

Legal Analysis of Ethiopia's State of Emergency

Summary

On October 9, 2016, the Ethiopian government announced a country-wide six-month state of emergency. This followed a year of widespread protests against government policies that state security forces violently suppressed, killing hundreds of people and detaining tens of thousands.¹ Protesters also committed a number of attacks on government buildings and private businesses perceived to be close to the ruling party.²

Government officials sought to justify the announced state of emergency, and corresponding directives that were issued on October 15, by contending that they were necessary in response to the threat posed by “anti-peace groups in close collaboration with foreign elements.”³ Officials said they needed to “put an end to the damage that is being carried out against infrastructure projects, health centers, [and] administration and justice buildings.”⁴ However, damaging property is a crime under Ethiopia's criminal law and the authorities could prosecute such acts without invoking a state of emergency.

The state of emergency directive prescribes sweeping and vaguely worded restrictions on a broad range of actions that undermine basic rights, including freedom of expression, association and peaceful assembly, and go far beyond what is permissible under international law.⁵ Human Rights Watch has documented serious rights violations and the curtailing of freedom of assembly and expression since the protests began in November 2015.⁶ To some extent, the sweeping provisions effectively codify measures that security forces have been committing unlawfully in response to the protests. Under the state of emergency, the army will be further deployed country-wide for at least six months -- this signifies a greater willingness by the government to use the armed forces in what should be a law enforcement role.

¹ Human Rights Watch, “*Such a Brutal Crackdown*”: Killings and Arrests in Response to Ethiopia's Oromo Protests, June 2016, <https://www.hrw.org/report/2016/06/16/such-brutal-crackdown/killings-and-arrests-response-ethiopias-oromo-protests>.

² “Dutch farmers on Ethiopia violence: ‘I was terribly scared,’” Yahoo News, October 22, 2016, <https://www.yahoo.com/news/dutch-farmer-ethiopia-violence-terribly-scared-172653287.html> (accessed October 23, 2016).

³ Tesfaye Wolde, “Ethiopia's State of Emergency Will Work,” *Washington Post*, October 16, 2016, (accessed October 23, 2016) https://www.washingtonpost.com/opinions/ethiopias-state-of-emergency-will-work/2016/10/16/52f87c0a-923b-11e6-bc00-1a9756d4111b_story.html?utm_term=.3ce0d2c62f3d.

⁴ “Ethiopia declares state of emergency after months of protests,” CNN, October 11, 2016, <http://www.cnn.com/2016/10/09/africa/ethiopia-oromo-state-emergency/> (accessed October 23, 2016).

⁵ International Covenant on Civil and Political Rights (ICCPR), adopted 1966; G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 59, U.N. Doc.A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976. Ethiopia ratified the ICCPR in 1993.

⁶ Human Rights Watch, “*Such a Brutal Crackdown*.”

The Ethiopian government is empowered to declare a state of emergency under the constitution, “should an external invasion, a breakdown of law and order which endangers the Constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur.”⁷ Under the International Covenant on Civil and Political Rights (ICCPR), certain rights may be derogated under a state of emergency but must be tailored to the “exigencies of the situation,” while other rights may not be derogated under any circumstances.⁸ Under the African Charter on Human and Peoples’ Rights, no derogation of charter rights is allowed during a time of emergency.⁹

The United Nations Human Rights Committee, the international expert body that interprets the ICCPR, has said in its General Comment No. 29 on states of emergency that governments need to “provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation.”¹⁰ Whether a specific measure is consistent with the “exigencies of the situation” depends on its “duration, geographical coverage and material scope,” which must be tailored to a particular situation.¹¹ To restore a “state of normalcy where full respect for the Covenant can again be secured must be the predominant objective.”¹²

Human Rights Watch has grave concerns that Ethiopia’s state of emergency directive permits vague and overbroad restrictions beyond those permitted under the ICCPR that threaten basic rights to free expression, assembly, and association and may encourage violations of the rights to the security of the person, including arbitrary detention and torture. For example, violence has occurred in only two of Ethiopia’s nine regions, affecting less than half the country, yet the geographic coverage of the state of emergency is country-wide. As to duration, the state of emergency is for six months, the maximum permissible under the Ethiopian constitution, yet the government has not explained why the current situation warrants the longest possible period allowed by law. Regarding material scope, the restrictions on free expression rights, which include both content and forms of speech and protest, go are well beyond the “exigencies of the situation” to permit the silencing of peaceful expression and denial of access to information.

