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Imperiling the Right to Vote in Ethiopia *Briefing Paper - May 2015*

Overview

The international human rights to vote and to participate in government are at the core of a functioning democratic society and necessary to ensure that public officials are accountable to the people. During a time in which election observation missions have proliferated across the globe, the notion of what constitutes “free and fair elections” has come to elevate the more technical requirements of electoral systems, as well as focus on the absence of overt violence and intimidation during the electoral period. This current understanding of what makes an election genuinely credible has become dislodged from the international obligations of States imposed by various international human rights treaties to respect, protect, and fulfill the right to participate in government through freely chosen representatives and the right to vote. In particular, the right to vote requires the full enjoyment and respect for the rights to freedom of expression, assembly, and association. In the lead up to elections, these fundamental rights are essential for the effective exercise of the right to vote.

On May 24, 2015, Ethiopia will hold parliamentary elections that will decide the next prime minister. Ethiopia’s last national elections in 2010 resulted in the Ethiopian People’s Revolutionary Democratic Front (EPRDF), the ruling party since 1991, winning a 99.6 percent victory in parliament. In the years prior to the 2010 elections, the government intimidated and harassed civil society groups and independent media. Many in the international community noted that an environment conducive to free and fair elections was not in place even before Election Day. International election observers documented multiple restrictions to the rights to freedom of assembly and expression prior to the elections.

Over the last several years, and with increasing intensity in recent months, the Ethiopian government has systematically stifled civic space in the country and criminalized dissent, mainly targeting human rights activists, journalists, and opposition supporters deemed too critical of government policy. These well-documented and widespread violations of the rights to freedom of expression, assembly, and association in the lead up to the May 24 elections imperil the right of all Ethiopians to effectively exercise their right to vote. This briefing paper will detail many of the pre-electoral violations that jeopardize the right to vote and the right to participate in government in Ethiopia and will conclude with recommendations for international observers monitoring the elections and the international community in light of these violations.

Freedom of Expression

Ethiopian government officials have threatened, harassed, detained, and prosecuted independent journalists with the effect of silencing dissent and preventing the receipt of information critical for an informed, democratic debate ahead of the May 2015 elections. Police intimidation and harassment of journalists and bloggers have resulted in more than sixty journalists fleeing the country since 2010 and the closure of six independent publications in 2014. The result is a chilling effect and self-censorship among journalists who have chosen to remain in the country. Government officials have harassed and threatened the viewers and those supplying information to independent foreign media outlets such as the Oromia Media Network (OMN). One filmmaker who partnered with the TV channel was forced to end collaboration with OMN after he received threats from security personnel that his collaboration with OMN amounted to "assisting terrorists."¹ In the summer of 2014, the state-owned Ethiopian Broadcasting Corporation publically denounced five independent magazines and newspapers by reporting that these outlets wanted to "destabilize" the government and are associated with terrorist organizations.²

The Ethiopian government has also increasingly used the 2009 Anti-Terrorism Proclamation ("Anti-terrorism law") to prosecute and threaten independent journalists and bloggers. The law's overly broad and impermissibly vague provisions defining "terrorism" and "encouraging or inducing terrorism" are consistently applied to restrict legitimate forms of expression. In early 2014, security forces invoked the Anti-terrorism law and threatened to arrest a group of independent journalists, who were in the process of forming the Ethiopian Journalists Forum (EJF). This threat ultimately succeeded in preventing the formation of EJF.³

Whether under the anti-terrorism law or other sections of the criminal code, independent bloggers and journalists have also been charged, detained, and prosecuted for being too critical of government policies. Ethiopia currently has the highest number of detained journalists of any country in Africa, with at least nineteen currently in detention. Independent bloggers and journalists have been arrested and detained and publications have been shut down for disseminating ideas and facts critical of the ruling party's policies and human rights abuses. Six independent bloggers with the collective Zone 9, and three other journalists, who published material critical of the ruling party, were arrested in April 2014 and later charged with terrorism and inciting violence. They could face the death penalty if convicted. In August of 2014, six independent magazines and newspapers were charged with several crimes, including terrorism, endangering national security, and "smears against officials and public institutions," for publishing articles critical of the government, including an article on the use of the anti-terrorism law to silence journalists and dissidents. Two months later, Temesgen Desalegn, a newspaper editor who also

¹ Human Rights Watch, "Journalism is Not a Crime": Violations of Media Freedom in Ethiopia 26 (2015), *available at* http://www.hrw.org/sites/default/files/reports/ethiopia0115_ForUploadR.pdf.

