

# AN APPRAISAL ON THE LEGAL PROTECTION OF HUMAN RIGHTS DEFENDERS IN ETHIOPIA

Brook Kebede Abebe\*

## Abstract

*Human rights defenders (HRDs) play a role in the solidification of democracy and the realization of fundamental rights and freedoms of individuals, they are crucial for the firming-up of democratic institutions. However, as they challenge the incumbent and the dominant non-state actors, HRDs are frequently victims of state and non-state actors. Subsequently, they need strong protection and attention from the government and the international community. Governments need to provide them with adequate protection and adopting robust means of doing this. Governments need also to recognize the work of HRDs as an opportunity rather than a threat to the incumbent, it is essential to allow them to perform their activities effectively and safely. This paper analyses the pertinent legal frameworks designed for the protection or otherwise of HRDs in Ethiopia. However, it doesn't address their institutional issues and all their rights, rather it concerns freedom of expression, the right to assembly and demonstration, and the right to association. In doing so, the current legislative reform measure and its fruits are investigated instead of the rights of HRDs. Major legal documents including international, regional and domestic legal instruments are critically investigated. The findings reveal the legal protection of HRDs before the reform measure was terrifying and targeted HRDs. Most of the legal documents were draconian and had a chilling effect on the works of HRDs in Ethiopia. After 2018, due to the legal and institutional reforms in the country, the protection of the rights of HRDs seems very promising. However, there are still legal gaps needing critical revision for their better protection in Ethiopia.*

**Keywords:** Human Rights Defenders, Protection, Freedom of Expression, Freedom of Association, Freedom of Assembly and Peaceful Demonstration, Ethiopia

## INTRODUCTION

In the Ethiopian context, individuals and groups including journalists, labour unions, Civil Society Organizations (CSOs), lawyers, witnesses, labour unions, whistle-blowers, teachers, and others are engaging as human rights defenders (HRDs). Most of the time, their role in fighting human rights issues makes them vulnerable to human rights violations and abuses from state and non-state actors.<sup>1</sup> Practically, many of them have

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\* (LL.B, BA, LL.M in Comparative Law, Economics, and Finance, LL.M in Human Rights Law, MA Candidate in Sociology); Lecturer of Laws at the University of Gondar, School of Law. Email: [kebedebrook89@yahoo.com](mailto:kebedebrook89@yahoo.com). The author is very grateful to Mizanie Abate Tadesse (Ph.D.) for his comments and suggestion that have helped him to improve the piece at the drafting stage. The author also

experienced threats, harassment, arbitrary detentions, arrests, violence, death, unfair trials, unlawful surveillance, and repression due to their engagement in human rights activities.<sup>2</sup> In this respect, there is a strong need to protect those individuals, groups, and organs of society that promote and protect universally recognized human rights and fundamental freedoms.<sup>3</sup>

The work of HRDs is highly dependent on the existence of adequate legal recognition and practical protection of their human rights. In this regard, the Federal Democratic Republic of Ethiopia Constitution (the FDRE Constitution), as well as other subordinate legislation, have their own positive and negative implications on the activities of HRDs in Ethiopia. The FDRE Constitution consists of bountiful human rights. It also acknowledges the importance of international human rights treaties in times of interpretation of basic human rights and fundamental freedoms, which are built-in under Chapter Three. It declares the status of the ratified international treaties as part and parcel of the laws of the country.

In mid 2018, the Abiy Ahmed administration introduced and implemented many positive human rights reforms and brought a renewed sense of optimism for the promotion and protection of human rights in Ethiopia. Among the practical measures, thousands of political prisoners including HRDs and journalists were released and those living in exile are allowed to enter the country.<sup>4</sup> The government, *inter alia*, attempted to conduct legal and institutional reforms on the National Election Board, national human rights institutions, and the judiciary branch of the government.

In Ethiopia, legal and institutional reformative measures also came in mid 2018. The government established the Legal and Justice Affairs Advisory Council (the LJAAC or the Council). The Council was established and mandated to reconsider the oppressive legislation and work on law reform by prioritizing those legal documents that affect the fundamental rights and freedoms of individuals and jeopardize the political space in the country. Accordingly, the Council has been undertaking a massive legal reform project. As part of this reform, the Council engaged in the change of that draconian legislation and contributed a lot in the drafting of several legal documents including the CSOs Proclamation Number 1113/2019; the Anti-Terrorism Proclamation Number 1176/2020; the Ethiopian Human Rights Commission Amendment Proclamation, Proclamation Number 1224/2020; Administrative Procedure Proclamation, Proclamation Number 1183/2020; the Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation Number 1162/2019; and the Media Proclamation Number

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would like to thank the anonymous referees (to whom the IJELS had sent this article) and who pointed out some serious flaws and constructive comments in the original manuscript.

<sup>1</sup> The Association for Human Rights in Ethiopia, Ailing Civic Space In An Authoritarian State, The State of Human Rights Defenders and Cost of Dissent in Ethiopia, Rue Ami-Levrier (1201 Geneva | Switzerland, 2018). Available at, [https://ahrethio.org/wp-content/uploads/2018/01/AilingCivicSpace\\_large-1.pdf](https://ahrethio.org/wp-content/uploads/2018/01/AilingCivicSpace_large-1.pdf). (Last Accessed on 19 April 2021).

<sup>2</sup> Ibid

<sup>3</sup> Todd Landman, Holding the Line: Human Rights Defenders in the Age of Terror, The British Journal of Politics and International Relations 2006,2 P: 123-147

<sup>4</sup> However, even after the reform, there are reports that indicate the increasing of arrests of journalists and human rights defenders in Ethiopia. See for instance: Committee to Protect Journalists, Ethiopia uses emergency law to ramp up arrests of journalists, New York, NY 10108 December 15, 2021. Available at, <https://cpj.org/2021/12/ethiopia-uses-emergency-law-to-ramp-up-arrests-of-journalists/> (Accessed on 20 December 2021).

1238/2021. However, still HRDs are facing intimidation and harassment by the government and non-state actors. Therefore, in addition to liberalizing the civic space, the government of Ethiopia need to be committed for the enforcement of such laws. Particularly, after 2018, the political situation of the country is not conducive for HRDs.

Regarding HRDs, a significant research gap remains due to scattered nature of laws and lack of comprehensive study on the issue in Ethiopia. In this respect, it is very relevant to explore whether and how such legal frameworks could comprehensively and meaningfully contribute to the protection of HRDs in Ethiopia. Hence, this paper explores the legal framework relevant to the protection of the rights of HRDs in Ethiopia. Besides, it highlights several key international and regional human rights instruments, which enshrine the rights that specifically promote and protect the rights of HRDs. It shows the complementary nature of the legal framework whereby instruments at the international level can be invoked to support domestic legislations for the purpose of protecting HRDs in Ethiopia. Accordingly, the paper outlines some selected legal documents.

As noted above, the paper evaluates the Ethiopian scattered legislations in protecting and facilitating the works of HRDs, particularly, the right to freedom of expression, association, and peaceful demonstration. These rights are enshrined in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration)<sup>5</sup> that facilitate the work of promoting and protecting human rights.<sup>6</sup> Methodologically, it uses a doctrinal legal research method, which assesses the pertinent legal frameworks and reports related to the works of HRDs in Ethiopia. It is limited in scope to the analysis of legislation and the writer does not investigate empirical data on the practicability of rights of HRDs in Ethiopia. However, the writer strongly believes that empirical investigation into the issue is very crucial.

The paper is organized into five parts. The first part outlines the introduction and methodology of the paper. The second part outlines the definition and characteristics of HRDs. In this respect, it critically examines the definition of HRDs based on the Declaration and the Office of the UN High Commissioner for Human Rights (OHCHR) Fact Sheet Number 29. Part three highlights the protection of HRDs under international and African human rights laws. The fourth part discusses domestic legislations, which have impacts on the freedom of expression, association, and peaceful demonstration of HRDs in Ethiopia. Under this part, there is a brief analysis of the Ethiopian policy and legal documents in the light of the country's recent reformative measure, and analyses the protection of HRDs under Ethiopian constitutional and infra-constitutional laws. Some prospects and challenges for the protection of HRDs are identified and discussed by reviewing the existing domestic legislation. Specifically, the major legal documents that

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<sup>5</sup> United Nations General Assembly, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," 9 December 1998. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (Accessed on 2 March 2021).

<sup>6</sup> A. M. Nah, K. Bennett, D. Ingleton, J. Savage A Research Agenda for the Protection of Human Rights Defenders, *Journal of Human Rights Practice*; 2013, 3 P: 401-420

have direct and indirect impacts on the work of HRDs are discussed. The last part presents the conclusion.

## 1. DEFINING AND CHARACTERIZING HUMAN RIGHTS DEFENDERS (HRDS)

There is no universally agreed definition for a 'HRD'. Hence, the use of this concept is not the same and straightforward<sup>7</sup> since there is no explicit agreement on it.<sup>8</sup> This is because defining HRD is controversial and some states would like to take it as an internal matter and link it with sovereignty while others underscored the relevance of having a universal definition.<sup>9</sup> The Declaration under Article 1 states that 'Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels'.<sup>10</sup> Accordingly, instead of providing a precise definition, the Declaration sets out the rights and protections bestowed to HRDs, the duties of states, and the role and responsibilities of non-state actors.<sup>11</sup> As a result, the entitlement of the term 'HRD' to a specific person is still very controversial. For instance, some people would like to focus on the specific actions of an individual or a group of people needing protection. However, others may consider HRDs as individuals or groups of individuals who are professionally engaged in the promotion and protection of human rights.<sup>12</sup> In this respect, the lack of a precise and comprehensive definition for HRDs creates challenges in deciding whether or not protection mechanisms and resources assigned for HRDs rub on to specific individuals or groups.<sup>13</sup>

Practically speaking, 'HRD' can be understood quite broadly. This is because it has been referred to any individuals or groups who stand for the protection of individuals and groups engaged in human rights work in any part of the globe, regardless of their profession, gender, race, religion, ethnicity, or group association.<sup>14</sup> On the contrary, some argue that certain individuals, organizations, and communities like members of a 'terrorist group', defenders of criminals, or 'the guerrilla' are not to be considered as HRDs. Besides, they are not entitled to legal protection and support on that basis.<sup>15</sup>

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<sup>7</sup> Bertrand Ramcharan, *The Advent of Universal Protection of Human Rights: Springer Biographies*, 2018.

<sup>8</sup> For better understanding please see the UN Special Rapporteur on the situation of human rights defenders (2011).

<sup>9</sup> Petter Wille, the history of the UN Declaration on Human Rights Defenders: its genesis, drafting and adoption. Available at: <https://www.universal-rights.org/blog/the-un-declaration-on-human-rights-defenders-its-history-and-drafting-process/>. (Accessed on 8 June 2021).

