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PROSCRIPTION OF GROUPS OR ORGANIZATIONS AS A TERRORIST UNDER ETHIOPIAN TERRORISM LAW; A COMPARATIVE LEGAL STUDY.

LLM THESIS IN CRIMINAL JUSTICE STUDY

BY

CHEMIR WOLLDE KERGA

HAWASSA, ETHIOPIA

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CHEMIR WOLLDE KERGA

ADVISOR: FIKADU PAULOS (ASST. PROF)

LLM THESIS SUBMITTED TO THE SCHOOL OF LAW, COLLEGE OF LAW AND GOVERNANCE, SCHOOL OF GRDAUATE STUDIES, HAWASSA UNIVERSITYS, IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE DEGREE OF MASTER OF LAWS IN CRIMINAL JUSTICE STUDY.

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ADVISORS' APPROVAL SHEET

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DECLARATION

I hereby declare that **"Proscription of Groups or Organizations as a Terrorist under Ethiopian Terrorism Law; A Comparative Legal Study"** is my original work and has not been presented for a degree in any other university, and all sources of material used for this thesis have been duly acknowledged.

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Advisor.

DEDICATION

I dedicate this thesis manuscript to my father Wollde Kerga who passed away while I am doing this work, for all the inputs he gave me during his life time.

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ACRONYMS AND ABBREVIATIONS

EATP	Ethiopia's Anti-Terrorism Proclamation
ADJRA	Administrative Decisions Judicial Review Act
AEDPA	Antiterrorism and Effective Death Penalty Act
EFCCA	Economic and Financial crimes Commission Act
FDRE.	Federal Democratic Republic of Ethiopia
EPRDF	Ethiopian Peoples` Revolutionary Democratic Front
FTO	Foreign Terrorist Organization
HPR	House of Peoples Representative
ICCPR	International Convention on Civil and Political Rights
ICCT	International Centre for Counter-Terrorism
ICSFT	International Convention for the Suppression of the Financing of Terrorism
INA	Immigration and Nationality Act
MLA	Money Laundering Act
NSCDCA	Nigerian Security and Civil Defense Corps Act
OAUPCTC	Organization of Africa Union Convention on the Prevention and Combating of Terrorism
OHCHR	Office of High Commissioner for Human Rights

PJCIS	Parliamentary Joint Committee on Intelligence and Security
PSTCP	Prevention and Suppression of Terrorism Crimes Proclamation
PTA	Prevention of Terrorism Act
TEL	Terrorist Exclusion List
TPPA	Terrorism (Prevention Prohibition Act
UDHR	Universal Declaration of Human Right
U.N	United Nations
UNCHR	United Nations Human Rights Council
UNHRC	United Nation Human Rights Committee
UNGA	United Nation General Assembly
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UN OHCHR	Office of the United Nation High Commissioner for Human rights
US	United State

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ABSTRACT

The Ethiopian government has implemented a comprehensive legal framework to combat terrorism, including provisions for proscription of organizations or groups as terrorist entities which involves designating it as a terrorist organization, thereby making its activities illegal and subject to criminal penalties. This comparative legal study examined the proscription of organizations as terrorists under the Ethiopian terrorism law through comparative analysis. Comparative jurisdictions may differ in the extent to which they provide procedural fairness, judicial review, or mechanisms for organizations to challenge their designation as terrorists. Additionally, the analysis explores the implications of proscribing organizations as terrorists on freedom of association and freedom of expression. Accordingly, laws of U.S., Australia, and Nigeria are considered for comparison. Selection of these nations as a sample is because of universal nature of terrorism crime and as member states to UN, they reached an agreement to combat it. Additionally, they enacted laws on proscription of organizations as a terrorist and practiced it. To achieve the intended objectives the thesis employed qualitative method as an approach. After the collected primary and secondary data analysis, the study found that the Ethiopian proscription of organization as a terrorist law seeks amendment in terms of providing clear grounds to proscribe, the procedural safeguards of the organization proscribing, accountability and transparency of the proscribing body and guarantying of human rights of individual associated with the organizations.

