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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of the freedom of opinion and expression on his visit to Ethiopia

Comments by the State*

* The present document is being issued without formal editing.

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Comments by the Federal Democratic Republic of Ethiopia

1. Paragraph 2- References to Ministers of Peace and of Innovation and Technology should be made as “Ministers” and not “Federal Ministers” since there are no ministerial posts at regional levels

2. Paragraph 5 line 11– Ethiopia is not in the process of considering a legislation related to “use of force during protests”. Rather, the draft legislation is on “police use of force and accountability” in general.

3. Paragraph 6 lines 1 and 2– the date for the next national election, although it was previously announced provisionally to take place on 16 August 2020 by the National Electoral Board of Ethiopia (NEBE), the latter has announced on February 14, 2020 for the election to take place on 29 August 2020.

In a latest development, we would like to inform the SR that after conducting a detailed assessment of the impact Covid-19 would have on its operation, NEBE decided to cancel the current electoral calendar and suspend elections operations of the coming national elections planned to be conducted in August 2020. It has also reported these developments to the house of people’s representative. Thus, the report requires updating as per the latest information from NEBE.

4. On Paragraph 7 line 4, regarding the reference in relation to ‘Inter-ethnic clashes’, paragraph 29 line 3 on ‘inter-ethnic division’ and paragraph 54 on ‘Inter-ethnic intolerance’, we have found that the assessment lacks objectivity and implies an undesirable outlook on the very fabric of Ethiopia.

Diversity is embraced as a beauty and strength of the nation and no single ethnic group has felt threatened by others. There were few attempts by rogue elements who were removed from public offices due to the grand reform. These detractors have desperately been causing mal administration while unlawfully enriching themselves. Once they are removed from the system, they anticipated that accountability is imminent and engaged what conflict entrepreneurs normally does- instigating skirmishes which are short-lived.

We would like to underscore that there was no ethnic-to-ethnic or people-to-people conflicts in Ethiopia. We do not subscribe to the assertion that the existence of a unified Ethiopia as a nation was threatened as stated in the report. There are countless components that bound us together and our destiny is entwined to one another. This is the fact and what has been buttressed during the people to people conferences held across the nation.

5. Paragraph 7- the government is blamed to have failed to take necessary steps to protect human lives and hold perpetrators of current or past human rights violations to account.

At the outset, the government is cognizant of these concerns and is deeply saddened by the senseless act of violence that had occurred. However, this presumption falls short of recognizing the general context. As it is evident to all closely observing the unfolding developments in Ethiopia, what the reform under the leadership of H.E Dr. Abiy Ahmed, Prime Minister of the Federal Democratic Republic of Ethiopia have brought is a quantum leap in many fronts. It has committed itself for a smooth transition while avoiding escalation, harness healing and preservation of law and order.

The government of Ethiopia approaches this concern from different perspectives:

First, we believe that the said commentators are juxtaposing measures taken by the previous government and the one being implemented. As it was clearly evident, it is unfortunate that our people were exposed to extreme measures during the previous administration’s tenure. This has crystalized into a norm in some minds which resulted in attaching justice and rule of law with needless violence against body and lives. It takes too much of a patience to balance a polarized concept of rule of law vis a vis the delicate task of transitioning the nation.

Second, one sided assessment frequently leads into a lopsided conclusion. Essentially, there are calls from the public for the preservation of justice and rule of law which the government fully appreciates. Nevertheless, there is a corrupt concept of serving justice among different interest groups. A given constituency will call for measures against its perceived adversary

whereas when the same request is made there is a categorical rejection and failure to handover suspects under the pretext of many shields.

Third, it goes without saying that the reforming government of Ethiopia is least criticized for repression against human rights. To begin with, protection, promotion and fulfillment of human rights and fundamental freedoms are the bedrock of the reform. Second and most importantly, rule of law is also one of the tenets of the reform and it is against this backdrop that a lot of suspects were detained across the nation in pursuit of serving justice. Had it not been for these actions of the government, some of the violence could have spiraled into a major setback.

Fourth, the flagship creeds which are very close to the hearts of the of the government in Ethiopia are peace, reconciliation and realizing prosperity within the auspices of dialogue and mediation. Widening the political and democratic space while ensuring justice have been a daunting task yet all resources are mobilized for its realization.