<sup>10</sup> A. M. Nah, K. Bennett, D. Ingleton, J. Savage, A Research Agenda for the Protection of Human Rights Defenders, *Journal of Human Rights Practice*, 2013, 3 P: 401-420

<sup>11</sup> Jones, M. Ending the Two Solitudes: Bringing Human Rights Defenders at Risk into the International Refugee Regime. Paper presented at the Research Workshop on Human Rights Defenders, University of York, 15-17 May 2013.

<sup>12</sup> Michael INEICHEN, Protecting Human Rights Defenders: A Critical Step Towards a More Holistic Implementation of the UNGPs, *Business and Human Rights Journal*, 2018, 1 P: 97-104 see also Nah, AM, Bennett, K, Ingleton, D & Savage, J, 'A Research Agenda for the Protection of Human Rights Defenders', *Journal of Human Rights Practice*, vol. 5, no. 3, pp. 401-420, (2013) (June 24, 2021) <https://doi.org/10.1093/jhuman/hut026>

<sup>13</sup> Ibid

<sup>14</sup> Who is a defender? Office of the United Nations High Commissioner for Human Rights. Available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>. (Accessed on 12 June 2021).

<sup>15</sup> Ibid

Generally, the lack of agreed and comprehensive definition can be problematic for the realization of the rights of HRDs. However, the UN Declaration on HRDs is not the only international legal document that lacks a definition of the subjects of the instrument.<sup>16</sup> In this respect, the OHCHR has tried to provide clarification on the interpretation and application of the term HRDs.<sup>17</sup> Accordingly, HRD refers to people who, individually or with others, act to promote or protect human rights.<sup>18</sup> In this respect, there is no special qualification attached that is required for an individual to be considered as a HRD. It is because the Fact Sheet principally concerns the responsibilities and rights of the individuals or groups. It also emphasizes the obligation of the HRDs that should accept the universality of human rights as defined in international human rights instruments.<sup>19</sup> The same document stated that 'the actions taken by HRDs must be peaceful to comply with the Declaration'.<sup>20</sup> However, the Fact Sheet has failed to address some practical issues. For instance, it ignores the importance of the 'universality' criterion in the contexts where discrimination against women is deeply entrenched in cultural norms like the Saudi Arabian or the Ethiopian societies. Accordingly, HRDs can be identified by what they do and through a description of their actions. So, for the purpose of this article, anyone who advocates for the promotion and protection of universally recognized human rights can simply be identified as a HRD. However, to the minimum, HRDs shall acknowledge or be in line with the basic principles of human rights including the universality and indivisibility of human rights.<sup>21</sup>

## 2. THE PROTECTION OF HRDs IN INTERNATIONAL AND AFRICAN HUMAN RIGHTS SYSTEMS

As noted above, there is no comprehensive binding international human rights instrument designed specifically for the protection of HRDs.<sup>22</sup> However, we can mention a non-binding international human rights instrument that specifically addresses the protection of

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<sup>16</sup> Petter Wille, the history of the UN Declaration on Human Rights Defenders: its genesis, drafting and adoption, March 11, 2019. Available at: <https://www.universal-rights.org/blog/the-un-declaration-on-human-rights-defenders-its-history-and-drafting-process/>. (Accessed on 12 June 2021).

<sup>17</sup> Office of the UN High Commissioner for Human Rights (OHCHR), Human Rights Defenders: Protecting the Right to Defend Human Rights. Fact Sheet No. 29. (2004)

<sup>18</sup> Petter Wille, the history of the UN Declaration on Human Rights Defenders: its genesis, drafting and adoption, March 11, 2019 available at: <https://www.universal-rights.org/blog/the-un-declaration-on-human-rights-defenders-its-history-and-drafting-process/>. (Accessed on 12 June 2021).

<sup>19</sup> To put it differently, a person may not deny some human rights and yet claim to defend other human rights because he or she is an advocate for other human rights. For example, it may not be acceptable to defend the human rights of minorities but to deny that women have equal rights.

<sup>20</sup> Ibid

<sup>21</sup> Who is a defender? Office of the United Nations High Commissioner for Human Rights. Available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>. (Accessed on 11 June 2021).

<sup>22</sup> Even though the Declaration on Human Rights Defenders is not legally binding and does not impose any obligation on states in the strict sense of the word, it is however the result of unanimity of the United Nations General Assembly and requires a robust assurance by states to enforce it. Therefore, this document is politically binding and as such includes a series of principles and rights based on existing human rights standards enshrined in other international instruments which are legally binding. In this regard, Ethiopia adopted almost all major international and African human rights instruments which contain basic rights of HRDs including, UDHR, ICESCR, ICCPR, ICERD, CAT, CRC, CEDAW, and ICRPD. There are also several regional instruments covering human rights issues ratified and signed by Ethiopia.

HRDs. In this respect, the Declaration for HRDs stated that States have a responsibility and duty to protect, promote and implement all human rights and ensure that they are fully enjoyed by all persons under their domestic jurisdiction by taking all necessary legislative, administrative, judicial etc. steps.<sup>23</sup>

The Declaration refers to several rights that are guaranteed by binding international human rights norms. These rights are crucial for HRDs to conduct their activities for the promotion and protection of human rights. Once binding international human rights instruments that protect those rights have been ratified by a State, they should be used to demand that the State protect not only individuals in general but also HRDs in particular. Besides, there are various binding international and regional human rights instruments regarding the protection of HRDs.

To begin with the international human rights instruments, the United Nations has created several binding instruments that are essential for the work of HRDs. Principally, international human rights documents impose an obligation on the state to provide adequate protection for individuals including HRDs. The obligation to provide adequate protection refers to the State's obligation to protect the rights of HRDs. However, these obligations originated from the State's primary responsibility to protect all human rights.<sup>24</sup> Accordingly, the right to be protected entails both negative and positive duties of the state. States must not only refrain from violating human rights but also act with due diligence to prevent violations of the rights of HRDs under their jurisdiction.<sup>25</sup> The duty to protect necessarily requires the state to provide protection for HRDs against abuse from non-State actors. Accordingly, the failure to do so might give rise to State responsibility. To put it differently, the Ethiopian government has to protect HRDs and should adopt strong measures of doing this, embracing the work of the HRDs as an opportunity rather than a threat for them.<sup>26</sup>

Similar to the international human rights instruments, under the African human rights system some instruments recognize and protect the rights of HRDs.<sup>27</sup> Most importantly,

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<sup>23</sup> Article 2 (1) (2) the Declaration

<sup>24</sup> For instance see the following provisions of international human rights documents: Article 2 of the Universal Declaration of Human Rights (UDHR); Articles 2, 9, and 12 of the UN Declaration on Human Rights Defenders; Article 2 of the International Covenant on Civil and Political Rights (ICCPR); and Article 3 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

<sup>25</sup> The Ethiopian government shall act with due diligence to prevent violations of the rights of human rights defenders usually by 'taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators, and providing defenders with remedies and reparation'. See Sixty-fifth session Item 69 (b) of the provisional agenda, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms UN A/RES/53/144 of 9 December 1998. Available at United Nations (UN) (April 15, 2022). Available at: <http://www.un.org/> (Accessed on May 11, 2021).

<sup>26</sup> For instance, the Ethiopian government should harmonize the domestic legal frameworks with the 1998 UN Declaration on Human Rights Defenders. It is because such measures will enhance the protection of human rights defenders and ensure that the rights and freedoms referred to in the UN Declaration on Human Rights Defenders will be protected. This could also involve the Ethiopian government adopting protective measures and programs, like other countries like Brazil has created the Programme for the Protection of Human Rights Defenders. A/HRC/13/22, paras. 77-83; A/HRC/13/22/Add.3, para. 111-113; A/HRC/16/44, para. 90-96; E/CN.4/2006/95, para. 45-56. See The Right to Access Funding, Human Rights Defenders Briefing Papers (International Service for Human Rights, 2009).

<sup>27</sup> Todd Landman, Holding the Line: Human Rights Defenders in the Age of Terror, *The British Journal of Politics and International Relations*, 2006,2 P: 123-147



the African Charter on Human and Peoples' rights authorizes individuals and NGOs to make complaints about human rights violations.<sup>28</sup> In this regard, under the African Charter, there is a specific provision that regulates the right to access and communicate with the African Commission on Human and Peoples' Rights (the Commission). In these cases, HRDs might demand State protection on the grounds of related African human rights instruments. Under the African human rights system, in 1999, the Commission confirmed in the Grand Bay Declaration the importance of the declaration on HRDs approved the previous year by the UN and called upon African states to implement the declaration in Africa.<sup>29</sup> Furthermore, the Commission has issued other resolutions which refer specifically to HRDs. In 2003, the Commission adopted another declaration called the Kigali Declaration encouraging the activities of HRDs and the need for their protection.<sup>30</sup> A year later, the Commission had issued its Resolution on the Protection of African Human Rights Defenders which announced the role of a Special Rapporteur for Human Rights Defenders in Africa.<sup>31</sup> The Special Rapporteur for Human Rights Defenders in Africa has the mandate to receive urgent petitions from HRDs. It has also mandated on-site visits to countries, submitting activity reports, raising questions on the protection of HRDs during the sessions of the Commission.<sup>32</sup> Moreover, it has the mandate to maintain contact with other stakeholders. In the Pan-African Conference on Human Rights Defenders which was held in Kampala in 2009, the Kampala Plan of Action (KAPA) for the protection of HRDs was launched. In this conference, several African and international Non-Governmental Organizations (NGOs) and the diplomatic corps, four of the African Union commissioners have participated.

### 3. ETHIOPIAN LAWS APPLIED TO THE PROTECTION AND RESTRICTION OF HRDs

In Ethiopia, as noted above, there is no a separate legislation that acknowledge the work and needs for protection of HRDs. However, there are scattered laws that provide protection for HRDs and their work. The FDRE Constitution is designed to protect principally the human rights and fundamental freedoms of everyone under Ethiopian jurisdiction. It is the primary legal document for demanding the access and full enjoyment of fundamental human rights nationally. The FDRE Constitution provides for a range of rights that all human beings, including HRDs are entitled to. It defines the obligations and duties of the State and recognizes rights that are crucial to the work of HRDs, including the freedom of expression, assembly, movement, and association. Overall, these provisions reinforce the pivotal role that HRDs play in society and legitimize their work. Article 9(4) of the FDRE Constitution determines the status of international treaties ratified by Ethiopia. In this regard, the Constitution considered those treaties including international human rights treaties as an integral part of law of the land.

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<sup>28</sup> Erika Szyszczak, *Citizenship and Human Rights*, International and Comparative Law Quarterly: 2004, 2 see also [http://www.achpr.org/english/info/charter\\_en.html](http://www.achpr.org/english/info/charter_en.html) (Accessed on May 11, 2021).