Key words; *Proscription, Terrorist Organizations, Ethiopia, Review and oversight, procedural safeguards and terrorism*

CHAPTER ONE

INTODUCTION

1.1 BACKGROUND

The worldwide community is seriously threatened by the complicated and widespread issue of terrorism.[1] While the problem itself is not new, the events of September 11, 2001(here after 9/11)[2] in the United States (U.S here after) gave international efforts to identify and prevent it a renewed feeling of purpose and urgency.

There have been many international conventions dealing with aspects of "terrorism" yet none contain an internationally agreed definition. There are also countless scholarly approaches and arguments on how terrorism should be defined.[3] However none of found agreeable definition of terrorism. In the wake of the horrific 9/11 attack on American soil, the United Nations Security Council (UNSC) emphasized the threat that terrorism posed to global peace

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[1] Weiner T, 'Terrorism's worldwide toll was high in 1996' *NY Times*, (1 May 1997), at 9.

[2] When four commercial airliners were hijacked en route to California from Logan International, Dulles International and Newark Airports. Two of the airliners were flown into the World Trade Centre, one each into the North and South Towers. One was flown into the Pentagon and the fourth crashed near Shanks Ville, Pennsylvania. There were 2974 fatalities as well as the 19 hijackers available at http://en.wikipedia.org/winki/sept_11_2001_attacks accessed on 15 June 2009

[3] Hoffman, B., *Inside Terrorism* (Revised and Expanded Edition, Columbia University Press, 2006), pp. 1 and seq.

and security and the need for governments to take effective counterterrorism measures, without providing a complete definition of terrorism.[4].

Proscription—the designation of non-state actors as terrorist organizations—operates as one technique of counterterrorism.[5] It refers to a legal sanction used to label a particular organization as a terrorist group. The rationale behind proscription is threefold: first, it signifies the "public aversion" to political violence groups; second, it forbids public demonstrations that could incite rioting and chaos; and third, it stops money from going to these groups.[6] Despite its ramifications for democratic freedom, due process, and human rights, the strategy garnered significant support from the world community in the wake of the 9/11 terror assault in the United States.

An organization may be outlawed on a national or international scale. Nationwide bans are imposed either by the application of regional or Security Council lists, or through internal legal procedures for the inclusion of new terrorist organizations, their members, and/or related persons on the list.[7] Every national counterterrorism measure, including the proscription of organizations, must fully abide by States' international human rights commitments, even though the specifics of the proscribing procedure vary by nation, region,

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[4] Security Council Resolution 1373 (2001), 'Establishment of Counter-Terrorism Committee (CTC)—Threats To International Peace and Security Caused by Terrorist Acts Adopted by the Security Council at its 4385th meeting'

[5] Lynch A, McGarrity N and Williams G. "The Proscription of Terrorist Organizations in Australia" (2009) Vol. 37 Federal Law Review, p. 2

[6] Lord Lloyd of Berwick & P Wilkinson , *Inquiry into Legislation against Terrorism,* (1996 Vol. 1), p 29-30

[7] UN OHCHR United Nations Global Counter-Terrorism Coordination Compact, Working Group on Protecting and Promoting Human Rights, the Rule of Law and Supporting Victims of Terrorism, Basic Human Rights Reference Guide: Proscription of Organizations in the Context of Countering Terrorism, p 4, June 2021

and the United Nations.[8] Proscription decisions must be reasonable and necessary, taking into account the specific effects of the prohibition or associated penalties. Every case must be evaluated in light of its unique circumstances. This respects the presumption of innocence, the right to judicial review, and the right to a fair trial.[9]

Ethiopia is among those affected by terrorism and terrorist attacks, having suffered property damage and fatalities as a result of the heinous acts of terror carried out at marketplaces, hotels, transportation hubs, and other places frequented by the general public.[10] In view of these challenges and international duty, it has ratified the Organization of the African Unity Convention on the Prevention and Combating of Terrorism (Algiers Convention) (here after OAUCPCT)[11] which under Article 4(2) obliges Member States to "adopt any legitimate measures aimed at preventing and combating terrorist acts". Moreover, Ethiopia has been a

[8] Ibid, United Nations Global Counter-Terrorism Coordination Compact; SC/Res.1624 (2005),Adopted by the Security Council at its 5261st meeting, on 14 September 2005.The Resolution provided that states must ensure that counter-terrorism measures should comply with all of their other obligations under International Law, in particular International Human right Law. Human right Council, on its part, adopted Decision 2/112 (2006) to entitled Persons Deprived of Liberty in the Context of Counterterrorism Measures in which it is urged to ensure that persons deprived of liberty regardless of the place of arrest or of detention benefit from the guarantees to which they are entitled protection against torture, cruel, inhuman or degrading treatment or punishment, the review of their detention and fundamental judicial guarantees.