Human Rights Watch takes the position that for as long as the state of emergency is lawfully in place, all provisions of the directive inconsistent with the derogation provisions of the ICCPR

⁷ Federal Democratic Republic of Ethiopia Constitution, art 93(1)(a).

⁸ ICCPR, art. 4

⁹ African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, <http://www.achpr.org/instruments/achpr/>. [Ethiopia ratified the African Charter in 1998.](#)

¹⁰ UN Human Rights Committee, General Comment No. 29, States of Emergency, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 5.

¹¹ Ibid., para. 4.

¹² Ibid., para. 1.

should promptly be repealed or revised. Ethiopia should also recognize that it remains obligated to uphold all articles of the African Charter, which has no derogation provisions. Individuals arbitrarily detained under the provisions or otherwise subject to violations of their human rights should receive redress, including prompt release and appropriate compensation.

1. Restrictions on freedom of expression

a. Access to information

The directive:

- restricts the writing or sharing of material on social media, radio, or internet that “could create misunderstanding between people or unrest.”¹³
- prohibits access to diaspora television stations and other “similar linked terrorist media” [US-based Ethiopian Satellite Television (ESAT) and Oromia Media Network (OMN) are named].¹⁴
- enables government to “censor and block” radio and television.¹⁵
- prevents political parties from speaking to local or foreign media that has the potential to disrupt “the security, sovereignty and the constitutional order.”¹⁶

The directive, by obstructing or limiting platforms for communication and banning the expression of anything that can “create misunderstanding between people or unrest,” renders virtually all communication as potentially criminal. The vague and overly-broad ban is ambiguous as to which conduct could run afoul of the directive. This not only makes the directive highly discretionary and prone to abusive and partisan implementation, but, as may have been intended, also casts a severe chilling effect on speech, and promotes self-censorship.

These restrictions also give legal backing to practices undertaken by Ethiopian security forces to limit access to information since the protests began in November 2015. The government has used various means to restrict access to OMN and ESAT, including with attempts to jam those stations, destroy satellite dishes on private homes, and arrest business owners who broadcast these channels.¹⁷ OMN has reported being jammed 15 times since its March 2014 inception, and ESAT has been intermittently jammed since 2010. International radio stations broadcasting in one of Ethiopia’s languages including Voice of America and Deutsche Welle have also reported increased

¹³ State of Emergency Directive, 2016, art. 1 [translated from Amharic].

¹⁴ State of Emergency Directive, art. 2 [translated from Amharic].

¹⁵ State of Emergency Directive, art. 28(5) [translated from Amharic].

¹⁶ State of Emergency Directive, art. 16(2) [translated from Amharic].

¹⁷ Human Rights Watch, “*Journalism is not a Crime*”: Violations of Media Freedom in Ethiopia, January 2015, <https://www.hrw.org/report/2015/01/21/journalism-not-crime/violations-media-freedoms-ethiopia#a79ddd>, p. 38.

incidence of jamming of their broadcast signals in recent months. Several Ethiopian journalists, bloggers, and fixers have been arrested since the protests began.¹⁸

The Ethiopian government has long committed abuses against media professionals, including harassment and intimidation of journalists, trumped-up prosecutions of journalists under the antiterrorism law, and harassment of sources, printers, publishers, and others.¹⁹ In Africa, only Eritrea has more journalists in detention than Ethiopia. Since the protests began, international journalists have reported more difficulties than usual in acquiring visas, in accessing areas of protest, and some have been detained.²⁰