<sup>29</sup> Grand Bay (Mauritius) Declaration and Plan of Action, 1999. Available at: [http://www.achpr.org/english/declarations/declaration\\_grand\\_bay\\_en.html](http://www.achpr.org/english/declarations/declaration_grand_bay_en.html) (Accessed on 11 May 2021).

<sup>30</sup> Ibid

<sup>31</sup> María Martín Quintana and Enrique Eguren Fernández, *Protection of Human Rights Defenders: Best Practices and Lessons Learnt 2013* <https://www.protectioninternational.org/wp-content/uploads/2013/04/Best-Practices-and-Lessons-Learnt.pdf> (May 11, 2021)

<sup>32</sup> Ibid

Under the FDRE Constitution, there is an express reference to Ethiopia's immediate international human rights obligations derived from international treaties ratified by the country. Besides, Article 13(2) of the FDRE Constitution briefly acknowledges the importance of international human rights documents in times of interpretation of basic human rights, which are built-in under Chapter Three of the Constitution. The amendment procedure of Chapter Three of the Constitution is also very stringent. In this respect, arguably we can say that human rights matters must have prevalence over any other matter in Ethiopian constitutional law, which, consequently, impacts the making and further application of infra-constitutional legislation. Article 37 of the Constitution provides for recourse to the judicial or quasi-judicial body by any person or organization, to seek orders for redress when their human rights are violated.

Indeed, HRDs are playing an important role and acting on behalf of victims of human rights violations, advocating for redress and accountability of government and non-state actors involved in human rights violations and abuses. Hence, the HRDs themselves are also victims of human rights abuses and violations. In this regard, the international human rights system is placing the principal obligation on the state to ensure human rights standards within their territories and/or subject to their jurisdiction.<sup>33</sup> The Ethiopian government, as a party to several international and regional human rights instruments, has three principal obligations for the HRDs in Ethiopia. These are the obligation to respect, protect and fulfil the human rights of HRDs.<sup>34</sup>

Besides, regarding the human rights abuses made by non-state actors, the Ethiopian government should have the obligation to protect HRDs from attacks made by third parties.<sup>35</sup> It has also the obligation to provide remedies and ensure that HRDs can claim their human rights.<sup>36</sup> Moreover, the Ethiopian government often should ensure that individuals are protected through the laws of the country. In this regard, the Ethiopian government should ensure the protection of HRDs through the laws of the country.<sup>37</sup>

Despite the obligations imposed above, Ethiopian HRDs are facing several risks. According to several reports, the Ethiopian government uses laws to severely restrict freedom of expression and assembly as well as independent human rights monitoring and

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<sup>33</sup> Common Article 2 of ICCPR and ICESCR

<sup>34</sup> Based on these three major obligations, the Ethiopian government is required to refrain from any action that deprives people of their rights. Besides, is also required to prevent third parties, including individuals, armed groups, and nongovernmental institutions, from depriving people of their rights. Moreover, the Ethiopian government is required to take active measures so that individuals and communities can realize their rights. Accordingly, the Ethiopian government should monitor the fulfillment of the human rights of individuals by the government and non-state actors. In addition, it should provide effective remedies when rights are abused by non-state actors including armed groups.

<sup>35</sup> Legally binding international instruments which Ethiopia has ratified including the ICCPR stated that the State has to protect all human rights. Thus, for instance, the right to life, the right to privacy, and the right to freedom of religion should be protected from violations not only by State agents but also by non-state actors. International Covenant on Civil and Political Rights, *entered into force* Mar. 23, 1976, S. EXEC. Doc. E, 95-2, 999 U.N.T.S. 171

<sup>36</sup> This right to an effective remedy is reflected in several human rights instruments, including the UDHR and ICCPR. Article 2(3) of the ICCPR provides that States parties should ensure that "any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity". See, for instance, summaries of individual cases raised by the Special Rapporteur on human rights defenders during 2009 and summaries of Government responses (A/HRC/13/22/Add.1 and Corr.1, paras. 696-703, and 1805)(2009)

<sup>37</sup> Ibid



promotion.<sup>38</sup> As a result, Ethiopia's repressive laws provoke fear and self-censorship among HRDs.<sup>39</sup> Besides, HRDs in the country frequently face threats, acts of intimidation, judicial harassment, and arbitrary arrest,<sup>40</sup> surveillance and official restrictions on the movement of HRDs. Accordingly, most of them fled the country and the few who stayed in the country continued to face constant threats.<sup>41</sup> Therefore, on different occasions, Ethiopia has received several recommendations specific to HRDs, committing to guaranteeing the protection of HRDs. Accordingly, in this part of the paper, the writer examines the legal reformative measures by looking at the provisions of the Constitution and some selected Proclamations concerning the protection and promotion of freedom of expression, the rights of assembly, movement, the rights of association and peaceful demonstration of the HRDs in Ethiopia.

### **3.1 The Protection and Restrictions of Freedom of Expression of HRDs in Ethiopia**

Arguably, almost for the last three decades, human rights protection and promotion have not been a primary concern for the Ethiopian government. The situation facing HRDs in Ethiopia has been significantly deteriorated following the 2005 election. Up until 2018, HRDs including politicians, lawyers, bloggers, journalists and CSO leaders were arrested and politically charged, tortured, extra-judicially killed and faced other several forms of inhuman treatments. These abuses and violations of fundamental rights and freedoms of HRDs were committed through the instrument of different laws including the anti-terrorism law. For instance reports indicated that, thousands of charges under the anti-terrorism law including journalist, bloggers, Artists and CSO leaders have been instituted. In addition, the repealed CSO's law, which was enacted in the aftermath of the 2005 election, was seriously affecting human rights defenders in Ethiopia. For instance, the Ethiopian Human Right Council was obliged to close 10 of its 13 branch offices throughout the country due to lack of finance.

It is difficult to imagine practical democracy without the right to freedom of thought, opinion, and expression.<sup>42</sup> It is because they are the basis for a free and democratic society.<sup>43</sup> Based on Article 6 of the Declaration, everyone individually or in the group has the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.<sup>44</sup>

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<sup>38</sup> Human Rights Watch, Ethiopia: Events of 2015, at 56-57

<sup>39</sup> ISHR, The Situation of Human Rights Defenders in Ethiopia, 2021. Available at: [https://ishr.ch/wp-content/uploads/2021/08/ethiopia\\_-\\_ishr\\_briefing\\_on\\_hrds.pdf](https://ishr.ch/wp-content/uploads/2021/08/ethiopia_-_ishr_briefing_on_hrds.pdf) (Accessed on 20 May 2021).

<sup>40</sup> The Association for Human Rights in Ethiopia, Ailing Civic Space In An Authoritarian State, The State of Human Rights Defenders and Cost of Dissent in Ethiopia, 2018. Available at: [https://ahrethio.org/wp-content/uploads/2018/01/AilingCivicSpace\\_large-1.pdf](https://ahrethio.org/wp-content/uploads/2018/01/AilingCivicSpace_large-1.pdf) (Accessed on 18 May 2021)

<sup>41</sup> REGIONAL ANALYSIS SUB-SAHARAN AFRICA observatory for the protection of human rights defenders annual report 2011. Available at: [http://www.omct.org/files/2011/10/21443/obs\\_2011\\_uk\\_afriqsub.pdf](http://www.omct.org/files/2011/10/21443/obs_2011_uk_afriqsub.pdf) (Accessed on 18 May 2021).

<sup>42</sup> Aidoo, Akwasi. "Africa: Democracy without Human Rights?" *Human Rights Quarterly* Vol. 15, No. 4., 1993: 703-715.

<sup>43</sup> As per the FDRE Constitution-free flow of information, ideas and opinions are essential to the functioning of the democratic public order, enjoying legal protection to ensure its operational independence, and its capacity to entertain diverse opinions.

<sup>44</sup> Ralph Crawshaw, Leif Holmström, Essential Cases on Human Rights for the Police, 2006

The provision is referred to as communication-related to human rights, which is the apparent focus of HRDs'. Albeit the FDRE Constitution criticized for the categorization of freedom of expression<sup>45</sup> as part of 'Democratic Rights,'<sup>46</sup> it articulated in a similar fashion with the Declaration and consists of the right to thought, opinion,<sup>47</sup> expression and freedom of artistic creativity.

Article 29 of the FDRE Constitution is almost similar to Article 19 of ICCPR except for the Constitution as a principle provides freedom of expression without any interference.<sup>48</sup> The Constitution provides absolute protection of the right to hold opinions. In Article 29(3), the FDRE Constitution protects the press from any form of censorship. Besides, it gives legal protection to the press and clearly states its indispensable role in the development and functioning of a democratic society. However, as noted above, freedom of expression is not an absolute right. It is subject to limitations. The FDRE Constitution prohibits any content and effect-based restrictions.<sup>49</sup> However, a speech may be limited based on its content or effect if the restriction is prescribed by law for the sake of protecting the "well-being of the youth, honour, and reputation of individuals, human dignity, and prevention of propaganda of war."<sup>50</sup> However, the legitimate aims of freedom of expression enshrined in the FDRE Constitution may have a chilling effect on the work of HRDs since it is vulnerable to overly broad and abusive interpretation.<sup>51</sup> Besides, those terminologies have no straightforward meanings in the Ethiopian legal dictionary. However, the UDHR and ICCPR do not follow the identical standards of legitimate aims including the well-being of the youth and human dignity.<sup>52</sup> Moreover, there are more grounds of limitations that are included in international instruments.<sup>53</sup>

Practically, after coming into the power of the Abiy's Administration, the government has formulated a media policy which is aimed to establish a policy framework that regulates the media and targeted to create an enabling environment for better realization of freedom of expression.<sup>54</sup> Therefore, the media policy emphasizes that the media need to accommodate the diversity of the content of the programs broadcasted and to pay attention and ensure coverage of the issues of vulnerable sections of the society in their

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<sup>45</sup> Article 29 of FDRE Constitution.

<sup>46</sup> Gedion Timothewos, Freedom of Expression in Ethiopia: The Jurisprudential Dearth, Mizan Law Review, 4(2) (2010), pp. 213.

<sup>47</sup> Concerning the right to opinion, in addition to Article 29 under Article 54(5) of the Constitution, no member of the house may be prosecuted on account of any vote he casts or opinion he expresses in the house, nor shall any administrative action be taken against any member on such ground. Therefore, even though currently there are no opposition parties in the EPRDF-dominated federal parliament, any opponent party who is a member of the parliament will enjoy the freedom of expression without any fear of prosecution.