[9] Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism Fact Sheet No. 32 (July 2008), 44; Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/61/267), para. 26.; UN OHCHR, United Nations Counter-Terrorism Implementation Task Force, The Basic Human Rights Reference Guide on “The Right to a Fair Trial and Due Process in the Context of Countering Terrorism,” Guideline 3.

[10] Statement by Lila Desta Asgedom, counselor of the FDRE, six committee on measures to eliminate international terrorism, 2020

[11] The OAU Convention on the Prevention and Combating of Terrorism (1999) (OAUCPCT). It was adopted on 14 June 1999 in Algiers and came into force on 6 December 2002. Ethiopia ratified the Convention on February 24, 2003.

member of the UN which has a mandate to secure international peace and security since 1945[12]

Domestically, the first, the comprehensive, special, and independent anti-terrorism law known as "Anti-Terrorism Proclamation No. 652/2009" (ATP) was adopted and went into effect on August 28, 2009,[13] despite the fact that Ethiopia has criminal laws that make it illegal to commit acts that pose a serious threat to the peace, security, and development of the nation as well as the global community.[14] But in 2020 the Government of Ethiopia has revised its previous Anti - Terrorism proclamation and adopted new Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020 (hereafter PSTCP) is aimed at preventing and controlling the crime by enabling the security forces to take strong precautionary and preparatory acts centered at the nature of the crime while ensuring perpetrators received penalty proportional to their acts.[15] Part Three of the PSTCP sets forth the rules for proscribing groups or organizations as a terrorist. On May 05, HPR proscribed the Tigrean Peoples` Liberation Front (TPLF) and the Oromo Liberation Army (OLA) which the government called ‘shene’ as a terrorist group in accordance with The PSTCP No.1176/2020.[16]

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[12] https://www.un.org/en/about-us/member-states

[13] ATP No.652/2009, Preamble, para. 4. - provides that adoption of this proclamation has become necessary to incorporate new legal mechanisms and procedures to prevent, control and foil terrorism, to gather and compile sufficient information and evidences in order to bring to justice suspected individuals and organizations for acts of terrorism by setting up enhanced investigation and prosecution systems.

[14] The criminal Code of Ethiopia, 2004

[15] Statement by Lila Desta Asgedom, (n 10)

[16] Ministry of justice, Attorney general Press Release Issued on the Proscription of ‘TPLF’ and ‘Shene’ as Terrorist Organizations (May 10, 2021)

Although proscription is a long-established tool of counter-terrorism it is (perhaps surprisingly) somewhat neglected by the legal literature. In Ethiopia, where eighty different languages are spoken, ethnically motivated terrorism is not a new phenomenon and its threat shall also not be underestimated in the future. Asmelash Yohannes Teklu (PhD) in his article[17] has discussed ethno-nationalism as the basis for most of the organizations labeled as terrorist by the old terrorism law (ATP) in Ethiopia. Beyond this the article does not discussed the procedural fairness of proscribing terrorist organization in Ethiopia terrorism law; whether Ethiopian`s terrorism law has clear and specified criteria to proscribe an organization as a terrorist; its implication on human rights of individual associated with it. Moreover, Proscription laws frequently provide the current administration broad power and few reliable checks and balances. Therefore, the procedure by which organizations are to be outlawed and the extent of government decision-making review are bound to be central too much of the specific debate surrounding proscription. This has been an important and visible fault-line in the review of Ethiopia's proscription scheme under the PSTCP No.1176/2020 and it is these particular issues that this thesis explores. Generally, there is no comprehensive research undertaken on Proscription of Terrorist organization as a terrorist under the Ethiopia Law with reference nation's experience. Thus it is very important to examine these components and others under Ethiopia terrorist organization proscription regime with nation`s experience.