Social media, particularly Facebook, has played a key role in the dissemination of information throughout the protests, particularly among young Ethiopians. There have been various restrictions on social media since protests began including the complete shutdown of the internet, and since October 5, the blocking of mobile phone internet access.²¹ Security forces have also regularly searched smartphones for videos or social media posts, and there have been regular arrests of those accused of filming or sharing videos. Armed soldiers have searched students' phones in and out of schools in some locations. The government has stated that social media is being used by "anti-peace elements" to coordinate property destruction and incite people to violence.²² Incitement to violence is covered by existing Ethiopian laws and any one can be prosecuted for such a crime.

b. Limits on communication to NGOs, foreign governments, and other entities

The directive prohibits any communication with undefined "terrorists and anti-peace groups" and communications to foreign governments and NGOs that could affect "security, sovereignty and the

¹⁸ "Ethiopia Arrests Second Journalist in a Week, Summons Zone 9 Bloggers," Committee to Protect Journalists (CPJ) alert, December 27, 2015, <https://www.cpj.org/2015/12/ethiopia-arrests-second-journalist-in-a-week-summo.php> (accessed October 23, 2016) and "Police Arrest Prominent Ethiopian Blogger," CPJ alert, October 3, 2016, <https://cpj.org/2016/10/police-arrest-prominent-ethiopian-blogger.php> (accessed October 23, 2016).

¹⁹ Human Rights Watch, "*Journalism is Not a Crime*" and "Ethiopia: Terrorism Law Used to Crush Free Speech," Human Rights Watch news release, June 27, 2012, <https://www.hrw.org/news/2012/06/27/ethiopia-terrorism-law-used-crush-free-speech>.

²⁰ Conor Gaffey, "Ethiopia Detains Journalists Covering Oromo Protests," *Newsweek*, March 7, 2016, (accessed October 23, 2016), <http://www.newsweek.com/ethiopia-oromo-protests-press-freedom-434307>.

²¹ Susmita Baral, "Ethiopia Protest August 2016: Amid Internet Ban, Rally Against Government Leaves at Least 33 Dead," *International Business Times*, August 8, 2016, <http://www.ibtimes.com/ethiopia-protest-august-2016-amid-internet-ban-rally-against-government-leaves-least-2398668> (accessed October 23, 2016) and "Ethiopia declares state of emergency after months of protests," CNN.

²² Matthew Tempest, "Ethiopian Ambassador: 'Anti-peace elements' Took Advantage of Oromia, Amhara Protests," *Euractiv.net*, October 5, 2016, <http://www.ethiopianembassy.be/en/2016/10/05/ethiopian-ambassador-anti-peace-elements-took-advantage-of-oromia-amhara-protests/> (accessed October 23, 2016).

constitutional order.”²³ These sweeping restrictions are both vague and overbroad and curtail free expression rights well beyond the scope of the situation.

“Terrorist and anti-peace groups” are not defined in the directive. The government has commonly used these terms to include the activities of peaceful protesters, civil society and political activists, including those in the diaspora, and media stations, including OMN and ESAT. Terrorism is loosely defined in the problematic antiterrorism law, and has been broadly applied in criminal cases to anyone who expresses dissent with government policies, including journalists, opposition politicians, and activists.²⁴ There is little independence of the judiciary in terrorism cases under Ethiopia’s antiterrorism law, rarely acquittals, and numerous due process concerns.²⁵

Historically, many of those that express contrary views to government policies are arrested and accused of providing support or taking direction from one of the five designated terrorist organizations, which includes the Oromo Liberation Front (OLF) and Ginbot 7. Many are released without charge following detention, which often includes ill-treatment and torture during interrogations.²⁶ Since 2009, the few who are charged are usually charged under the antiterrorism law. Alleged communication or a connection with these “terrorist groups” is often the basis for charges, even though credible evidence of communication with those groups is rarely, if ever, provided.