<sup>48</sup> In its General Comment No 34, the Human Rights Committee recognizes the freedom to hold opinion as an absolute right. Human Rights Committee General Comment No. 34 (2011), 102<sup>nd</sup> Session, CCPR/C/GC/34, Para 9. (Hereinafter "General Comment No. 34"). This General Comment is an explanation of Article 19 of ICCPR. It elaborates the elements of freedom of expression and opinion and states' duty to protect, respect, and fulfill the right as guaranteed by Article 19 of ICCPR.

<sup>49</sup> FDRE Constitution, Article 29 (6).

<sup>50</sup> Ibid

<sup>51</sup> Human Rights Watch, Ethiopia: Events of 2015, at 56-57.

<sup>52</sup> See common Article 19 of ICCPR and UDHR

<sup>53</sup> Like ICCPR and General Comment No.31 and Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR, doc E/CN.4/1985/4 (1985). Para.17.

<sup>54</sup> Media Policy of the FDRE, 2020, p.1.

programs.<sup>55</sup> Most importantly, the Policy has also emphasized the role of CSOs in the media. It includes a commitment to ensure the representation of CSOs in the board members of public media and demanding them to contribute their part in the implementation of the policy by providing the necessary support to the media.<sup>56</sup> Accordingly, the Ethiopian government, at least at the policy level, recognizes the importance of the CSOs in the democratization process of the country.

Previously, there were legislations that have been impacting the freedom of expression of HRDs. One of them is the Mass Media Proclamation.<sup>57</sup> Even if the newly promulgated and the previous Media Proclamations<sup>58</sup> and the Constitution<sup>59</sup> explicitly prohibited pre-publication censorship, both of the Media Proclamations are allowing the Federal or the Regional public prosecutor to impound and stop any publications that may cause a clear and present danger on the national security of the state.<sup>60</sup> In the absence of clear and precise definition for phrases like a clear and present danger on the national security of the state, there will be big threats on the protection and work of HRDs in Ethiopia.

The new Media Proclamation put the requirements of registration of print and online media outlets in preventing duplication of names, recording shareholders and identity of owners, and compelling information on the dissemination of media outlets, registration is maintained under Proclamation 1238/2021. The same Proclamation also gave the power to register for an independent institution called Media Authority and tried to establish an independent registering entity and has no institutional dependence with the executive branch of government. The law also allows individuals to bring legal action if they are aggrieved by the decision of the Authority. HRDs are indeed the watchdog of the domestic implementation of human rights. Thus access to information is necessary for their activities to verify the endeavours of the government. In this regard, the FDRE Constitution and Proclamation No. 1238/2021 are allowing any person including the media to seek and obtain information. However, due to a lack of computer-based information databases, HRDs including journalists are inadequately informed about press briefings.<sup>61</sup> Besides, lack of initiative and capacity are mentioned among the major reasons obstructing the right of access to information held by public bodies.<sup>62</sup>

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<sup>55</sup> Ibid., p.11 and p.13

<sup>56</sup> Ibid., p.11

<sup>57</sup> Freedom of the Mass Media and Access to Information Proclamation 2008, Proclamation No. 590, Neg. Gaz. Year 14, no. 25

<sup>58</sup> Article 3 Ibid

<sup>59</sup> Article 29 (3)(a) of the FDRE Constitution

<sup>60</sup> Article 85 of Proclamation Number 1238/2021 stated that 'Where the Federal or Regional public prosecutor, as the case may be, has sufficient reason to believe that a periodical or a broadcasting service which is about to be disseminated or transmitted contains illegal matter which would if disseminated, lead to a clear and imminent grave danger to the national security which could not otherwise be averted through a subsequent imposition of sanctions, may apply to Federal High Court to get a grant of an order to impound the periodical or an injunction order forbidding transmission of a broadcasting service.'

<sup>61</sup> See United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye Visit to Ethiopia, 2-9 December 2019, End of mission statement, (2019). Retrieved from <https://ethiopia.un.org/en/27708-end-mission-statement-special-rapporteur-freedom-expression-ethiopia> (Accessed on 21 May 2021).

<sup>62</sup> Ibid

Moreover, according to Article 23(4) of Proclamation No. 1238/2021, Civil Society Organizations that have an ownership stake in broadcasting service shall not include foreigners. Such kinds of stipulations have chilling effects on the work of foreign HRDs. Accordingly; the nationality requirement may have its implication on the work of foreign HRDs in Ethiopia.<sup>63</sup> Besides, this stipulation may conflict with the very essence of the general principle of human rights and the Declaration.<sup>64</sup> In this regard, the Declaration expressly stated that without any nationality requirement everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Besides, Proclamation No. 1238/2021 under Article 84 (1) removed the criminal liability for defamation and stated that defamation shall not entail criminal liability. However, based on the same provision, defamation may entail civil liability. This measure has its positive implication on the work of HRDs, particularly for journalists. However, the moral compensation is very severe and will be up to three hundred thousand Ethiopian Birr.<sup>65</sup> The Proclamation also consists of an important provision that has a positive contribution to the work of HRDs. According to Article 49 of the Proclamation, journalists may not be forced to reveal a source that provided information on a confidential basis. However, exceptionally, the court may order the disclosure of a confidential source when the following two conditions are fulfilled. The journalist may be forced, if it is critical information necessary for prosecution or defense of a serious crime or for preventing clear and imminent danger to the national security and secondly if there is no other alternative means for obtaining the information needed to prosecute or defend the case, or avert the imminent danger. In this respect, it is important to note that these two requirements are cumulative not alternatives. Accordingly, we can argue that Proclamation 1238/2021 is good enough in the protection of journalistic sources which are indispensable for the work of HRDs including journalists.

According to the Human Rights Watch report, in Ethiopia, HRDs and especially national and international bloggers are frequently has been accused of terrorism.<sup>66</sup> Recently, HRDs use social media technologies to conduct human rights campaigning. But the Ethiopian government in 2012 promulgated a Proclamation on Telecom Fraud Offences, Proclamation 761/2012, which creates obstacles to freedom of expression of HRDs through social Media. This Proclamation restricts freedom of expression by punishing the

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<sup>63</sup> For instance, please read the following: 'Every Ethiopian citizen, either privately or through a legal person, has the right to be legally recognized and get a certificate of registration to establish a periodical, an online media and news service based on clear criteria and without discrimination.' Article 22 (1) of Proclamation 1238/2021

<sup>64</sup> Regarding this; arguably it is possible to say that the government has employed this law to exclude foreigners from media ownership as a means of excluding them from human rights promotion and protection through the mainstream and social media outlets.

<sup>65</sup> To avoid arbitrary determination of moral compensation, the law set down some standards including the profitability of the media company and the seriousness of the damage and the effect of compensation shall be taken into account. Moreover, the law stated the conditions that shall not result in civil liability for defamation. See Article 84(2), (3), and (4) of Proclamation 1238/2021.

<sup>66</sup> Human Rights Watch (29 May 2014). "Joint Letter to UN High Commissioner for Human Rights Navanethem Pillay Regarding Violations in the Context of Kenyan Counterterrorism Operations." (21 May 2021). Available at: <http://www.hrw.org/news/2014/05/29/joint-letter-un-high-commissioner-human-rights-navanethem-pillay-regarding-violation> (Accessed on 10 June 2021).

dissemination of any “terrorising message” connected with a crime punishable under the Anti-terrorism Proclamation 2009 (Article 6(1)).<sup>67</sup> An offence under this section is punishable by 3 to 8 years imprisonment in addition to a fine. Accordingly, the Proclamation restricts freedom of expression by punishing the dissemination of any terrorizing message on social media.<sup>68</sup> The Telecom Fraud Offence Proclamation addresses illegal content on the internet and criminalizes the dissemination of any 'terrorizing message' and 'obscene message' through electronic communications including the internet. Besides, Article 6(1) restricts the utilization of telecommunication services for any 'illegal purpose'.<sup>69</sup> Moreover, the Directive issued by the Ministry of Communications and Information Technology in 2011, also prohibits some of the online contents such as messages that promote hatred, violence, or discrimination.<sup>70</sup> Therefore, the presence of such provision in the absence of clear definitions will restrict the activities of HRDs in Ethiopia.

HRDs recently become more familiar with the usage of social media platforms and strategize how they can be used to meet campaigning goals. However, they should also be critically examined for their usefulness, allowing HRDs to make more informed decisions allocating time and resources during the execution of human rights campaigns. Cognizant of the catastrophic effect of hate speech and misinformation, the Ethiopian government enacted Hate Speech and Disinformation Prevention and Suppression Proclamation No.1185/2020 which criminalizes such acts.<sup>71</sup> In this respect, Proclamation No.1185/2020 has its implication on the work of HRDs. The Proclamation is highly criticized for its failure to precisely define the concept of hate speech and other relevant terminologies.<sup>72</sup> For instance, a HRD who is sharing any content on social media may be deemed to be a disseminator of hate speech and will be subject to criminal liability. The definition of ‘dissemination’ is also very awkward.<sup>73</sup> Lack of precision in the Proclamation may cause arbitrary deprivation of the rights of HRDs and it is in

<sup>67</sup> Amnesty International, *Comments on the Telecom Fraud Offences Proclamation* (November 2012), . Available at: <http://www.amnesty.org/en/library/asset/AFR25/> (Accessed on 23 June 2020).

<sup>68</sup> Some criticized this proclamation on the ground that Blogs, tweets, and even Facebook status updates could result in jail time and heavy fines for posting information that may be deemed offensive to national security. Sup era n-31

<sup>69</sup> Telecom Fraud Offence Proclamation, Federal Negarit Gazeta, Proclamation No. 761/2012.

<sup>70</sup> Article 11, Ministry of Communications and Information Technology, Value Added Service License Directive No. 3/2011.

<sup>71</sup> በፌዴራል ጠቅላይ ዓቃቤ ህግ የሕግ ጥናት፣ ማርቀቅና ማስረጽ ዳይሬክቶሬት፣ የጥላቻ ንግግር በኢትዮጵያ፣ ህዳር 2011 ዓ.ም.። Hate Speech and Disinformation Prevention and Suppression Proclamation No.1185 /2020, Federal Negarit Gazette No. 26th Year, Addis Ababa, March 23rd 2020.

<sup>72</sup> Hate speech is defined under the Proclamation as a "speech that deliberately promotes hatred, discrimination or attack against a person or a discernible group of identity, based on ethnicity, religion, race, gender or disability." Ibid Art 2(2). It is also important to know that the UN Special Rapporteur expressed concerns about the ambiguous formulation of Ethiopia's hate speech and disinformation law, stating that the scope of the law is overbroad and not based on international human rights law. United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression, David Kaye, Visit to Ethiopia, 2-9 December 2019, End of Mission Statement, <https://www.ohchr.org/EN/NewsEvents/Pages/> (accessed 15 January 2022). See also Ayalew, Yohannes Eneyew, Defining 'Hate Speech' under the Hate Speech Suppression Proclamation in Ethiopia: A Sisyphean exercise? (December 5, 2020). Ethiopian Human Rights Law Series Volume 12 (2020), in Sisay Alemahu and Abadir Ibrahim eds, *Righting Human Rights through Legal Reform: Ethiopia's contemporary experience* (Addis Ababa University Press), Monash University Faculty of Law Legal Studies Research Paper No. 3776922, (August 2, 2021) Available at SSRN: <https://ssrn.com/abstract=3776922> or <http://dx.doi.org/10.2139/ssrn.3776922> (Accessed on 23 October 2021).

