



Human Rights Watch Submission on Ethiopia

2012 Report of the UN Special Rapporteur on human rights defenders to the General Assembly: Questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

- 1.a) *Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.***

The Ethiopian constitution states that all persons have basic human rights – including life, liberty, and security. Despite these constitutional protections, since 2008 the ruling Ethiopian People’s Revolutionary Democratic Front (EPRDF) has enacted legislation, including the Charities and Societies Proclamation (CSO law) and the Anti-Terrorism Proclamation, that severely curtail basic rights. This group of laws severely limits the work of human rights defenders, as well as that of the independent media, international and local journalists, and members of the political opposition.

- 1.b) *Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.***

The protections outlined within the constitution are to be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, and international instruments adopted by Ethiopia. However, the CSO law places such severe restrictions on human rights and governance-related work as to make most such work impossible, violating fundamental rights to freedom of association and expression provided for in the Ethiopian constitution and international human rights law.

- 1.c) *Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.***

The judiciary in Ethiopia lacks independence and has in fact been used on numerous recent occasions as a tool with which to implement flawed legislation and to crack down on peaceful dissent.

The Ethiopian Federal High Court has passed rulings reinforcing an ad-hoc and arbitrary implementation of the CSO law and the Anti-Terrorism Proclamation. On December 21 the Ethiopian Federal High Court convicted two Swedish journalists on charges of support to terrorism, after they were arrested reporting on human rights abuses in the closed-off region

of Ogaden. On January 19, 2012, it convicted three Ethiopian journalists, an opposition leader, and a fifth person under an anti-terrorism law that violates free expression and due process rights.

Most recently the High Court upheld a decision by the board of the agency set up to implement the law, the Charities and Societies Agency (CSA), ruling on the freezing of the account of one of the country's leading human rights organization, the Human Rights Council (HRCO).

The HRCO, Ethiopia's oldest human rights organization (formerly known as the Ethiopian Human Rights Council, EHRCO), has been the leading human rights voice in the country, with a strong track record of investigating and reporting on violations and promoting human rights in the country since its establishment in 1991. As a result of the restrictions in the CSO law, HRCO has been forced to close 9 of its 12 offices and cut 85 percent of its staff.

In December 2009, the CSA, a new regulatory body established under the CSO law, granted HRCO its license as an Ethiopian charity, but, in a letter dated three days before the registration, the CSA ordered four private banks to freeze all of HRCO's assets including its private bank accounts and reserve funds. On February 3, 2012, the Cassation Bench of the Federal Supreme Court of Ethiopia heard a petition by HRCO to admit an appeal against the freezing of its bank accounts.

The CSO law does not allow for retroactive application, meaning the restrictions in the law cannot be applied to funds collected before the passing of the law. Further, the CSA did not secure a court-ordered warrant permitting it to freeze HRCO's assets, nor does the CSO law contain any provision permitting the CSA to block an organization's accounts. On these bases HRCO challenged the lawfulness of the freeze to the Board of the CSA, and subsequently to the Federal High Court in April 2010. The High Court upheld the decision of the regulatory body on October 24, 2011.

HRCO is now petitioning the Supreme Court, the highest adjudicating body in the country, to hear its appeal of the decision of the Federal High Court. The appellate hearing, which had been postponed, is now set for June 15, 2012. Its decision will be of great significance for the future of HRCO's vital work and for the wider promotion and protection of human rights in Ethiopia.

2.a) *Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.*

Anti-terrorism legislation and terrorism-related offenses in the criminal code are being used to restrict the work of human rights defenders.

The five Ethiopians convicted under the anti-terrorism legislation on January 19 were found guilty of conspiracy to commit terrorist acts, which carries a sentence of 15 years to life imprisonment or death, as well as of participating in a terrorist organization. They were also convicted of money laundering under the Ethiopian criminal code.