² *Id.* at 18-19.

³ *Id.* at 52.

published articles critical of the ruling party, was convicted of criminal defamation and sentenced to three years in prison.

Freedom of Assembly

In the lead up to elections this May, government officials have also harassed, detained, and used excessive force against peaceful protestors, curbing the exercise of the right to freedom of assembly. The suppression of peaceful protests has often concentrated on preventing opposition parties from demonstrating publicly. In March of 2014, members of the Semayawi Party (Blue Party), the country's most active political opposition group, were arrested and held for several days when they chanted political slogans at an event on International Women's Day. Later, in December of 2014, police arrested an estimated ninety demonstrators when a coalition of opposition groups gathered to collectively protest Ethiopia's restrictions on the holding of public assemblies. In January of 2015, the police beat demonstrators, including several members of the Unity for Democracy and Justice Party, at a protest against government repression of opposition parties.

The Ethiopian government's consistent practice of suppressing political rallies, which forms part of an overall crackdown on peaceful assemblies across the country, has resulted in a lack of an informed public debate on topics relevant to the upcoming elections and a chilling effect on forms of public assembly and expression. In April and May of 2014, security forces responded to peaceful protests in the Oromia Regional State with excessive force, resulting in at least thirty deaths of protestors and bystanders, as well as arbitrary arrests and the detention of thousands of citizens. In November 2014 security forces again used excessive force in response to a peaceful protest against the sale of Meskel Square in Bahir Dar City in the Oromo region, killing five protestors and arresting several more.

On April 22 of this year, protests over the killing of Ethiopian citizens by the international terrorist group ISIS morphed into anti-government demonstrations. Security forces responded with excessive force to disperse the crowd who began chanting anti-government slogans, and after some demonstrators started throwing stones; video recordings documented police beating protestors who were not responding with violence.

Freedom of Association

Since its enactment in 2009, the Charities and Societies Proclamation ("CSO law") has violated the right to freedom of association and has decimated the ability of independent civil society groups in Ethiopia to carry out legitimate work, including voter education activities, human rights reporting, and political advocacy, that is critical to ensuring free debate and guaranteeing the right to receive information during the pre-electoral period. The CSO law imposes severe funding restrictions on civil society groups, criminalizes legitimate human rights activities, and allows for intrusive government interference in the internal operations of CSOs. The vagueness of the law also allows for broad and unequal application,

which in turn, produces a chilling effect on civil society organizations that would otherwise disseminate critical human rights information. For example, the Ethiopian Human Rights Council (EHRC) had documented human rights violations across the country through its twelve offices since 1991. Since the enactment of the CSO law in 2009, EHRC has been forced to reduce its offices to four and the staff by 85 percent, crippling the reach, scope, and overall effectiveness of their work.

The government has also targeted opposition political parties and associations, preventing them from fully functioning by arresting leaders and targeting members based on their membership violating the right to freedom of association. After the Oromo protests in April and May 2014, the Oromo Federalist Congress party (OFC) reported that several hundred members were arrested in the ensuing months based in large part on a party membership list stolen from their Dembi Dollo office in June of 2014.⁴ In July 2014, the police arrested several members of the Blue Party, Unity for Democracy and Justice, and the Arena Tigray Party on suspicion of terrorism,⁵ a charge often used to silence dissenters. In the fall of 2014, two Blue Party officials and three members of the party were arrested and denied access to their family or a lawyer.⁶

Ethiopia's Obligations Under International Law

The African Charter on Democracy, Elections, and Governance calls on State Parties to "ensure fundamental freedoms and human rights" in the context of holding regular, free, fair and transparent elections. The African Charter on Human and Peoples' Rights similarly ensures the right to participate freely in government, either directly or through freely chosen representatives under article 13.

The African Commission on Human and Peoples' Rights (ACHPR), in finding a violation of article 13, found that "a pattern of action designed to hamper [a potential political candidate's] political participation" denies the potential candidate the right to participate in government⁷ and that the prevention of certain members of the population from running for office violates the rights of all citizens to freely choose a government representative.⁸

Under the International Covenant on Civil and Political Rights (ICCPR), acceded to by Ethiopia in 1993, the right to take part in public affairs and to vote is guaranteed by article 25. In interpreting the nature of a state's obligations under article 25, the United Nations Human Rights Committee has held that

⁴ Amnesty International, 'Because I am Oromo': Sweeping repression in the Oromia region of Ethiopia 40 (2014), available at <https://www.amnesty.org/en/documents/afr25/006/2014/en/>.