[17] Asmelash Yohannes Teklu (PhD), 'Enhancing Human Rights Protection and National Security by Proscribing a 'Terrorist' Organization: the Ethiopian Dilemma' (2016), Vol. 4, Mekelle University Law Journal,

1.2 STATEMENT OF THE PROBLEM

The absence of a global consensus on what constitutes terrorism and how to battle it has had an especially hazardous effect on domestic proscription regimes. Proscription of organizations as a terrorist is controversial because it involves fundamental issues regarding public law and the boundaries of government power.[18] In addition, Proscription regimes often devolve wide discretions to the government of the day, with few effective checks and balances.

Ethiopia, like many other nations, has enacted legislation to address the threat of terrorism within its borders. The Ethiopian government has the authority to designate certain groups or organizations as terrorist entities, imposing severe legal consequences and restrictions on their activities. Hence, the process for proscribing groups or organizations under Ethiopian terrorism law has raised concerns and warrants a comparative examination.

The PSTCP under proscription of organization as a terrorist section confers the Federal Parliament which may be controlled by one party or coalition of the parties[19] to proscribe or de proscribe an organization as a terrorist organization up on the submission of the government, which may be formed by one political party or coalition of parties that has greatest number of seats in the house[20] without involvement of judiciary[21]. The absence of judicial participation in the proscription of organizations as terrorists has severe impacts on

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[18] Andrew Lynch, Nicola McGarrity and George Williams (n 5), p. 3

[19] Federal Democratic Republic of Ethiopia (FDRE) Constitution, Article 54

[20] Ibid article 73

[21] Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020 (hereafter PSTCP), Article 18(1)

the access to justice,[22] fair trial rights[23] and the freedom of association.[24] This freedom of association pre-determines several other constitutional freedoms. It sets the stage for the enjoyment of freedom of speech, religion and other rights, which cannot be realized if the state determines membership. According to the constitution every citizen has the right to bring a justiciable matter to, and to obtain decision from, the competent organ of government with the judicial power as given in article 37. And hence, the legality of an association shall be ascertained by an independent judiciary; not by the law–making organ, which tends to be open for abuse.

In addition, the UN in its resolutions and guidelines provides[25], notice to the listed party of the case against it; an Opportunity for the party to be heard and challenge that case; and an opportunity to appeal the listing decision to an independent tribunal that must have access to the confidential materials and be empowered to grant an effective remedy. ICCPR also under article 14 provide respecting of fair trial rights like trial by independent and impartial court, the right to examine and know evidence, appeal right and presumption of innocence. Unfortunately, the construction of Article 18 of the PSTCP suggests that the parliament has an absolute discretion to 'proscribe or de-proscribe' an organizations a terrorist without involvement of courts and without any possibility for appeal against proscription. Moreover,

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[22] FDRE constitution, (n 19), article 37

[23] Ibid article 20 (3); International Convention on Civil and Political Rights (ICCPR), Ethiopia become party to this treaty in 1993 https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en, article 14

[24] Ibid, FDRE constitution, article 31

[25] A 2006 study commissioned by the U.N. Office of Legal Affairs also included a right of the party to be advised and represented. See Bardo Fassbender, Targeted Sanctions and Due Process, 20 March 2006, pp. 8, 28-32 available at http://www.un.org/law/counsel/Fassbender_study.pdf.

Article 21 of the proclamation expressly denies organizations the right to access, review and test such confidential information on the basis of national security. Quite significantly, Justice may not be perceived to have been served if an entity is restricted based on facts that it is unaware of, which would erode public confidence in the justice system's impartiality. It has become impossible to allay public concerns that proscription power might be used for purposes other than those required by law enforcement due to the lack of adequate procedural safeguards.

Additionally, in accordance with the Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, a number of nations have recognized periodic review mechanisms of proscription procedures[26] to guarantee that the organizations on the list are routinely reviewed and that it is regularly decided whether the organizations still meet the requirements for listing. This process is absent from the proscription regime for Ethiopian terrorist organizations, nevertheless.

In addition to these legal gaps that the researcher observes and discusses, there is no full-fledged research that is conducted on the specific issue of proscription of organization as a terrorist under Ethiopian legal frameworks in comparative perspective. Therefore, this study tried to assess the legal frameworks of Ethiopia and some selected countries that help to appreciate the gaps or challenges and import lessons to Ethiopia.