<sup>73</sup> The Proclamation under Article 2(7) “Dissemination” means to spread or share a speech on any means for many persons, but it does not include like or tag on social media.” See also Ibid.

contradiction with international human rights instruments and the FDRE Constitution.<sup>74</sup> Accordingly, this will endanger the freedom of expression and the activities of HRDs in Ethiopia.<sup>75</sup>

Moreover, according to Yohannes, even if the reading of the preamble of the Proclamation looks as if it is a human rights friendly document, the Proclamation follows 'heckler's veto' doctrine, which is prohibited under international human rights law.<sup>76</sup> Indeed, in the current Ethiopian ethnic politics and the labeling of certain writing and speech with certain groups, the mere presence of heckler's veto may affect the work of HRDs. On the other hand, according to Article 7(4) of the Proclamation, for instance, if a HRD disseminate a kind of speech that may be labeled as 'hate speech' through a Social Media account with more than 5,000 followers, the person may be criminally liable for the act with simple imprisonment not exceeding three years, alternatively or cumulatively with a fine not exceeding 100,000 Ethiopian birr. Accordingly, the Proclamation would have a chilling effect on the freedom of expression of HRDs.<sup>77</sup> This is an instance where HRDs could be targeted for having 5,000 followers.<sup>78</sup>

The HRDs also faced threats that emanated from other legal documents. One of the chilling effects on the right to freedom of expression of HRDs is emanated from the Computer Crime Proclamation which endangers the free enjoyment of the right to freedom of expression and access to information of HRDs..<sup>79</sup> For instance, The Telecom Fraud Offences Proclamation which extended the violations and penalties defined in the criminal code to electronic communications, including both fixed-line and mobile internet services may significantly affect the works of HRDs.<sup>80</sup> Besides, the Computer Crime Proclamation penalizes several actions of online expression and authorizes the investigator to conduct interception or surveillance of computer data without a court warrant.<sup>81</sup> This may severely affect the work of HRDs. Moreover, Proclamation 958/2016 stated that the dissemination of any type of writing or video online that is likely to cause violence shall be punishable with imprisonment.<sup>82</sup> However, the law did not mention the *modus operandi* and what content would be likely to cause violence.<sup>83</sup>

<sup>74</sup> Even if the legality requirement of limitation obliges states to enact laws in a clear and certain manner, the Hate Speech Proclamation did not clearly and precisely define what constituted 'hatred', and 'dissemination'.

<sup>75</sup> Hussein Ahmed Tura, Counter Terrorism Law and Freedom of Expression in Ethiopia: The Need to Strike a Right Balance, SSRN Electronic Journal, 2015

<sup>76</sup> According to Yohannes, the law mandates the stifling of speakers when those who are offended choose to show their displeasure through harmful acts. Ibid

<sup>77</sup> Simegnish Yekoye Mengesha, Silencing Dissent, *Journal of Democracy*: 2016,1 P. 89-94

<sup>78</sup> Ibid

<sup>79</sup> See The Reforms Ethiopia Needs to Advance Internet Freedom, CIPESA Policy Briefing Series, July 2018, p.1. (June 11, 2021) Retrieved from [https://cipesa.org/?wpfb\\_dl=273](https://cipesa.org/?wpfb_dl=273) (Accessed on 2 October 2021).

<sup>80</sup> Proclamation No.761/2012, Telecom Fraud Offence Proclamation, Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 18<sup>th</sup> Year No.61, Addis Ababa, 4<sup>th</sup> September 2012, Article .6.

<sup>81</sup> Proclamation No. 958/2016, Computer Crime Proclamation, Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 22<sup>nd</sup> Year No. 83, Addis Ababa, 7<sup>th</sup> July 2016, Articles 3-21; Article 25(3).

<sup>82</sup> Art 14 Computer Crime Proclamation 958/2016, Federal Negarit Gazette, Addis Ababa, 22<sup>nd</sup> Year 83.

<sup>83</sup> Y Eneyew Ayalew 'Assessing the limitations to freedom of expression on the internet in Ethiopia against the African Charter on Human and Peoples' Rights' (2020) 20 African Human Rights Law Journal 315-345 <http://dx.doi.org/10.17159/1996-2096/2020/v20n1a12>



Whistle-blowers and witnesses can also be considered as HRDs which are individuals who have and report information of illegal or criminal activities including corruption, terrorism, human trafficking, and other crimes occurring in the country. In this respect, they can be any person who somehow becomes aware of illegal or criminal activities taking place in any place either through witnessing the behavior or being told about it and discloses this information publicly to expose the existing wrongdoing and prevent it from happening in the future. Accordingly, the law should protect whistle-blowers. Instead, they are often fired or treated unfairly for having 'blown the whistle'. However, recent years have seen an increase in whistle-blower protection legislation in Ethiopia.<sup>84</sup>

In the Ethiopian legal system, there are legal regimes that are protecting HRDs, particularly for witnesses and whistle-blowers.<sup>85</sup> The first law that has introduced the idea of witness protection is the Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 235/2001 and its amendment Proclamation No. 433/2005.<sup>86</sup> According to the said Proclamations, the Federal Ethics and Anti-corruption Commission must provide physical and job security protection to witnesses and whistle-blowers.<sup>87</sup> The Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 236/2001 and its amendment proclamations, Proclamation No. 434/2005 added witness protection and made reprisal against them illegal. However, the law has failed to set out the procedures for protection and kinds of protection measures that may be taken to protect one type of HRDs called to witness or whistle-blowers.<sup>88</sup> According to Article 38 (2) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005, the public prosecutor may apply to the court to keep the identity of the witness in secret during the preparatory hearing and if the court authorizes, the identity of witness will be kept secret. Therefore, the objective of whistle-blower protection is to encourage disclosure of corruption offenses. However, nothing is said as to how long the witness identity could be kept in secret or whether it could extend to normal hearing. Besides, the protection of whistle-blowers under this Proclamation could be criticized for its failure to provide comprehensive protection to all kinds of witnesses.

<sup>84</sup> Wekgari Dulume, Oromia Law Journal, Ethiopian Witness Protection System: Comparative Analysis With UNHCHR And Good Practices Of Witness Protection Report, 2017 Vol 6, No. 1, 124

<sup>85</sup> The 2010 Ethiopian Criminal Justice Policy is also an important document in terms of introducing witness protection. On several occasions, witnesses may refuse to testify even though they know the detail of the committed crime. This is because of the fear of reprisal or threat of intimidation. Accordingly, the Policy stated that most of the time criminal justice fails due to lack of witnesses. This happens in most cases as witnesses refrain from testifying because of threats from offenders. So, if they are protected justice would be served. In some cases, the victims even fail to bring their cases to court as they face intimidation and threat from offenders or their relatives. To make sure victims bring their cases to justice overcoming fear of threat, the policy extended protection to victims of a crime. To have effective criminal prosecution especially for heinous crimes, there is a need to protect witnesses who testify against such criminals. Besides, the Amharic version of the Policy can be read as follow: አብዛኛውን ጊዜ የወንጀል ድርጊቶች ቁልፍ ምስክር ሆነው የሚቀርቡት ራሳቸው የወንጀል ተጎጂዎች በመሆናቸው ምክንያት ለምስክሮች የሚደረግ ጥበቃ ለእነሱም በተመሳሳይ መልኩ እንደሚያስፈልግ ይታወቃል። በወንጀል ፍትሕ ሥርዓቱ ውስጥ በሚፈፀሙ ከባድና አደገኛ የሆኑ የወንጀል ጉዳዮች ላይ ሚዛናዊና ውጤታማ ክስ ማቅረብ እንዲቻል ለጥቃት የተጋለጡ ምስክሮችን ለመርዳትና ሥጋታቸውን ለማስወገድ የሚያስችል ሥርዓት መዘርጋት ተገቢ ይሆናል። በመሆኑም፤ ለወንጀል ምስክሮች የሚደረግ ጥበቃን አስመልክቶ በዘርፉ የሚወጡ ሕጎች የሚከተሉትን ፍሬ ጉዳዮች በዋናነት መያዛቸውን ማረጋገጥ ያስፈልጋል። Please see የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትሕ ፖሊሲ, የካቲት25/2003፤ 3.19(ሐ).

<sup>86</sup> Federal Ethics and Anti-Corruption Commission Proclamation No.235/ 2001, Art. 7(16).

<sup>87</sup> Federal Ethics and Anti-Corruption Commission Proclamation No.235/2001.

<sup>88</sup> Proclamation No. 433/2005, which revised Federal Ethics and Anti-corruption Commission Establishment Proclamation No. 235/2005 governing the same issue.

Ethiopia has a separate and comprehensive legal regime for the protection of witnesses and Whistle-blowers. It is the Ethiopian Witness and Whistle-blowers Protection of Criminal Offences, Proclamation No. 699/2010.<sup>89</sup> It covers both substantive and procedural protections.<sup>90</sup> But it is widely blamed for some drawbacks that hinder its effective implementation. The Proclamation is applicable to a witness who wishes to give testimony or whistle-blower who gives information on a suspect punishable with ten or more years rigorous imprisonment or with death.<sup>91</sup> There are two grounds under which a witness is protected under this Proclamation. The first ground is related to where offense may not be revealed without the testimony of the witness or whistle-blower's information. The second is the existence of danger to the life, physical security, freedom, or property of the witness or whistle-blower.<sup>92</sup> Therefore, the scope of the Proclamation is limited to criminal investigation and be applicable to an investigation undertaken on a suspect punishable with rigorous imprisonment for ten or more years or with death without having regard to the minimum period of rigorous imprisonment. Therefore, it does not include the protection of witnesses and their families who have participated in human rights investigations. However, it is important to know that the protection measures are partially applicable to the protected persons whichever is necessary to guarantee the protection of the witness of a whistle-blower or their families.<sup>93</sup> But the meaning of family provided in the proclamation is limited in terms of scope. According to Article 7(2) of the proclamation, a family only includes the spouse or cohabitant, the children, parents, siblings and the children of the spouse or cohabitant of a person. In this regard, individuals living with the witness but not mentioned in the above lists are not protected by this law.