Given the long-time use of similarly overly broad language in the antiterrorism law to crack down on peaceful expressions of dissent, this provision of the directive could be used as a pretext to target anyone lawfully communicating about diverse topics, including or expressing or sharing criticism of the government.

The government has gone to great lengths to restrict the flow of information on human rights abuses to foreign governments and to domestic and international NGOs. Directive provisions restricting communication with NGOs further erodes the role of civil society groups that has already been severely curtailed since the 2009 Charities and Societies Proclamation was passed.²⁷

²³ State of Emergency Directive, arts. 2(1), 16(1) [translated from Amharic].

²⁴ Human Rights Watch, *“Journalism is Not a Crime.”*; “Dispatches: Using Courts to Crush Dissent in Ethiopia,” May 9, 2016, <https://www.hrw.org/news/2016/05/09/dispatches-using-courts-crush-dissent-ethiopia> ; “Dispatches: Ethiopian Pastor Pays the Penalty for Speaking Out,” March 15, 2016, <https://www.hrw.org/news/2016/03/15/dispatches-ethiopian-pastor-pays-penalty-speaking-out>.

²⁵ “Dispatches: Ethiopia’s Zone 9 Bloggers Acquitted, Free Speech Still on Trial,” Human Rights Watch, October 16, 2015, <https://www.hrw.org/news/2015/10/16/dispatches-ethiopias-zone-9-bloggers-acquitted-free-speech-still-trial>.

²⁶ Human Rights Watch, *“Such a Brutal Crackdown.”*

²⁷ “Ethiopia: Human rights Work Crippled by Restrictive Law,” Amnesty International press release, March 12, 2012, <https://www.amnesty.org/en/latest/news/2012/03/ethiopia-human-rights-work-crippled-restrictive-law/> (accessed October 23, 2012).

This law limits foreign funding of domestic NGOs working in good governance and human rights to 10 percent of its budget, effectively closing or restricting the activities of all NGOs working in those areas. International human rights NGOs already face significant restrictions, are denied access to Ethiopia for research, and there are regular arrests of those suspected of sharing information with those NGOs. Recently, some government officials have sought to blame unrest on human rights groups²⁸ documenting security force abuses and calling for credible investigations.

Limitations on communications with foreign governments, combined with restrictions on diplomats²⁹ traveling more than 40 kilometers outside of Addis Ababa, will severely curtail the ability of foreign governments to access independent information that is needed to formulate coherent and timely responses to events as they unfold. It is not clear what impact this measure could have on the provision of much needed humanitarian assistance and development projects that are funded and in some cases implemented by foreign governments.

2. Restrictions on freedom of assembly and protest

a. Country-wide protest ban

According to the directive “any assembly or protest without authorization from command post is prohibited.”³⁰ There are also further measures prohibiting protests or activities that could “prevent education institutions from carrying out their mandate, closing their institutions, or causing any damage to their infrastructure.”³¹ There are also prohibitions on protests at sporting events and on public holidays it is prohibited to “show any slogan or agenda unrelated” to that holiday.³² While some restrictions on assembly may be justified under a state of emergency, a blanket ban on protests country-wide is overly broad. Any criminal acts committed during a protest should be prosecuted under Ethiopian law. The vast majority of the hundreds of protests since November 2015 have been peaceful, and most of the violence that occurred after Irreecha was not done as part of a protest.³³ A blanket ban on protests further reduces outlets for the peaceful expression of grievances.