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[26] Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, (n 9), Practice 9(5)

1.3 OBJECTIVE OF THE STUDY

1.3.1 General objective.

The general objective of this study is to assess the legal frameworks of Ethiopia and some selected countries on proscription of organization as a terrorist so as to identify the gaps and import lessons to Ethiopia.

1.3.2 Specific objectives

- ✓ Explore the critics or gaps on Ethiopian laws of proscription of organizations as a terrorist;
- ✓ Identify the best experiences of proscription process of organization as a terrorist;
- ✓ Assess whether procedural rights of organizations are recognized under laws of Ethiopian terrorist organizations proscription; and
- ✓ Assess whether there are sufficient checks and balance provided under the law of proscription of organizations or groups in Ethiopia.

1.4 RESEARCH QUESTIONS

Based on this problem, the following research questions are framed

- ✓ What are gaps or critics on Ethiopian laws of proscription of organizations as a terrorist?
- ✓ What are the experience of other countries in regulating the proscription of groups as a terrorist through comparing with Ethiopia?
- ✓ What procedural rights of organizations are recognized under laws of Ethiopian proscription of organizations as a terrorist? And

- ✓ How acts of proscribing organ are checked and over sighted under the law of proscription of organizations or groups as a terrorist in Ethiopia?

1.5 RESEARCH METHEDOLOGY AND METHOD

1.5.1 Research Approach and Method

The researcher employed the qualitative research approach which is suitable for doctrinal legal research[27] in general and this research in particular.[28]Since the research intends to analyze the laws of Ethiopia and some selected countries that regulate Proscription of Terrorist organization.

1.5.2 Research Design

Research designs are types of inquiry within a specific research approach (qualitative, quantitative, and mixed) that provide specific direction for procedures in a research design.[29] Decisions regarding what, where, when, how much by what means concerning an inquiry or a research study constitute a research design.[30] The main research design of this research is

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[27] Doctrinal legal research lies at the heart of any lawyer's task because it is the research process used to identify, analyze and synthesize the content of the law and other authoritative sources. It is all about thorough inquiry into legal concepts, values, principles, and existing legal texts such as statutes, case laws, etc. The most important characteristic is that in doctrinal work, 'arguments are derived from authoritative sources, such as existing rules, principles, precedents, and Scholarly publications'. See Amrit Kharel, 'Doctrinal Legal Research' (January 2018) SSRN Electronic Journal

[28] Ibid, p. 8. Doctrinal researcher thoroughly analyses the relevant legal texts to interpret what law exists regarding the particular context, and thus the approach of analysis in doctrinal research is always a qualitative one. The analytical, legal reasoning aspect of doctrinal research processes is a necessarily qualitative one.

[29] John W. Creswell, *Research design: Qualitative, quantitative and mixed methods approach*, (4th edn, SAGE, India, 2014) p. 12

[30] C.R KOTHARI, *Research methodology methods, and techniques* (2nd edn New age international publishers, New Delhi, 2004) p. 31

grounded theory that has the aim of giving generalization or conclusion of theoretical statements about the collected and analyzed data inductively from the bottom. It also used internal knowing of laws through interpreting and analyzing the laws and other authoritative sources. It employed interpretative as a legal research model that tries to interpret the authoritative sources collected and analyzed. The data collected are analyzed through the comparative analysis as a method of legal research.

1.5.3 Data Collection and Analyze

The researcher collected data from primary and secondary sources. Primary sources were laws or legislations of the country like Constitution of FDRE, Prevention and Suppression of Terrorism Crimes Proclamation, as well as international human right instruments, counter terrorism instruments and legislations of the selected countries. The researcher also collected data from secondary sources like relevant literature, researches and books as well by taking into account their suitability, adequacy, and reliability. After locating the sources that were used the researcher interpreted these sources through searching the true meaning, grammar, internal logic of laws, and other authoritative sources and analyzed them through the comparative analysis method.