Similarly, a Proclamation for the Prevention and Suppression of Terrorism Crimes provides legal protection for whistle-blowers and witnesses. In this regard, there is explicit protection for HRDs called whistle-blowers. According to Article 12 of Proclamation No. 1176/2020, any person interferes to prevent a whistle-blower or witness or who has evidence of crime from giving information by threat or violence.<sup>94</sup> The protection also extended to the families of the HRDs.<sup>95</sup> Moreover, Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178/2020 in Article 25 provides protection for Witnesses and whistle-blowers. According to this Article, where the life or property of any person or his family is

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<sup>89</sup> Ethiopian Witness and Whistle-blowers Protection of Criminal Offences, Proclamation No. 699/2010

<sup>90</sup> The Proclamation is consisting of the issues like who will be protected and the type of protective measure that will be taken. Besides, it contains the requirements used to determine necessary protection measures are included.

<sup>91</sup> Article 3 of Ethiopian Witness and Whistle-blowers Protection of Criminal Offences, Proclamation No. 699/2010

<sup>92</sup> But one of the issues here is who will investigate the existence of the threat? In this regard, the law has no clear answer. Currently, there is no established system to identify the prevalence of threats. Besides, according to Proclamation No. 943/2016, the Attorney General is mandated to ensure that whistle-blowers and witnesses of criminal offenses are accorded protection following the law. However, the practical move of the Attorney General is questionable.

<sup>93</sup> Ethiopian Witness and Whistle-blowers Protection of Criminal Offences, Proclamation No. 699/2010, Article 4

<sup>94</sup> Article 12(1) of Proclamation No. 1176/2020, Prevention and Suppression of Terrorism Crimes stated that such person or a person who has a close relationship with him shall be punished with rigorous imprisonment from three years to seven years

<sup>95</sup> Article 12 (1) and (2) of Proclamation No. 1176/2020 stated that a person who assaults, threats, suppresses, or harms any person or a person who has a close relationship with such person, who gave information or evidence to justice authorities or appeared as a witness in an investigation or judicial proceeding of crime

endangered for being a witness or whistle-blower of an offense stipulated under Proclamation No. 1178/2020, protection shall be given for the witness or the whistle-blower. Besides, the Revised Criminal Code of Ethiopia under Article 455 provides legal protection for witnesses.<sup>96</sup> In this regard, the above legal documents have their positive implications for the works of HRDs in Ethiopia. Reports indicated that Ethiopia's human rights record including freedom of expression is now atrocious, crushing independent media, and jailing journalists and activists. So, there is still a need to change the reality in Ethiopia.

### **3.2 The Protection and Restrictions of Freedom of Association and HRDs in Ethiopia**

Freedom of association is another important right for the works of HRDs in Ethiopia. It is recognized in international and regional human rights instruments.<sup>97</sup> More importantly, freedom of association is included under the Declaration as a core right of HRDs<sup>98</sup>. This can be inferred from the provisions of the Declaration. Specifically, Article 5(b) stated that for implementation of human rights and fundamental freedoms, everyone has the right, individually and in association with others, to exercise the right to association. Similarly, Article 31 of the FDRE Constitution guarantees every person with the right to freedom of association for any cause or purpose. It also mentions the grounds for limitations including, subverting the constitutional order, violation of appropriate laws, or which promotes such activities. But the terms are vague and unclear. For example "to subvert the constitutional order" is alien to international human rights instruments and may be abused to arbitrarily restrict freedom of associations of HRDs.

After a decade of repression, the Ethiopian government repealed the 2009 CSOs legislation and adopted the new one.<sup>99</sup> The new Proclamation is a relatively more democratic legal document that resurrects the space for HRDs and their engagement in human rights activities. It is also important to note that the adoption of the revised Civil Society Proclamation 1113/2019, the participation of local civil societies, and the public hearing before the approval by the House of Peoples Representatives was an important

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<sup>96</sup> Article 455: Provocation and Suborning.

Whoever, by gifts, promises, threats, trickery or deceit, misuse of his influence or any other means, induces another to make a false accusation, to give false testimony or to make a false report, application or translation before the concerned organ in judicial or quasi-judicial proceedings, is punishable, even where the act solicited has not been performed, with simple imprisonment, unless he is punishable for incitement following the provisions of the General Part (Art. 35).

Whoever, by violence, intimidation or by promising or offering or giving undue advantage causes another to make a false accusation or give false testimony or obstructs, through interference, the giving of testimony or the production of evidence concerning a crime punishable with rigorous imprisonment for more than two years or obstructs law enforcement officials or public servants while exercising their official duties with the same crime, is punishable with rigorous imprisonment not exceeding seven years.

<sup>97</sup> For instance, UDHR (Article 20), ICCPR (Article 22), ICESCR (Article 8), CRC (Article 15), and ACHPR (Article 10).

<sup>98</sup> Article 5 of the Declaration

<sup>99</sup> Proclamation 1113/2019, which repeals Proclamation No. 621/2009.

indication of the government's promise to revise laws in line with international human rights norms.<sup>100</sup> However, still there are challenges that the new law has failed to address.

According to Article 2(1) of the new CSO Proclamation, Proclamation No. 1113/2019, Organizations of Civil Societies" defined as means a Non-Governmental, Non-partisan, Not for-profit entity established at least by two or more persons on a voluntary basis and registered to carry out any lawful purpose, and includes Non-Government Organizations, Professional Associations, Mass-based Societies and Consortiums. Accordingly, it explicitly acknowledges the establishment of an association made by two or more persons that can agree to voluntarily for any lawful purpose as specified in Article 2(1). In this respect, the Proclamation is compatible with international human rights standards and the FDRE Constitution.

According to Article 57 of Proclamation No. 1113/2019, an organization to be considered as an association needs to be registered by the Agency for CSOs. This requirement has been criticized by the Special Rapporteur on Freedom of Association because it may affect the right to associate.<sup>101</sup> Besides, the Agency is authorized to reject the registration if the organization failed to fulfill the required legal standards.<sup>102</sup> Moreover, the re-registration requirement may also affect the legal personality of many HRDs.<sup>103</sup> In this respect, such kinds of standards may undermine the right to association and the works of HRDs. In this regard, the regional human rights standard indicated that registration shall be administered through a notification process.<sup>104</sup> Accordingly, the organization may be acquiring legal status through notification.

The new CSO Proclamation has taken a liberal position and recognizes that resources of the HRDs can be solicited from any legal sources.<sup>105</sup> Accordingly, it is possible to argue that Proclamation Number 1113/2019 explicitly recognizes resource mobilization as a right of HRDs. However, Proclamation Number 1113/2019 under Article 63(2) consists of a mandatory stipulation on the issue of budget allocation for administrative and operational costs that are creating a challenging condition for HRDs.<sup>106</sup> Such kinds of restrictions may hinder HRDs to engage in their activities in a flexible manner. This restriction affects the HRDs' financial decisions and may be interpreted as a needless

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<sup>100</sup> Kidan Dires Demissie, The 2009 and 2019 CSO Laws in Ethiopia: From Hinderance to Facilitator of CSO Activities? A Research Paper for partial fulfilment of Master of Arts in Development Studies, International Institute of Social Studies, The Hague, The Netherlands, December 2019

<sup>101</sup> African Commission on Human and People Rights Guidelines on Freedom of Association and Assembly in Africa (2017) (May 11, 2021). Available at: [www.achpr.org](http://www.achpr.org) (Accessed on 13 October 2021).

<sup>102</sup> Article 59 of Proclamation No. 1113/2019

<sup>103</sup> According to Article 83 of the Proclamation, an Organization can be dissolved as a result of failure to reregister.

<sup>104</sup> Abebe, Brook Kebede. "The Ethiopian Civil Society Organizations Law and its Role for Social Movement in Ethiopia" (2022) 2:1 Contemporary Sociological Issues 1-17.

<sup>105</sup> Article 63 of Proclamation Number 1113/2019.

<sup>106</sup> The Administrative cost of an organization established for the benefit of the general public or that of third parties may not exceed twenty percent of its total income. For this provision, "Administrative Expense" shall mean expenses that are not related to the project activities of an Organization but are necessary to ensure the continuity of an Organization and related to administrative activities, and shall include: salaries and benefits of administrative employees; purchase of consumables and fixed assets and repair and maintenance expenses related to administrative matters; office rent, parking fees, audit fees, advertisement expenses, bank service fees, fees for electricity, fax, water and internet services; postal and printing expenses; tax, purchase, and repair of vehicles for administrative purposes, and procurement of oil and lubricants for the same; insurance costs, penalties and attorney fees. Article 63(2)

intervention in the internal affairs of HRDs. This is because, based on international human rights standards, the right to access funding and use may be subject only to the requirements in the law that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, and those concerning transparency.<sup>107</sup> However, the Agency has been mandated to issue Directives regarding Organizations exempted from the budget allocation rule.<sup>108</sup>

Under Article 62 of Proclamation Number 1113/2019 organizations that are established by foreign citizens who reside in Ethiopia and who have established foreign organizations or local organizations are prohibited from lobbying political parties, voter education, and elections observation. Accordingly, it is possible to argue that the new Proclamation restricted Foreign HRDs to engage in lobbying activities related to human rights work including training, conducting background researches, coordination work, publication, and public relation campaigns contributing to policy decisions of political parties and their members during the election. Moreover, any HRDs organization should be permitted to undertake actions aimed towards shaping political parties' positions and programs that contribute to the promotion and protection of human rights in Ethiopia.

Article 57 and the following provisions of the new Proclamation designate an appellate mechanism where the agency has failed to register and issue a certificate for the organization. Besides, based on Article 83 of Proclamation Number 1113/2019 a HRD organization can be dissolved when it is decided by the Board of the Agency, by a competent organ of an association according to their internal rule and the Court. Moreover, under Article 9 of the new Proclamation set out a complaint procedure and mechanism for rights violations and the right to appeal decisions made by the Agency's administration. This will be taken as an important development for the work of HRDs because, unlike the repealed legislation, Proclamation Number 1113/2019 is not limited to the right to appeal and is not only extended to the resident or foreign HRDs. In this respect, the Proclamation promotes and protects the right to a fair trial and due process of law which is recognized under international human rights instruments and the FDRE Constitution as well.

Proclamation Number 1113/2019 is more liberal that permits the establishment of an organization by two or more persons either permanently or temporarily.<sup>109</sup> The legislation categorizes CSOs mainly in two types, namely local and foreign organizations where the local organizations, in turn, have their categories. However, the susceptibility of public morals is a rejection ground of CSOs from being certified where freedom of association may be infringed under the pretext of public morality as the word doesn't have an objective definition. The limitation of administrative costs stated under Article 63(2) which is only 20% of the association's annual budget may impede the free decision and

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<sup>107</sup> Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and association, Seventy-first session Item 69 (b) of the provisional agenda, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms Report (June 24, 2021). Available at: [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/385&referer=/english/&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E) (Accessed on 14 September 2021).