²⁸ Ministry of Foreign Affairs Ethiopia, “Human Rights Watch encourages opposition violence in Ethiopia,” post to “The Official Blog of MFA Ethiopia” (blog), October 22, 2016, <https://mfaethiopiablog.wordpress.com/2016/10/22/human-rights-watch-encourages-opposition-violence-in-ethiopia-article-drtdedros/>

²⁹ *State of Emergency Directive*, art. 18. [translated from Amharic]

³⁰ *State of Emergency Directive*, art. 3. [translated from Amharic]

³¹ *State of Emergency Directive*, art. 5. [translated from Amharic]

³² *State of Emergency Directive*, art. 6,9. [translated from Amharic]

³³ Irreecha is an important cultural event for the Oromo ethnic group and draws millions of people each year to Bishoftu. On October 2, 2016, an unknown number of people, possibly hundreds, died during a stampede after security forces used teargas and gunfire to control the tense crowd.

Protests have not been expressly outlawed since November 2015, but the government has taken various steps to restrict protests. The government has repeatedly stated that protests were “illegal”³⁴ because permission had not been sought from authorities.³⁵ Domestic law requires authorities to be “notified” of protests. Some protesters told Human Rights Watch they were arrested when they sought permission from local authorities or were denied permission for no particular reason. In some locations in Oromia, protests were allowed to proceed but were quickly broken up by security forces using teargas, live ammunition, beatings, and arrests. In Amhara region in August, security forces used live ammunition to break up protests. Other strategies to restrict protests since November 2015 included pre-emptive arrests of perceived protest leaders, confiscation of tools used to mobilize for protests including phones, security forces occupying schools, and arrests of teachers, parents, local government officials and others as punishment for student protests.

b. Criminalization of forms of protest

The directive prohibits:

- “Closing any licensed businesses or shops or government bodies that give service to the public, [or] disappearing from business premises for no particular reason.”³⁶
- “Closing or blocking of any roads, [or] disrupting transport services.”³⁷

Over the last year, some protesters have engaged in forms of non-violent protest that protesters feel make them less prone to security force abuses including blocking of roads, general strikes, and closing of businesses.

Prohibiting the closure of businesses is not related to stemming violence and the property destruction that has occurred since Irreecha. Business owners should be able to open and close their business as they see fit. These measures are a further attempt to close off other avenues for peaceful protest, particularly those that may have actual or perceived negative impact on Ethiopia’s economy.

3. Arbitrary detention and lack of due process

³⁴ William Davison, “Deaths Reported as Protests Flare in Ethiopia’s Oromia Region,” *Bloomberg.com*, August 6, 2016, <http://www.bloomberg.com/news/articles/2016-08-06/ethiopian-security-forces-try-to-suppress-renewed-oromo-protests> (accessed October 23, 2016).

³⁵ William Davison, “Deaths Reported as Protests Flare in Ethiopia’s Oromia Region,” *Bloomberg.com*, August 6, 2016, <http://www.bloomberg.com/news/articles/2016-08-06/ethiopian-security-forces-try-to-suppress-renewed-oromo-protests> (accessed October 23, 2016).

³⁶ State of Emergency Directive, art. 4(1). [translated from Amharic]

³⁷ State of Emergency Directive, art. 7. [translated from Amharic]

Under the directive, those who do not comply with its measures can be arrested without a “court order” and detained “in a place assigned by the command post until the end of the state of emergency.”³⁸ Government can “decide whether to teach the necessary rehabilitation and release or present them before court when necessary.”³⁹

While some measure of detention is permitted during a state of emergency, the widespread detention that is enabled under the directive and has occurred since November 2015 is not permitted under international law. Prohibitions on torture and arbitrary detention are not derogable under any condition.⁴⁰ According to General Comment 29, the prohibitions against taking of hostages, abductions or *unacknowledged detention* are not subject to derogation [emphasis added].⁴¹ Fundamental requirements of fair trial must be respected during a state of emergency.⁴²

These measures effectively codify unlawful government actions that have largely been used since November 2015, particularly in Oromia. There have been tens of thousands of individuals detained since the protests began. Some are charged, some are held in detention indefinitely, and others undergo a short “rehabilitation” and then are released. Many of those detained over the last year were held in military camps and family members were often not aware of their whereabouts until they were released. Many of those released report torture in detention, including in military camps but very few are ever charged.

