.4, that a terrorist organization as:

"a group, association or organization which is composed of not less than two members with the objective of committing acts of terrorism or plans, prepares, executes or cause the execution of acts of terrorism or assists or incites others in any way to commit acts of terrorism".

The legislation further provides, in Article 25, that:

Any organization shall be proscribed as terrorist organization if it directly or indirectly: commits acts of terrorism; prepares to commit acts of terrorism; supports or encourages terrorism; or is otherwise involved in terrorism.

Under Ethiopian law, it is the House of Peoples' Representatives that has the power, upon submission by the government, to proscribe or de-proscribe an organization as a Terrorist Organization.

However, in Australia and Germany, the executive branch of the government can proscribe or an organization as a terrorist without parliamentary approval.

In Australia, the law defines a "terrorist organisation" as an organisation

that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whether or not the terrorist act occurs or an organisation that is specified as terrorist by the council of ministers.

Under German laws, the executive branch of the government (without parliamentary approval) can ban organisations that "promote illegality or undermine the constitution". This applies to religious organisations as well. In the recent past, six organisations and corporations have been banned from operating under domestic legislation for promoting extremist views, violence, anti-semitism or sedition.

Rights groups routinely cite the evidentiary rules of the Ethiopian anti-Terrorism legislation as an encroachment against individual liberty. However, they never mention that it is no different than similar laws in their home countries.

Indeed the list of admissible evidences, under Article 23 of Ethiopia's anti-Terrorism legislation, includes:

“...digital or electronic evidences; evidences gathered through interception or surveillance or information obtained through interception conducted by foreign law enforcement bodies; and confession of a suspect of terrorism in writing, voice recording, video cassette or recorded in any mechanical or electronic device.”

However, the legislation clearly and strictly prescribes that any police search should be supported by court warrant . In fact it further restricts

warrants given to conduct covert search in Article 18 as follows:

18.1 The court on the basis of the information presented to it by the applicant, may give covert search warrant by having into consideration:

- a) the nature or gravity of the terrorist act or the suspected terrorist act; and
- b) the extent to which the measures to be taken in accordance with the warrant would assist to prevent the act of terrorism or arrest the suspect.

18.2/ A warrant issued in accordance with this Article shall specify:

- a) the address of any premise to which the warrant relates, and the names of the occupiers, if known;
- b) the maximum duration being 30 days, the period during which the warrant is valid and the date on which the warrant is issued; and
- c) if necessary, the type or description of evidences to be searched for and seized

However, these evidentiary rules are similar to those in Germany, Italy and Norway.

In Germany, intelligence is admissible as evidence in connection with a defined list of serious crimes, which includes terrorist activities.

Italian laws give the police and other investigating authorities the powers to

conduct the interception of communications.

Norway's legislations permit for police surveillance (including electronic and technical measures) of individuals if there are good grounds for believing a terrorist act is being prepared. A court must approve any such surveillance, however, the hearings are closed and a security-cleared defence lawyer will be appointed. The defense lawyers are not informed of their client's name or names.

The Ethiopian legislation fares better with regard to its provisions on the detention and court remand of terror suspects.

Under Article 19.1, the police may detain without court warrant any person whom it suspects to have committed or is committing a terrorist act. However, the detained shall have the right to be brought before a court within 48 hours.

The legislation sets a time limit on the period of investigation. It stipulates in Article 20 that the court may give an order to remand the suspect for investigation or trial. However, it places a restriction that:

“each period given to remand the suspect for investigation shall be a minimum of 28 days; provided however, that the total time shall not exceed a period of four months.”

Interestingly, these provisions in the Ethiopian legislation safeguard the rights of the terror suspect much better than the laws of Spain, France, United Kingdom and Germany.

In Spain, in terrorism cases, the judge may order that suspects be held incommunicado if they have grounds to believe that knowledge of the suspect's detention would prejudice the investigation. This involves a limitation of detainees' rights in two ways: relatives may not be informed of the detention, and legal assistance is provided by a duty solicitor, not a lawyer of their own choice.

The initial incommunicado order is valid for 72 hours following arrest. It can be prolonged for a further two days upon the authority of the investigating magistrate. The incommunicado period may be extended by five days, exceptionally followed by a final period of three days. Thus, it is possible for a person against whom criminal proceedings have begun to be held incommunicado for up to 13 days.

While the detainee is held incommunicado in police custody, he may be questioned in the presence of the duty solicitor (not a lawyer of his own choosing), who is called in immediately on arrest. The lawyer may advise their client on procedural matters, but may not consult privately with the suspect.

In France, the time limits for pre-trial detention for terrorist offenses is up to 2 years pre-trial detention for crimes punishable by 10 years imprisonment or less and up to 4 years pre-trial detention for crimes punishable by more than 10 years imprisonment.

Under United Kingdom (UK)'s anti-terrorism legislations, the police may indefinitely detain, without charge or trial, foreign nationals who are

suspected of terrorism, upon an order issued by the Interior Ministry. Similarly, the Interior Ministry can impose, without court order, severe restrictions on the activities of individuals it suspects of "involvement in terrorist-related activity", but for whom there is not sufficient evidence to charge.

In Germany, the judge can remand the suspect in custody while the criminal investigation and prosecution are still underway if there are strong grounds to suspect that the person apprehended committed the crime, if there is a risk of flight or if there is danger of interference with witnesses or evidence and the measure is proportionate to the possible sentence.

This also applies to those suspected of membership of a terrorist organization (domestic or foreign). The detention could continue for a indefinite time, except that the matter should be reviewed by a judge at intervals each not exceeding six-months.

Last but not least, its worth noting that the **punishments** under the Ethiopian anti-Terrorism legislation are no different from those found in western legislation.

Ethiopia's Anti-Terrorism Legislation punishes a terrorist act with rigorous imprisonment from 15 years to life or with death. Note that, in practical terms, Ethiopia doesn't implement death sentences and "life imprisonment" means 20 years in prison.

“Rendering Support to Terrorism” is punishable with rigorous imprisonment from 10 to 15 years; whereas an act of

“Encouragement of Terrorism” is punishable with rigorous imprisonment from 10 to 20 years.

For the sake of brevity, let's take a look at the punishments provided by the laws of one European country, Spain.

Under Spanish law terrorism related charges entail up to 40 years of imprisonment! For example, promoting or directing terrorist organizations is punishable with eight to fourteen years imprisonment; membership of a terrorist organization results in six to twelve years imprisonment; the effective maximum prison sentence for a person convicted of two or more terrorist offenses is now 40 years.

In Norway, on the other hand, the law sets out that terrorist acts are punishable by a term of imprisonment not exceeding 21 years and imposes a maximum sentence of 12 years imprisonment for those who intend to commit acts of terrorism, co-conspirators and accomplices. Norwegian law also makes it a serious criminal offense, punishable by up to 10 years imprisonment, to directly or indirectly finance terrorist acts or make funds available for such financing.