<sup>108</sup> Article 63(3) of the Proclamation Number 1113/2019.

<sup>109</sup> Article 2(1) and Article 16(1)

restrict its function.<sup>110</sup> Generally, these restrictions on freedom of association are contravening the Declaration on Human Rights Defenders and have their impact on the work of human rights defenders. According to Article 22 (2) of ICCPR, any restriction on the rights to the association should have a legitimate aim, should be necessary, and need to be proportional. Most importantly, the government should show the absence of any other alternatives to achieve the intended objective.<sup>111</sup>

Trade Unions are important associations that can address the imbalance of power between employers and employees and improve working conditions. They are working at the main struggle for human rights and social justice. Sometimes, artificial categorization may be made between labor rights defenders (e.g trade unions) and human rights defenders, but these distinctions are futile.<sup>112</sup> This is because labor rights are also human rights, and any person or organization defending them is a human rights defender as articulated in the UN Declaration on Human Rights Defenders. Having said so, the FDRE Constitution under Article 42 (1) (a) (b) explicitly guarantees trade union rights.

Labour Proclamation, Proclamation No. 1156/2018 is the major source of law that governs the private labour relationships in Ethiopia and it is applicable throughout the country.<sup>113</sup> As an objective, it provides a guarantee for the right of workers and employers to form their respective associations and engage in collective bargaining as stated under its Preamble. Proclamation No. 1156/2018, under Article 114 (1), allows the establishment of a trade union where the number of workers is ten or more. Even if the law sets the minimum number of members of the union, exceptionally workers who work in different undertakings but in similar activities which have less than ten workers may form a general trade union by observing the minimum number of membership requirements.<sup>114</sup> A Trade Union has the function of protecting the rights and interests of its members, in particular, representing members in collective bargaining and labor disputes before the competent organ when so requested or authorized by their members. In this respect, labor rights defenders can effectively engage in the promotion and protection of the rights of employees.

Proclamation 1156/2018 is also protecting the Trade Union and its members. In this regard, it is important to know that to be and not to be a member of a trade union is

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<sup>110</sup> Human Rights Council, Rights to freedom of Peaceful Assembly and Association, Report of the Special Rapporteur on the Rights to freedom of Peaceful Assembly and of Association' A/HRC/41/41, Forty-first Session 24 June 12 July 2019 (17 May 2019) see also Abebe, Brook Kebede. "The Ethiopian Civil Society Organizations Law and its Role for Social Movement in Ethiopia"(2022) 2:1 Contemporary Sociological Issues 1-17.

<sup>111</sup> Ibid

<sup>112</sup> Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and association, Seventy-first session Item 69 (b) of the provisional agenda, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms Report (June 24, 2021). Available at: [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/385&referer=/english/&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E) (Accessed on 14 September 2021).

<sup>113</sup> According to article 55 (3) of the Constitution, the legislative power to enact labor laws is vested in the House of Peoples Representative while the Regional States are left to regulate employment relationships of civil service in their respective state as per article 52 (2) (f) of the Constitution.

<sup>114</sup> Article 114(1) and (2) of Proclamation No. 1156/2018. The law under Article 114(3) allows them to jointly form Trade Union federation and federations may jointly form Trade Union confederations as well.



interest-based and the employer cannot force employees to do that.<sup>115</sup> Besides, terminating the contract of employment based on membership to the trade union may not be legally acceptable ground.<sup>116</sup> More importantly, trade union leaders are legally entitled to leave with pay to present cases in labor disputes, negotiate collective agreements, attend union meetings, and participate in seminars or training courses.<sup>117</sup> According to Article 126 of the Proclamation, any trade union has the right to bargain with one or more employers or their association in selected issues.<sup>118</sup> The law stated the establishment of Permanent, Ad-hoc Labour Relations Boards and Permanent Advisory Board for the Ministry of Social and Labour Affairs.<sup>119</sup> Among the members of the board, representatives of labor unions have their significant seats.<sup>120</sup> The law further protects labor rights defenders and it stated that no service fees shall be levied in respect of labor cases submitted to conciliation, to a Labour Relations Board, and to courts by any worker or trade union.<sup>121</sup> Accordingly, the Labour Law Proclamation has its implications for the protection of labor rights defenders. However, there is a possibility of criminal punishment where a Trade Union or trade union leader violates one of the acts that are mentioned under Article 186(1) of Proclamation No. 1156/2018.

Article 42 of the FDRE Constitution does not recognize the right of all government workers to freedom of association; rather it categorically entitles this right only to lower-level government employees whose work compatibility allows for it.<sup>122</sup> Indeed, the Trade Union rights of government employees are human rights that are recognized by international human rights instruments and guaranteed by the Constitution. The Government should take steps towards ensuring that this right is practically enjoyed by government employees. Adoption of enabling legislation is the first most important step to protect trade union rights. Government employees should be able to form or join trade unions of their choice to promote their economic or work-related interests, by any means available to them including collective bargaining. The absence of a legislative framework implementing this constitutional right has resulted in the denial of rights for employees in the government sector. Like all other human rights, the government has to respect and protect the trade union rights of employees in the public sector.

However, it is important to note that the scope of Proclamations 1156/2018 and 1064/2017 are very limited. Accordingly, there are other legal regimes that regulate

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<sup>115</sup> Particularly, Article 14 stated that it shall be unlawful for an employer where coerce or in any manner compel any worker to join or not to join a trade union; or to continue or cease membership of a trade union, or to require a worker to quit membership from one union and require him to join another union, or to require him to cast his vote to a certain candidate or not to a candidate in elections for trade union offices.

<sup>116</sup> Article 26(2) of Proclamation No. 1156/2018

<sup>117</sup> Article 82 of Proclamation No. 1156/2018

<sup>118</sup> Article 129 of Proclamation No. 1156/2018 stated that ‘matters concerning employment relations and conditions of work as well as relations of employers and their associations with trade unions may be determined by a collective agreement.’

<sup>119</sup> Article 171(3) of Proclamation No. 1156/2018

<sup>120</sup> Articles 145 and 146 of Proclamation No. 1156/2018

<sup>121</sup> Articles 162 (1) and (2) of Proclamation No. 1156/2018

<sup>122</sup> See Desset Abebe Teferi, Trade Union Rights of Government Employees in Ethiopia: Long overdue! 2017 (June 11, 2021). Available at: [https://www.researchgate.net/publication/312024060\\_Trade\\_Union\\_Rights\\_of\\_Government\\_Employees\\_in\\_Ethiopia\\_Long\\_overdue](https://www.researchgate.net/publication/312024060_Trade_Union_Rights_of_Government_Employees_in_Ethiopia_Long_overdue) (Accessed on 22 September 2021).

employment relations. For instance, Government Officials, Judges<sup>123</sup>, Prosecutors<sup>124</sup>, members of the police<sup>125</sup> and the defense force<sup>126</sup> and prison wardens<sup>127</sup> are outside of the scope of Proclamation 1064/2017 and they are regulated by their separate legislation. However, the legislation that is enacted to regulate these categories of employees do not recognize trade union rights. Despite the limitation placed on the collective bargaining rights of those employees who are 'engaged in the administration of the state' and members of the police and army forces, the rights of all employees without any distinction to form/join trade unions is guaranteed under Convention 87.<sup>128</sup> Therefore, together with the adoption of legislation recognizing the trade union rights of civil servants, amending the above-listed legislation so as to bring them in line with ILO conventions is another matter that should be deliberated upon by relevant government organs.

According to Article 114 of the newly promulgated the Ethiopian Electoral, Political Parties Registration and Elections Code of Conduct Proclamation, Proclamation No. 1162/2019, interested local election observers including HRDs may observe the electoral process by obtaining the Board's observer accreditation to be issued based on their request.<sup>129</sup> However, international observers need to have a prior invitation letter from the government through the Foreign Minister to observe the electoral process.<sup>130</sup> Besides, based on Article 115(1), those international observers are mandatorily required to take an observers' accreditation from the Board.<sup>131</sup> But the law lacks clarity. For instance, an entity that has submitted an application for observer status may be required to bring any

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<sup>123</sup> Proclamation No.1234/2021 Federal Courts Proclamation, 27th Year No.26 ADDIS ABABA 26<sup>th</sup> April 2021 and Proclamation No.1233/2021, Federal Judicial Proclamation Administration, 27<sup>th</sup> Year No.18 ADDIS ABABA, 20<sup>th</sup> May 2021

<sup>124</sup> Council of Ministers Regulations No. 44/1998 Federal prosecutor Administration Council of Ministers Regulations 5th Year No.8 ADDIS ABABA - 20<sup>th</sup> Nov 1998

<sup>125</sup> Proclamation No. 720/2011 Ethiopian Federal Police Commission Establishment Proclamation, 18<sup>th</sup> Year No.2 ADDIS ABABA 28th November 2011 and Proclamation No. 944/2016 Ethiopian Federal Police Commission Establishment (Amendment) Proclamation 22nd Year No 63 ADDIS ABABA 2nd May 2016; Federal Police Administration Council of Ministers Regulation No. 86/2003

<sup>126</sup> Proclamation No.1100 /2019 Defense Forces Proclamation, 25th Year No. 19 ADDIS ABABA, 19th January 2019

<sup>127</sup> Proclamation No. 1174/2019 Federal Prison Proclamation 26th Year. No 14 ADDIS ABABA 17<sup>th</sup> February. 2020

<sup>128</sup> C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C087](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C087) (Accessed on 15 September 2021).

<sup>129</sup> According to Article 115 (1) The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation, Proclamation No. 1162/2019; a local election observer is a local civil society organization with a legal personality. In addition, according to Article 6 of Local Election Observers' Accreditation, Working Procedure, and Code of Conduct Directive No.5/2020, any local civil society organization applying for accreditation as a local election observer: a) Shall have legal personality; b) Shall be non-profit and non-governmental and free from any political affiliation; c) Its board members and leaders shall not be members of any political organization; d) The observers it deploys shall be capable of observing election impartially, and the organization shall have the capacity to enforce this.

<sup>130</sup> According to Article 7(1) of Directive 11/2021 and Article 114(2) of Proclamation No. 1162/2019, the government through the Ministry of Foreign Affairs may invite international observers to observe the electoral process. It is also important to note that accreditation shall not be given to individual observers. However, an individual can be a member of an accredited international election observer group or institution and issued an accreditation card to observe the election only on behalf of the institution or group. See Article 7(4) of Directive on Accreditation, Working Procedures, and Code of Conduct for International Election Observers No. 11/2021

<sup>131</sup> Based on Article 123 of the Proclamation 1162/2019, NEBE is expected to prepare and issue accreditation cards to all stationary and mobile agents, journalists, and election observers.

additional information or evidence that the Board deems necessary.<sup>132</sup> This stipulation is open for arbitrary rejection of the application.