Lawful and proportional measures were taken, are being taken and will be taken in order to ensure peace and stability in the country. No doubt shall prevail with regards to the government's capability, readiness and determination to take all necessary measures. It has to be recalled that law enforcement personnel and civil servants have paid the highest sacrifices while in service.

It is therefore with these premise that we find the reference above and the statement claiming 'repressive practice from the past had not completely disappeared and that the government is not taking measures' to be hastily generalized and fails to take the full context onboard.

In another note, we would also like to highlight an editorial error while mentioning a number which we think is a year. We therefore suggest for it to be corrected.

6. Paragraph 13 lines 7-8– while Ethiopia concurs with the special rapporteur on his assessment of the key place given to media outlets, broadcasting networks, civil society, and technology, the preamble of the FDRE constitution does not make specific refence to the above. We recommend reconsideration of the use of the word "preambular".

7. Paragraph 14 lines 1 and 2– it is stated "for nearly three decades, the Government of Ethiopia tortured and jailed journalists and human rights defenders, labeling them as terrorists." We find the phrase "for nearly three decades" unjustified. The Anti-Terrorism Proclamation No.652 was adopted in 2009 and it is after that the concept of terrorism was legally introduced in Ethiopia. Therefore, we cannot refer to what is nonexistent while there was no probability that the said category of persons could have been incarcerated under the realm of terrorism which automatically makes the reference to 'the last three decades' as factually incorrect. Ethiopia enjoyed improved press freedom and freedom of expression and opinion in general in the period that followed the fall of the Dergue Regime in 1991. Making a generalized statement that labels the past three decade in their entirety is not justified and is not supported by our UPR report and other Communications referred to in the footnote.

8. Paragraph 15 lines 8-9- the statement "the Council has a three-year term to address a critical range of issues, including ……improving judicial independence" is factually incorrect. The task of improving judicial independence falls with another separate Advisory Council established under the Federal Supreme Court.

9. Paragraph 16–The Justice and Legal Affairs Advisory Council was, as its name indicates, established to play an advisory role. While the Council has drafted a number of laws on its own, it is not mandated to present the laws directly to the Council of Ministers or the House of Peoples Representatives. All laws drafted by the Council have been subjected to review by the Office of the Attorney General (OAG). Similarly, the OAG did not forfeit its legal drafting mandate to the Council; hence the fact that the new law against Hate Speech and Disinformation as well as the Gun Control law being drafted by the OAG itself is a standard practice. That said, the regular legal drafting mechanism allows experts, civil society and others (including members of the Advisory Council) to participate in law-making through consultations organized by the OAG and in public-hearings organized by the Parliament before each law is tabled for adoption.

10. Paragraph 23- It is reported that the SR had met the Attorney General. However, the fact is that he had exchanges with H.E the Deputy Attorney General and other officials. Therefore, this has to be amended as such.

11. Paragraph 26 line 3, as the proper designation of the institution is 'The National Intelligence and Security Services', we request for the document to take onboard this amendment.

12. Paragraph 27- Regarding the concern raised in the report about the definitions of "terrorism" and "incitement" contained in the new law which the SR considers potentially stifle legitimate expression, Ethiopia notes the concern but stresses that utmost precautions have been taken to provide clear definitions for these words in as much as possible so that their interpretation will not go beyond the intention of the legislator.

Although there is no universally comprehensive definition of terrorism, the Proclamation to Provide for the Prevention and Suppression of Terrorism Crimes No. 1176/2019 defines "terrorist act" as an act which causes serious bodily injury to a person; endangers the life of a person; hostage taking or kidnapping; causes damage to property, natural resource or environment; or obstructs public or social service with the intention of advancing political, religious or ideological causes for terrorizing, or spreading fear among the public or section of the public or coercing or compelling the government, Foreign Government or International Organization.

Accordingly, all acts are punishable only if they are committed to pursue ideological or political objectives using violence. It is the primary purpose of the legislation to punish the intent of the offender to use violence to advance political objectives, not the act in and of it. We believe the concern that the legislation could be used to criminalize acts of peaceful political dissent that result in disruption of public services is erroneous as the legislation clearly states that the mental element behind the commission of any of the acts constituting terrorism should be done with intent to advance a political or ideological cause by coercing the government and others provided under Article 3 paragraph one of the legislation.