The “rehabilitation” program referred to in article 28 of the directive has been in place in Ethiopia for some years and is a strategy used by security forces during crackdowns. They typically involve large scale arrests, detention for several days or weeks, ill-treatment and sometimes torture, and release on conditions of future compliant behavior. Conditions of release vary, including the requirement to regularly report to police stations to limit movement, suspension from school, or prohibition on attending protests. There is no due process or formal record of these detentions.

³⁸ State of Emergency Directive, art. 28(1) & (2). [translated from Amharic]

³⁹ State of Emergency Directive, art. 28(3). [translated from Amharic]

⁴⁰ ICCPR, art. 4(2)

⁴¹ Human Rights Committee, General Comment No. 29, para. 13(b).

⁴² *Ibid.*, para. 16. The Human Rights Committee is of the opinion that “the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the Covenant.” *Ibid.*

The goal is to punish and “rehabilitate” offenders in a short period of time. Rehabilitation has occurred regularly since November 2015, particularly in Oromia.

Torture continues to be a serious problem in Ethiopia, particularly in military camps. Human Rights Watch has documented torture in detention throughout the protests and more broadly. Many individuals detained during the protests never appeared in court, but those that have and have reported torture or mistreatment have not had their complaints adequately addressed by the judiciary.

4. Right to education

The directive bans protests at schools, permits security officials access to schools to maintain “peace and security” and enables institutions “to take administrative measures on students and staffs protesting and instigating violence in education institutions.”⁴³ Instigating violence is a criminal act and can be prosecuted under Ethiopian law, but peaceful protesting is not a criminal act and students should not face sanction for doing so.

These measures effectively codify and increase restrictions on access to education that have been in place in Oromia since November 2015. Throughout the protests, access to education has been restricted through school closures, detention of teachers, occupation of school grounds by security forces, and arrests of students.⁴⁴ School and universities have also taken administrative measures including suspension of students from university for participating in protests.⁴⁵ This has frequently been reported in Oromia and elsewhere. In addition, many of those detained during periods of intense crackdowns, including crackdowns since November 2015 are often released on the condition that they do not attend school for periods of months or years.

5. Freedom of movement of refugees

The directive prohibits individuals “leaving a refugee camp without the necessary authorization.”⁴⁶

Under international law, Ethiopia must formally justify any prohibition on free movement as the least restrictive measure necessary to protect national security, public order, or public health, which it has not done.⁴⁷ The directive, and Ethiopia’s National Refugee Proclamation unlawfully

⁴³ State of Emergency Directive, arts. 5, 28(7), 30. [translated from Amharic]

⁴⁴ Human Rights Watch, “*Such a Brutal Crackdown*,” p.21

⁴⁵ Ibid.

⁴⁶ State of Emergency Directive, art. 17. [translated from Amharic]

⁴⁷ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, *entered into force* April 22, 1954, art. 26; ICCPR, art. 12(1). Article 12(3) provides that the only exceptions permitted to this right are those “provided by law ... and necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others.”

limit refugees' movement and without basis distinguishes between Ethiopian citizens and foreign nationals.⁴⁸

Ethiopia host over 650,000 refugees, the largest in Africa. Most of these refugees are from Somalia, South Sudan, and Eritrea, however there are no refugee camps under the authority of the UN High Commissioner for Refugees in Oromia and Amhara, where recent unrest has occurred.⁴⁹

The country-wide ban on the freedom of movement of refugees is both overly broad and discriminatory.

⁴⁸ Ethiopia's National Refugee Proclamation, No. 409/2004, art. 21(2).

⁴⁹ UN High Commissioner for Refugees, "Ethiopia: Registered Persons of Concern by Camp and Locations, as of 31 January 2015," Map, <http://reliefweb.int/map/ethiopia/ethiopia-registered-persons-concern-camp-and-locations-31-january-2015> (accessed October 23, 2016).