According to Proclamation 1162/2019, NEBE may accredit local CSOs to conduct civic and voter education.<sup>133</sup> But, the accreditation is limited to the registered local NGOs.<sup>134</sup> Conducting civic and voter education is relevant for the realization of the political rights and participation of individuals. However, such stipulation may lead to discriminatory treatment of foreign HRDs.

### **3.3 The Protection and Restrictions of Freedom of Peaceful Assembly and Demonstration and HRDs in Ethiopia**

To effectively implement the works of HRDs peaceful assembly, demonstration and petition are basic rights.<sup>135</sup> This can be read from Articles 12(1) and 5(a) of the Declaration, everyone has a right to peaceful assembly and is entitled to organize events such as public and private meetings, vigils, marches, seminars, conferences, and demonstrations. Correspondingly, Article 30 of the FDRE Constitution recognizes the right to assembly, peaceably and unarmed demonstration, and to petition.<sup>136</sup> Based on the stipulation of the FDRE Constitution, assemblies can be indoor, outdoor, static, or moving assemblies.<sup>137</sup> In support of this allegation, the UN Human Rights Committee in its General Comment No. 37 stated that peaceful assemblies may be conducted in all places.<sup>138</sup> In addition, the right is for everyone including foreigners. Therefore, the right can be enjoyed without any kind of distinction. This can be further supported by Article 25 of the FDRE Constitution. More importantly, the writer strongly argues that the right to assembly, demonstration, and petition can be organized and enjoyed by those registered, unregistered, foreign, or local HRDs. In support, Article 2(1) of the Draft Assembly Proclamation stated that any individual, group, or legal person has the right to organize and participate in such assemblies peacefully without arms.

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<sup>132</sup> Article 7(4) of Directive 11/2021

<sup>133</sup> According to Proclamation 1162/2019 and Directive No. 4/2020, to apply for accreditation for voter education, any local civil society organization or educational institution that meets the requirements for providing voters education under the electoral law and based on Article 8 of the Proclamation 1162/2019 and of the Directive. NEBE will ascertain the fulfillment of the following criteria: a) is a legally registered local civil society organization or an accredited higher learning institution that works on elections and related matters following its by-laws; b) meets the requirements for voter education outlined in this directive; c) Can discharge its responsibilities. d) The organization, its leader, or its trainers are independent of any political activity and, after ensuring that the requesting organization and its representatives have accepted and signed to abide by the code of conduct for voter education, issue a voter education accreditation. Based on the same provision of the Directive; NEBE shall not issue accreditation to any organization that does not meet the requirements set in this article. It shall notify the applicant of the reason for such a decision in writing. See Article 124(2) of the Proclamation 1162/2019 and Article 8 of the Voter Education Accreditation and Code of Conduct Directive No. 4/2020.

<sup>134</sup> Article 124 of the Proclamation 1162/2020

<sup>135</sup> Based on article 5(a) of the Declaration to promote and protect human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels to meet or assemble peacefully.

<sup>136</sup> Article 30 of the FDRE Constitution

<sup>137</sup> The Draft Assembly Proclamation under Article 2(3) divides assembly into indoor assembly and public assembly. Accordingly, the Draft legislation tried to make a distinction between public gatherings and individual business meetings.

<sup>138</sup> Human Rights Committee, General Comment No.37 UN Doc. CCPR/C/GC/37 (17 SEPTEMBER 2020) Parg.55

However, these rights may be limited when there is a genuine and necessary cause. In this respect, for legitimate restriction, the FDRE Constitution stated that appropriate regulations can be enacted for the interest of the public convenience concerning the location of outdoor assemblies and the direction of movement of the demonstrators. Based on Article 13(2) of the FDRE Constitution, the protection of the right to assembly, demonstration, and petition under Article 30 of the Constitution and the restriction as well shall be interpreted in line with international human rights instruments adopted by Ethiopia. In this regard, if a demonstration would unquestionably present a serious and imminent danger to the safety of the public, the rights to peaceful assembly and demonstration will be restricted. Besides, under international human rights law, the limitation of particular right should be prescribed by law and justified by the criteria of necessity and proportionality to the legitimate interest required to be protected, particularly, national security, public safety, public order, public health, public morals and the rights of others. The FDRE Constitution under Article 30(1) stated that the right to assembly can be restricted for the protection of democratic rights, public morality, and peace. However, this stipulation can be criticized as only concerned about the protection of democratic rights incorporated in the second part of Chapter Three of the FDRE Constitution and doesn't refer to other rights and fundamental freedoms. The meaning of public morality also may be challenging for the works of HRDs. This is because it varies from place to place, time to time, and situation to situation. Often, the Ethiopian government restricts freedom of assembly in the absence of genuine concerns about public security, public safety, or order. Peaceful Demonstration and Political Meetings Proclamation Number 3/1991 was enacted during the transitional period in 1991. The Proclamation contains the definition of peaceful demonstration and political meetings and it doesn't cover the issue of the petition.<sup>139</sup> According to the Proclamation, the concept of peaceful demonstration may include any kind of outdoor gatherings because it doesn't make a distinction like religious ceremonies and other public meetings like the Great Run with some politically motivated slogans. However, the Draft Assembly Proclamation expressly excludes some assemblies from the scope of its application.<sup>140</sup> For instance, labor strikes, religious and cultural assemblies, and so on are not falling under the umbrella of public gatherings. But it is important to note that, political issues only be discussed in the public political meeting as provided under Article 2(2) of the Proclamation. However, from the spirit of the law, one can understand that non-political issues including in religious and cultural meetings cannot be discussed in public political meetings. In this respect, such kinds of distinction may have a chilling effect on the works of HRDs.

Based on this law, peaceful demonstration and assembly are exercised without the interference of the rights of others.<sup>141</sup> As clearly provided under Article 4 of Proclamation 3/1991, any individual, group or organization, who prepares peaceful demonstration and political meetings, must give notice to city administration or the Awraja administrator. In this regard, HRDs can freely organize and attend meetings.

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<sup>139</sup> Article 2 Proclamation Number 3/1991

<sup>140</sup> Article 3 (2) The Draft Assembly Proclamation

<sup>141</sup> Article 3 Proclamation Number 3/1991.

The Draft Assembly Proclamation obliged the organizer of the assembly to submit their proposal for police and failure to submit a notification may not entail criminal responsibility if the assembly is taking place for a direct response to a sudden occurrence.<sup>142</sup> This is an important aspect of the Draft Proclamation that will help the work of HRDs in cases where there is a need for assembly for immediate responses to human rights violations and abuses. Besides, based on the draft Proclamation, the police is not required to respond to the proposal, rather it is expected to intervene only where there are justifiable grounds to impose restrictions and conditions on the proposed assembly. However, if there is justifiable ground the police need to respond within 48 hours of the receiving of the proposal and may impose restrictions or conditions relating to the time and place of the assembly.<sup>143</sup> Therefore, based on the current application the only requirement attached to these political rights is written notification before 48 hours of the planned demonstration.<sup>144</sup> However, the Draft Assembly Proclamation requires notification 7 days before the intended assembly. But proclamation No. 3/1991 as well as the Draft Assembly Proclamation do not consider oral, online, or telephone notification.<sup>145</sup> As far as the Draft Assembly Proclamation is concerned, notification is only required for public assemblies. In this respect, the Draft Proclamation under Article 4(3) excludes some forms of assemblies including indoor meetings, and other meetings in the premises of higher education institutions are excluded from the requirement of notification. The government body must receive the written notice. The administrator has a mandate up to the extent of prohibition. This is because it has the mandate to postpone or change the place of demonstration or the meeting for an unlimited number of applications. However, there is no means of judicial review and effective remedy provided in cases of unlawful denial of the right to freedom of assembly by state authorities. As a result, the right to a peaceful demonstration of HRDs will depend on the leniency of the government. In this regard, the absence of legal recourse for the postponement or change of the decision made by the Administrator may be challenging for the works of HRDs. But the Draft Assembly Proclamation stated that complaints concerning restrictions and conditions imposed on assemblies shall be submitted to the Federal First Instance Court. Besides, the National Human Rights Institution may receive a kind of complaint from HRDs since the issue is directly related to male administration and human rights violations.<sup>146</sup> However, the failure to respond to the notification might be considered as the authorization to the meeting or the demonstration. In this regard, the law looks as if it is a human right friendly legislation and in support of the works of HRDs.

## CONCLUSION

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<sup>142</sup> Article 32 (3) The Draft Assembly Proclamation

<sup>143</sup> Most Importantly, the police may dispense assemblies when its peaceful character is lost as a result of violence; in case of manifest deterioration of peace and order; in case of prohibited place (for instance it is prohibited to have assemblies 100-200 meters from worship, embassies, hospitals and so on); and where the participants violate justifiable restrictions imposed on assembly based on court order. Please see Article 30 (1) and Article 17(1) of the Draft Assembly Proclamation

<sup>144</sup> Article 4(2) and Article 5 Proclamation Number 3/1991

<sup>145</sup> Article 15(1) of the Draft Assembly Proclamation

<sup>146</sup> For more please read the Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000 Federal Negarit Gazeta 6<sup>th</sup> Year No 40 (4 July 2000) and Ombudsman Establishment Proclamation No. 211/2000 Federal Negarit Gazeta 6<sup>th</sup> Year No 40 (4 July 2000)

This paper has discussed the protection of HRDs in Ethiopia. It has presented the legal framework for the protection of human rights defenders in Ethiopia. Accordingly, the paper investigates some selected Ethiopian laws in the light of the protection and recognition of the rights of HRDs in Ethiopia. The paper also identifies the positive sides of the selected Ethiopian laws concerning the activities of HRDs. The Constitution is the supreme law of the country that incorporated and recognized international human rights standards. Despite the recognition of human rights of HRDs, from the aforementioned discussions, one can understand the previous repressive laws like the Charities and Societies media and the Anti-Terrorism Proclamations that were severely undermined civil society and independent media. However, the recent legal reform in the country is promising for the work of HRDS in Ethiopia. The overall analysis of the paper shows that the protection of HRDs is conveyed with several legal restrictions. The source of threats against HRDs emanates from different laws, which substantially increase the vulnerability of HRDs in Ethiopia. Most of the restrictions of the laws are discouraging for HRDs. Therefore, the Ethiopian government should need to develop and promulgate specific laws and policies to recognize and implement the Declaration on Human Rights Defenders in Ethiopia. Although there are scattered laws, Ethiopia has no specific legislation and/or institution dealing specifically with the protection of HRDs. Therefore, there is a need to enact a comprehensive law and provide an institutional mandate for independent bodies to provide better protection for HRDs in Ethiopia.