⁵ *Ethiopia: End the onslaught on dissent as arrests continue*, Amnesty International (July 10, 2014 12:00am), <https://www.amnesty.org/en/articles/news/2014/07/ethiopia-end-onslaught-dissent-arrests-continue/>.

⁶ Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights 150 (2015)*, available at <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>.

⁷ *John K. Modise v. Botswana*, Comm. No. 97/93, ACHPR, ¶ 97 (1993).

⁸ *Legal Resources Foundation v. Zambia*, Comm. No. 211/98, ACHPR, ¶ 72 (2001). See also *Lawyers of Human Rights v. Swaziland*, Comm. No. 251/02, ACHPR, ¶ 53 (2005) (finding that the prohibition of the formation of political parties also violates the people's right to participate in government).

"[f]reedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected," and that the right to vote "requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas."

The Human Rights Committee has further stated that States must ensure the right to "form and join organizations and associations concerned with political and public affairs" as an essential component of article 25 because "political parties and membership in parties play a significant role in the conduct of public affairs and the election process."⁹ States must also ensure the right to nondiscrimination for potential political candidates when running for office so as to ensure "that persons entitled to vote have a free choice of candidates."¹⁰

With respect to freedom of the press, the Human Rights Committee has stressed the importance of the right to access information, stating that "[i]n order to ensure the full enjoyment of rights protected by article 25 [of the ICCPR], the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion." The obligation to ensure an independent and free media means the "public also has a corresponding right to receive media output."¹¹

African Union Election Observer Mission and Mandate

The African Union (AU) is the only international body to send observers to monitor the upcoming Ethiopian elections. The long-term observers from the AU arrived on April 19 and a larger delegation of observers was scheduled to arrive on May 17. According to the AU Democracy and Electoral Assistance Unit, the AU election observers "have a mandate to observe, collect and analyze data in the lead up to the Parliamentary Elections on May 24th in line with relevant African Union and international instruments such as the African Charter on Democracy, Elections and Governance, the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, the African Union Guidelines for Election Observation and Monitoring Missions, the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR)."¹²

⁹ Human Rights Committee, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, ¶ 27, U.N. Doc. CCPR/C/21/Rev. 1/Add. 7 (July 12, 1996).

¹⁰ *Id.* ¶ 15.

¹¹ *Id.* ¶ 13.

¹² *AUC Chairperson Approves the Deployment of African Union Long-Term Observers (LTOs) Mission to Ethiopia*, African Union (April 20, 2015), <http://pa.au.int/en/content/auc-chairperson-approves-deployment-african-union-long-term-observers-ltos-mission-ethiopia>.

Recommendations

To the Ethiopian government:

- Ensure the rights to freedom of assembly and association by allowing political parties and citizens to engage in peaceful assembly and create associations without unlawful restrictions, threats, or harassment as mandated by international law.
- Guarantee the right to freedom of expression – including the right to receive and access information – of journalists, bloggers, and citizens expressing dissent by immediately stopping the arrests, interrogation, threats, and detention of journalists, bloggers, human rights activists, and others for the expression of opinions critical of the government.
- Reform the 2009 Anti-Terrorism Proclamation and the Charities and Societies Proclamation in compliance with Ethiopia's international human rights obligations.

To the African Union Election Observer Mission:

- Ensure that all election monitoring activities incorporate a human rights-based approach and document all violations of the right to vote and the right to participate in government, including the aforementioned violations of the rights to freedom of expression, assembly, and association.
- Include violations of the rights to freedom of expression, assembly, and association in the final election observation report and explicitly state that these violations detract from the ability to hold free and fair elections.

To the International Community, including the United Nations, European Union, and the United States:

- Publicly denounce the violations of the rights to vote and participate in government in light of the myriad infringements of the rights to freedom of expression, assembly, and association in the current electoral process.
- Call for assurances that journalists, peaceful protestors, and opposition parties' political leaders and members will be able to freely and publically voice and disseminate their opinions, as well as be allowed to hold public peaceful rallies and legally form associations.
- Call for the reformation of the Anti-Terrorism Proclamation and the Charities and Societies Proclamation Law in line with Ethiopia's international human rights obligations.

To the United States, specifically:

- Take immediate measures to ensure that funding for development programs, as well as bilateral trade agreements like the African Growth and Opportunity Act (AGOA), is directly linked to the ability of local civil society organizations in Ethiopia to operate freely and without undue restrictions on their legitimate activities.

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