The case was marred by serious due process concerns. The defendants had no access to legal counsel during their three months in pretrial detention, and the court did not investigate their allegations of torture and mistreatment in detention. Both Woubshet and Zerihun alleged in court that they had been tortured, including being beaten, and otherwise ill-treated during their pretrial detention at Addis Ababa's notorious Maekelawi prison. None of the defendants were granted access to legal counsel during their pretrial detention. Local sources told Human Rights Watch that these allegations of mistreatment have not been investigated by the court. The evidence submitted by the prosecution pointed to the criminalization of basic human rights work. According to the charge sheet, which Human Rights Watch examined, the evidence consisted primarily of online articles critical of the government and telephone discussions notably regarding peaceful protest actions that do not amount to acts of terrorism.

In another case underlining the use of this national security law to restrict the work of human rights defenders, journalist Eskinder Nega, in jail for the seventh time, was most recently charged under the 2009 counterterrorism law and could face the death penalty. Fifteen other journalists and opposition members have already been convicted or charged under the Anti-Terrorism Proclamation, including two Swedish journalists who attempted to report on abuses in the Somali region of Ethiopia.

Human Rights Watch has repeatedly raised serious concerns about Ethiopia's Anti-Terrorism Proclamation of 2009, including its overly broad definition of "terrorist acts," which can include acts of peaceful protest that result in the "disruption of any public services." The law also includes vague provisions that proscribe support for, or encouragement of, terrorism, which can include public reporting on banned terrorist groups. The provision on pretrial detention allows suspects to be held in custody for up to four months without charge, one of the longest periods in anti-terrorism legislation worldwide. The provision violates due process rights guaranteed under Ethiopian law and international law.

These laws have since been regularly used to imprison hundreds of journalists and political opponents. It is nearly impossible or safe to work as a human rights defender in Ethiopia because one risks being jailed under the accusation of being a terrorist or enemy of the state.

2.b) *Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.*

Article 3 of the Anti-Terrorism Proclamation defines terrorism in a manner that could be used to criminalize non-violent political dissent and various other activities that should not be deemed as terrorism.

It states that anyone who – with the purpose of "advancing a political, religious or ideological cause" and intending to "influence the government"; "intimidate the public or section of the public"; or "to destabilize or destroy the fundamental political, constitutional, economic or social institutions of the country" – commits: an act that causes death or serious injury; an act that creates risk to the safety or health of the public; kidnapping or

hostage taking; serious damage to property; damage to natural resources, the environment, or the historical or cultural heritage; or “endangers, seizes or puts under control, causes interference or disruption of any public service” – is subject to punishment by “rigorous imprisonment from 15 years to life or with death.”

This definition of terrorism includes acts that do not involve violence or injury to people, such as property crimes and disruption of public services. The United Nations special rapporteur on counterterrorism and human rights has stated that the concept of terrorism should be limited to acts committed with the intention of causing death or serious bodily injury, or the taking of hostages, and should not include purely property crimes. In addition, permitting the death penalty for property crimes would violate the requirement under international law that the death penalty only be imposed for “the most serious crimes.”

The broad and ambiguous definition of terrorist acts under the law could readily be used to criminalize acts of peaceful political dissent that result in “disruption of public services” – as public demonstrations sometimes do. A non-violent march that blocked traffic could qualify as a terrorist act, subjecting protesters to 15 years to life in prison, or possibly even the death penalty. The law might also permit prosecutions on terrorism charges for minor acts of violence committed in the context of political activism: thus a political protester who damages a police car or breaks the window of a government building could conceivably be prosecuted as a terrorist. Furthermore, an individual need only “threaten to commit” any of the relevant acts, including property crimes and “disruption of public service,” to be prosecuted as a terrorist and punished with a minimum 15 years’ imprisonment, or death.

As noted above, the definition of “acts of terrorism” could include acts of political dissent. Therefore a group of two or more individuals who engage in peaceful political protest could be deemed a “terrorist organization,” and membership deemed a crime, subject to 5 to 20 years’ “rigorous imprisonment.”

3.a) *Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.*

The provisions in the Charities and Societies Proclamation and the Anti-Terrorism Law are broad, making interpretation difficult and further forcing civil society and the media to take extreme precautions to reduce the threat of accusation under the laws.

Within the Charities and Societies Proclamation the law provides that any person who violates its provisions is subject to punishment. Punishment is not limited to officers within a civil society organization and could potentially extend to members, volunteers, and recipients of services. The law is vague with respect to which provisions of the penal code would be applied to determine the level of culpability and punishment individuals could face. In addition to imprisonment and fines, criminal charges can lead to the cancellation of an NGO’s license.