Moreover, taking such criticisms which were raised on the former anti-terrorism proclamation, the new legislation clearly provides under Article 4 that where the obstruction to public service resulted from a legal strike, peaceful demonstration, assembly or similar exercise of a legal right, the act shall not be considered an act of terrorism.

As per the United Nations Security Council Resolution 1624 (2005), incitement to commit a terrorist act is prohibited by Article 10 of the Proclamation to Provide for the Prevention and Suppression of Terrorism Crimes No. 1176/2019 which defines "incitement" as:

(a) Whosoever to cause the commission of one of the crimes provided for in this Proclamation, intentionally incites another person by inducing, promises, money, gift, threat or any other means shall be punishable with a punishment provided for the offence provided that the crime was attempted or committed.

(b) Notwithstanding the provision of Sub-article (1) of this Article, whosoever in clear manner incites by statement, writing, using image or by any other conduct to cause the commission of any of the acts provided for under this Proclamation or publish, produce, communicate, distribute, store, sell, or make available to the public through any means anything with substance of such kind shall be punishable with rigorous imprisonment from one year to five years, provided that the crime was attempted or committed.

(c) Notwithstanding the provision of Sub-article (2) of Article 36 of the Criminal Code, where the act mentioned has been committed as provided for in Sub-article (1) or (2) of this Article but the intended crime has not materialized or attempted, the person who commits the acts mentioned in the sub-articles shall be punished with rigorous imprisonment from one year to five years.

An individual seeking to express political dissent or expressing comments cannot be penalized on the pretext of incitement of terrorism. Any opinion expressed will have to constitute an actual incitement of a terrorist act beyond mere expression. As a matter of fact, the prosecution of incitement has to be aligned with paragraph 1 of article 3 of the legislation. Unless the mental element of intent to advance a political or other cause to coerce the

government or likewise is proved, as provided under paragraph 1 of article 3 of the legislation, then there could be no prosecution.

13. Paragraph 27 - Regarding the concern raised in the report about the punishment foreseen in the new law to combat terrorism which allows for 15 years to life in prison or even death penalty which the SR considers to be "harsh" and against the general approach that death penalty should be imposed in exceptional circumstances and for the most serious crimes, we believe, taking into account the hideous nature of acts of terrorism, the punishment is appropriate in the most extreme circumstances. Necessity of such rigorous measures has also been affirmed by UN Anti-Terrorism Conventions and the Palermo Convention. Although the penalty for the crime ranges from fifteen years to life imprison or death, it does not mean all the stipulated offences incur death penalty and long-term imprisonment. The penalties in the legislation are applied consistently with the provisions of the Criminal Code of the FDRE and the Sentencing Guidelines of 2010 and 2013 issued by the Federal Supreme Court of Ethiopia. The Criminal Code, under Article 117 states "sentence of death shall be passed only in cases of grave crimes and on exceptionally dangerous criminals". This confirms with the ICCPR requirement of death penalty imposition for "most serious crimes". Moreover, as per the Sentencing Guidelines issued by the Federal Supreme Court, death penalty is imposed only on the most serious criminal offences and in the absence of any extenuating circumstances.

14. Paragraph 28 – While the Government of Ethiopia acknowledges that the former anti-terrorism legislation was vague in its definition of what constitutes "terrorism" and that there it had often been used to stifle political dissent, its application as it relates to the June 2019 incident in the Amhara Regional State and the assassination of the Chief of staff of the FDRE Armed Forces in the capital city is legitimate for a number of reasons. First, application of the law cannot be challenged merely because a successor legislation was being drafted. The law was only repealed after a successor law was adopted by parliament on January 2020. Secondly, despite defects in the former law's definitional article, the June 2019 assassination of the President and cabinet members of the Amhara Regional State and the Chief of Staff of the Armed Forces with the objective of achieving a political agenda was clearly a crime of terrorism; both in the old and new anti-terrorism proclamations as well as accepted international standards. We urge the Special Rapporteur to take a closer look at the facts constituting the June 2019 attempted coup.

15. Paragraph 29 line 5, with regards to the allegations that 'prosecutorial and police forces continue to employ the same tactic in the face of political dissent', it is found to be an unsubstantiated claim and runs the risk of a one-sided assessment.

