

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2, 24/5 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the wide restrictions imposed under the state of emergency decree declared on 9 October 2016, which severely affects the right to freedom of expression, and the right to freedom of peaceful assembly in Ethiopia.

Allegations about violent repression of protests and the enforcement of the Anti-Terrorism Proclamation 652/2009 were the subject of previous communications to your Excellency's Government: ETH 4/2011, sent on 4 October 2011 (see A/HRC/19/44), ETH 7/2011, sent on 19 December 2011 (see A/HRC/20/30), ETH 5/2015 sent on 28 December 2015 (see A/HRC/32/53), ETH 2/2016 sent on 2 September 2016 and ETH 5/2016 sent on 7 October 2016. We thank your Excellency's Government for the substantial response to our communication ETH 4/2011, received on 17 February 2012 but we remain concerned about the fact that the Anti-Terrorism Proclamation 652/2009 and the subsequent measures implemented by the authorities are highly detrimental to freedom of expression, to freedom of peaceful assembly and association in Ethiopia. We reiterate our regret that no response has been received to date to communications ETH 7/2011, ETH 5/2015, ETH 2/2016 and ETH 5/2016.

According to the new information received:

In the context of many demonstrations sparking across the Oromia, Amhara and Konso provinces - which were almost systematically violently repressed by security forces - and about which we raised concerns in the above mentioned communications, Ethiopian authorities declared, on 9 October 2016, a country-wide six-month state of emergency. The adoption of the state of emergency was reportedly justified by the Government by pointing to the threat posed by violent groups attacking private properties "in close collaboration with foreign governments". The state of emergency imposes a 6 p.m. to 6 a.m. curfew on access to "economic installations, infrastructure and agricultural development projects, factories and others" for anyone apart from authorized employees.

In addition, the state of emergency decree provides for a wide range of repressive measures, particularly regarding freedom of expression and freedom of association and assembly rights which do not appear in compliance with article 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which Ethiopia ratified on 11 June 1993. Under these provisions, freedom of expression and peaceful assembly may not be restricted unless the restrictions are “provided by law”, and necessary for “respect of the rights or reputations of others”, or “for the protection of national security or of public order (*ordre public*), or of public health and morals.”

Derogations from these rights during a state of emergency require that the conditions for a state of emergency are present in accordance to article 4(1) of the ICCPR, and that the derogations do not go beyond what is “strictly required by the exigencies of the situation”. In its General Comment No. 29 on state of emergency, the Human Rights Committee has highlighted 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.” Moreover, to assess whether a specific measure is consistent with the “exigencies of the situation” the “duration, geographical coverage and material scope,” must be tailored to a particular situation.

1. *Freedom of expression*

The decree prohibits any incitement and communication that could cause public disturbance and riots, in particular “exchanging messages through internet, mobile, in writing, television, radio, social media or any other means of communication”. It also prohibits “Following television or radio programs; displaying, following and reporting terrorist groups’ media such as ESAT and OMN”.

Furthermore, it prohibits any communication with undefined “terrorists and anti-peace groups” but also “any communication and exchange of message with foreign governments or foreign NGOs that is likely to harm the sovereignty, security, and constitutional order is prohibited”.

Additionally, “Political parties shall not provide press statements that are likely to harm the sovereignty, security and constitutional order to local or foreign media” and “law enforcement officers can monitor or restrict messages transmitted through any radio, television, writings, images, photograph, theatre and film”.

We are concerned that these provisions, through their overly broad and vague language, could severely curtail freedom of expression, as provided by article 19 of the International Covenant on Civil and Political Rights, as well as access to information by giving the authorities broad discretion in limiting legitimate expression. Forbidding exchanges via most communication channels appear to be a disproportionate measure that goes beyond what is strictly required. We have previously raised concern vis-à-vis the practice implemented by Ethiopian

authorities to limit access to information, especially through internet shutdowns (see ETH 5/2016 about several internet shutdowns imposed in Ethiopia since November 2015).

The use of broad terms such as “causing public disturbances” and forbidding any communication with “terrorist and anti-peace groups”, gives the authorities discretion to forbid any communication they consider falling under these provisions. There is indeed no definition of these groups. We reiterate previous concerns at the use of terrorist legislation to repress peaceful protests and the expression of dissenting views

Finally, the banning of political parties from communicating with local and international media is a disproportionate measure which is incompatible with Ethiopia’s obligations under international human rights law.

2. *Freedom of peaceful assembly*

The decree provides that any demonstration or public gathering will require a prior authorization: “in the interests of protecting the peace and security of the people and citizens; conducting demonstration and public gatherings without permission from the Command Post is prohibited”.

Strikes in “educational institutions in sport facilities” will be prohibited if they stir up disturbances. Obstructing roads or disturbing national or religious holidays is prohibited.

We express concern at these provisions which are disproportionate vis-à-vis the exigencies of the situation, given that most of the protests carried on since November 2015 have been peaceful. These provisions are likely to impose a *de facto* general ban on protests in the country.

Since November 2015, the authorities have consistently and repeatedly repressed protests alleging their illegality due to the fact that no prior permission has been asked (see above-mentioned communications). The Special Rapporteur on the rights to freedom of peaceful assembly and of association has underlined in his first report to the Human Rights Council that the right to hold and participate in a peaceful assembly should not be subject to previous authorization by the authorities but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others (A/HRC/20/27, para 28).

We would like to recall Human Rights Council resolution 24/5 “States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants,

seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law”.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5, 6 and 8. We further wish to mention the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

3. *Arbitrary arrests and detentions*

Finally, under the decree, 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.”

We wish to underline that the declaration of state of emergency does not grant the authorities a *carte blanche* to detain persons. We express concern at the widespread arbitrary detentions that have taken place, which according to information received amount to 11 607 detentions since the declaration of state of emergency. Other sources of information report higher numbers: twenty thousand detentions in the Oromia region and over fifteen thousand arrested in the Amhara region, notably in Gondar and Gojjam.

Additionally, we express concern at the reportedly inhumane conditions of detention which include the denial of medical attention for the many detainees who are infected with malaria or related diseases. Prisoners are moreover forced to do military exercise as way of inflicting punishment. The whereabouts of most of the detainees are also unknown, and access to information has been severely limited by a two month long suspension of 3G mobile internet network in several regions, including the capital Addis Ababa.

Without expressing at this stage an opinion on the facts of the case, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right not to be deprived arbitrarily of his/her liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information you may have about the above mentioned issues.
2. Please provide information about justification for the adoption and implementation of the state of emergency decree and how its provisions are in compliance with Ethiopia's obligations under international human rights law, in particular with articles 4, 9, 14, 19 and 21 of the ICCPR.
3. Please provide information on any measures taken to ensure the physical and psychological integrity of all protesters and detainees. Please also provide information on the legal grounds for the arrests and detention of the above-mentioned persons and how these measures are compatible with international norms and standards.
4. Please explain what measures have been taken to ensure that protestors and human rights defenders in Ethiopia can carry out their peaceful and legitimate activities and express and protest freely without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary measures be taken to revise or put an end to the state of emergency in order to comply with international obligations subscribed by Ethiopian authorities.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai

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Michel Forst

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