Article 92(2)(e) of the Charities and Societies Proclamation states that the license of any charity or society will be canceled where “it commits a crime by violating the provisions of

the criminal code or that of this proclamation.” Based upon this language, it is very difficult for nongovernmental organizations to ascertain the potential grounds for cancellation and the specific penal code violations that may lead to such a measure. The vagueness of these provisions could lead to arbitrary criminal prosecutions.

In its May 2012 resolution on the human rights situation in Ethiopia, the African Commission on Human and Peoples’ Rights (ACHPR) condemned the excessive restrictions placed on human rights work by the Charities and Societies Proclamation, underscoring that it denies “human rights organizations access to essential funding, endowing the Charities and Societies Agency with excessive powers of interference in human rights organizations, further endangering victims of human rights violations by contravening principles of confidentiality.” Furthermore, the ACHPR called for the CSO law to be amended in accordance with the UN Declaration on Human Rights Defenders.

The law further violates due process rights guaranteed under Ethiopian and international law. The Ethiopian constitution requires the government to bring a person before a court within 48 hours of being detained and to inform that person of the charges being brought against them. The International Covenant on Civil and Political Rights (ICCPR), which Ethiopia ratified in 1993, provides in article 9(3) that anyone arrested for a criminal offense shall be brought before a judicial authority and promptly charged.

The Anti-Terrorism Law permits the police to request an additional investigation period of 28 days each from a court before filing charges, for a maximum of up to four months. Authorities have frequently denied people held under the Anti-Terrorism provision access to legal counsel. Human Rights Watch reports that none of the defendants detained and charged under the Anti-Terrorism Law during 2011 had access to a lawyer during their pre-trial period.

Human rights defenders risk intimidation and imprisonment if they violate either of these broadly defined proclamations. As a result, human rights defenders have been forced to restructure their work given the limitations on funding, which in turn impacts the beneficiaries of such human rights work. Furthermore, those who fear government repercussions can also resort to self-censorship of their human rights work, and in extremes, have fled the country to continue working on human rights issues.

3.b) *Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.*

As highlighted in the cases of both the HRCO in respect to the CSO law and the conviction of journalists and political opposition under the anti-terrorism legislation, there are no effective administrative or legal safeguards in place that protect human rights defenders from discrimination in the administration of justice.

4.a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.

Key provisions in the Charities and Societies Proclamation (CSO law) severely limit the work of human rights defenders. The law prohibits foreign NGOs from engaging in activities pertaining to women's rights, children's rights, disability rights, citizenship rights, conflict resolution, or democratic governance. The law also imposes limitations on all civil society organizations that do not fit the CSO law's definition of "Ethiopian" Charities/Societies (C/S). Article 2 states:

- "Ethiopian" Charities/Societies are NGOs formed under Ethiopian law that consist exclusively of Ethiopians and receive no more than 10% of their income from foreign sources.
- "Ethiopian Resident" C/S are NGOs formed under Ethiopian law that receive more than 10% funding from foreign sources.
- "Ethiopian Resident" NGOs are formed under Ethiopian law and by Ethiopians but are considered foreign because they receive more than 10% of funding from foreign sources.
- "Foreign Charities" are NGOs whose members include foreign nationals; NGOs formed under foreign laws and further receive foreign funding.

Once an NGO is labeled "foreign" or "Ethiopian Resident" it is prohibited from participating in many activities reserved exclusively for Ethiopian C/S, including advancement of human and democratic rights. These groups are also deprived of recourse to judicial remedies because they are labeled "foreign." Access to justice is a right guaranteed to everyone under article 37 of the Ethiopian constitution and is a fundamental human right guaranteed to every person under the ICCPR.

Unsurprisingly, the vast majority of domestic human rights NGOs received funds from foreign sources. As a result, following the passing of the CSO law, the majority of independent Ethiopian civil society organizations working on human rights issues have had to discontinue their work. The CSO law has been widely criticized for failing to meet international human rights standards.