The measures taken in Ethiopia in the past two years are the first of its kind in the recorded history of the nation. Just in a span of one month in March 2020, H.E President Sahlework Zewde have pardoned 5570 prisoners who were under federal custody. Regional governments have also taken significant measures.

The widening of political and democratic space has ensured the untampered flow of ideas and this gesture has been well recognized equally both at home and abroad. There could be some specific incidents though it cannot be generalized as a system-led tactic which is against the very principle of constructive engagement. Therefore, we request for a balanced reflection.

16. Paragraph 33 – While we do not share the assessment that the definition of Hate speech and Disinformation is overbroad and does not meet international standards, utmost care is being taken to ensure that the law is not abused during implementation. Successive trainings are being provided to law enforcement, the judiciary and the general public on the objective, content and proper application of the law. As with all other laws, subsidiary legislations including regulations and directives will be issued, as the need arises, to ensure proper application of the law.

17. Paragraph 34 – on the concern that the Hate Speech and Disinformation law could lead to penalties imposed on those who merely re-post or otherwise share content deemed "hate speech" or "disinformation" and that the law carries penalties of 50,000 – 100,000 Birr in addition to providing for a maximum prison sentence of five years, which is considered by the SR, to be very significant, it is important to note that the maximum penalty imposed by

the law as adopted is 3 years not five and furthermore, the law gives courts the discretion to avoid penalizing a convict with incarceration to the extent they believe that the objective of correcting the offender could be served through other means. So, punishment other than financial penalties and imprisonment is provided for within the law.

18. Paragraph 39 line 4, it is reported that thousands of imprisoned journalists were released. It is with utter dismay we report back to the SR that there has never been a report from the government or any other body for that matter claiming this number of journalists were in prison. We are of the view that, these kinds of statements have a negative repercussion. Practically, cases are tried before a court of law while fulfilling due process and it is only when charges are proved beyond reasonable doubt that convictions are taken. We would like to confirm once again that citizens have a constitutionally protected right to choose whatever profession they want for their calling and no one has been arrested for exercising journalism as it will be against article 41 (2) of the FDRE constitution which guarantees everyone to have the right to choose his/her occupation and profession.

According to article 25 of the FDRE constitution, all persons are equal before the law and are entitled without any discrimination to equal protection of the law. The phrase encapsulated in this paragraph of the report will provide shield and harm this principle. In this regard, the government of Ethiopia clearly states its unwavering commitment to preserve this principle and whenever and wherever there is a criminal responsibility, it will continue to take commensurate measures within the bounds of the law.

19. Paragraph 43 - the SR concludes that the failure of the Government of Ethiopia to allow access to information appears to amount a substantial violation of the right to information. While we agree that a lot remains to be done to fully implement the right of access to information, it should be noted that in the post April 2018 period, the government has significantly improved access to information by opening up the various government agencies and ensuring continued access to information formal structure in the government such as the press secretariat and through print, broadcast and social media outreach. We find the assessment of the SR in this regard to be sweeping and fails to take into account significant steps taken to improve access to information.

20. Paragraph 51 and 52- With respect to the statement that the government shuts internet without an obvious legal basis, we would kindly request the special rapporteur to observe to the following points.

First, according to proclamation no 808/2013 which reestablishes Information Network Security Agency, the agency among others is vested with the power to keep the country safe from any threats against national security and it can take measures when the necessity arises. Further can be looked into article 6 of this proclamation which details the powers and functions of the agency.

Second, the FDRE constitution is progressive in recognizing the right to freedom of information. Under article 29 (2), it has guaranteed a freedom to seek, receive and impart information and ideas of all kinds. Moreover, under the same article sub article 3, access to information of public interest is guaranteed. However, as it is enshrined under international law governing the subject whom Ethiopia is also a party to, clearly specified that these rights are not absolute and derogations with in the established scope are permissible. The limits Ethiopia have incorporated under article 29 (6) of the constitution are verbatim of those specified under article 19 of UDHR and article 19 sub article 3 of ICCPR.

In conclusion, we would like to reaffirm that these measures are exercised seldom with maximum restraint and are solely confined to the requirements of legality, legitimacy, necessity and proportionality.