4.b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.

The CSO law directly inhibits the rights to association, peaceful assembly, and freedom of expression found in the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights and other human rights instruments.

Since passage of the CSO law, human rights organizations have significantly reduced in number and size, have cut programs, closed offices and laid off staff. The law has been used by the government to freeze assets of more than US\$1 million belonging to the two leading human rights organizations. The Ethiopian Human Rights Council, the leading human rights organization in the country, has been forced to close 9 of its 12 offices, and cut 85 percent of its staff. Further, its bank accounts have been frozen since the 2009 passage of CSO.

Additionally, the Ethiopian Women's Lawyers Association had to dismiss almost 75 percent of its staff. The association was considered to be the only major organization focusing exclusively on women's rights at the national level in Ethiopia.

The CSO law has been used to entrench fear in the human rights community and a number of human rights defenders fled the country shortly after its passage in 2009.

5.a) *Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?*

The CSO requires that all charities and nongovernment organizations are registered with the Charities and Societies Agency, a government organization created under the CSO proclamation. If they are not registered they "have no legal personality" (article 65(1)), and thus are not legally permitted to operate, and the organization's license to operate will be cancelled (article 92(1)(d)).

5.b) *If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.*

N/A

6. *Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.*

The Anti-Terrorism law makes reporting on both the Ogaden and Oromia Regions of Ethiopia extremely difficult, particularly considering existing restrictions on access to the regions, not only to media, but to humanitarian and human rights NGOs. The Anti-Terrorism law makes gaining first-hand information virtually impossible, and for those who do enter the region to report on abuses they are liable to be arrested and prosecuted for terrorism.

Ethiopian authorities arrested Swedish journalists Martin Schibbye and Johan Persson on July 1, 2011 while they were reporting on the Ogaden National Liberation Front (ONLF), an armed insurgent group that the government outlawed earlier in 2011. After a two-month trial, they were found guilty of rendering support for a terrorist organization by providing "a skill, expertise or moral support or gives advice." They were also convicted under the penal code of entering the country illegally "for the purpose of engaging in subversive activity."

After an unfair trial, a court in Addis Ababa on December 21, 2011, convicted Schibbye and Persson of "rendering support to terrorism" and entering the country illegally for subversive purposes.

7.a) *Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.*

The Anti-Terrorism Law severely restricts the rights to freedom of opinion and expression of human rights defenders, because of its overly broad definition of “terrorist acts,” which include acts of peaceful protest that result in the disruption of any public services. The law also includes vague provisions that proscribe support for, or encouragement of, terrorism, which can include public reporting on banned terrorist groups.

In addition to the Anti-Terrorism Law, the Mass Media and Freedom of Information Proclamation includes a number of provisions that allow the government to restrict the independent media. In particular, the law allows prosecutors to summarily impound any print publication deemed a threat to public order or national security. The law also increases fines for defamation to 100,000 birrs (approximately US\$10,000). Defamation and libel remain criminal offenses under Ethiopia's penal code punishable by extensive prison sentences. Against international standards, article 43(7) further states that, “defamation and false accusation of constitutional mandated legislators, executives and judiciaries will be matter of the government and prosecutable even if the person against whom they were committed chooses not to press charge.”

Measures within the law continue to grant the Ministry of Information authority over media regulation, empowering the ministry to “register and issue certificates of competence” to the press, to monitor the activities of the media, and to control the publicly owned Ethiopian News Agency.

7.b) *How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?*

Once again the legal framework as well as administrative framework impede rather than enable the work of HRDs.

Ethiopia’s main, state-owned printing company, Barhanena Selam, recently issued a directive saying it would vet any material prior to publication and censor any material it deems as violating the law. This clearly refers in particular to the Anti-Terrorism law which criminalizes reporting on opposition groups that the government deems terrorist and holds printers, as well as publishers, accountable for material that promotes terrorism. The directive also allows Barhanena Selam the right to cancel any printing contract if the publisher repeatedly submits content the printer considers legally objectionable. This law contravenes article 29 of Ethiopia’s constitution and the Freedom of Mass Media and Access to Information Law, both of which prohibit censorship.

8. *Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.*

N/A