1.5.4 Sampling Method

To enrich the research with the perspectives of other jurisdictions, it examines the experience of selected countries namely; Australia, U.S. and Nigeria in regulating the Proscription of Terrorist organization as a terrorist. The three countries are selected for the following four reasons; first, these selected countries (Australia, U.S. and Nigeria) share a similar political, legal and institutional frame-work built on common law principles; a common language and a commitment to liberal democratic ideology.[31] In Ethiopian legal system also there are many instances that take feature of common law legal system especially in criminal matters.[32] Second, with particular reference to terrorism, these countries have developed a mutual understanding of the menace of terrorism and a shared determination of how to curb it. Thus, comparison among these countries is based on the fact that their antiterrorism legislation were enacted with an international harmonization flavor. Third, Pursuant to the UN General Assembly 56th Session, Resolution 1373 which was passed following the 9/11 attack on the United States, Ethiopia and these countries answered the call for intensified and comprehensive international cooperation in the fight against terrorism.[33] Like Ethiopia, Australia, U.S, and Nigeria have adopted different counter terrorism strategies including legislative reforms, institutional building, bilateral and mutual collaborations with other states in curbing terrorism. Fourth, despite a growing number of successful legal challenges to the fairness of listing, proscription of terrorist groups is a common feature in all the jurisdictions examined in this study.

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[31] Dolowitz, D. P., & Marsh, D. 'Learning from Abroad: The Role of Policy Transfer in Contemporary Policy Making' (2000) Vol. 13 No.1 Governance p. 5–23; Legrand, T. 'Overseas and over Here: Policy Transfer and Evidence-Based Policy-Making' (2012)Vol. 33 No. 4 Policy studies, p. 329–348

[32] Asmelash Yohannes Teklu, 'Striking the Balance between Conforming to Human Rights Standards and Enacting Anti-terrorism Legislation: A Challenge of the 21st Century (An Ethiopian Perspective)' (A thesis submitted in partial fulfilment of the requirements of the University of Lincoln for the degree of Doctor of Philosophy 2014), p.24-30

[33] UN Security Council, Letter dated 2002/09/29 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning Counterterrorism addressed to the President of the Security Council, 31st July 2002, S/2002/ 856, available at: http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/517/02/IMG/ N0251702.pdf?OpenElement (accessed 10 June 2018)

All these selected countries and Ethiopia are member states to UN[34], International Convention for the Suppression of the Financing of Terrorism adopted in New York on 9 Dec. 1999 and enacted 10 Apr.[35] and basic human rights conventions[36]

Moreover, the question of how the Ethiopian proscription regime contrasts with that of other comparable democracies could also have broader implications. If the Ethiopian proscription regime is significantly more repressive than that of other countries, some will use the disparity to question Ethiopia's democratic principles this is because Proscription has serious implication for entities concerned and puts to tests the Ethiopian government's ability to counter terrorism while upholding fundamental freedom.

1.6 SCOPE OF THE STUDY

Because of the time and resource limitations, among counter terrorism mechanisms, the focus of this study is limited to one of the major counter terrorism mechanism which is the proscription of organization as a terrorist. Moreover, even though both physical and legal person may proscribe as a terrorist if they commit terrorist act this study focuses on proscription of organization as a terrorist under Ethiopian and selected countries legal framework.

Moreover, financial constraints, the researcher could not go further to include comparative analysis on the practical implementation of the selected countries laws. Hence, only the legal

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[34] https://www.un.org/en/about-us/member-states

[35] Ethiopia has been a party to the Convention since 20 Mar. 2012, Australia has been a party since Sep 2002, U.S. a party to the Convention since 26 Jun 2002 and Nigeria has been a party since 1 Jun 2000, For current status of ratifications, refer to the following website: http://untreaty.un.org/english/bible/englishinternetbible/partI/chapterXVIII/treaty11.asp

[36] https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en

frameworks not the actual practice, and their significance in providing good practice to Ethiopia are, inter alia, discussed.

Geographically, it is limited to the proscription of organization as a terrorist in Ethiopia and other three selected countries namely Nigeria, Australia and United States. Therefore, the thesis is delimited to the proscription of organization as a terrorist in Ethiopia and the above mentioned three countries.

1.7 SIGNIFICANCE OF THE STUDY

It is believed that this study can contribute to the effort of strengthening the legal framework of Ethiopia in regulating the proscription of groups or organizations as a terrorist. It helps to identify legal gaps if any and helps to draw lesson from other jurisdictions, to regulate the proscription of organizations as a terrorist adequately. As result, it can serves as an input for the legislative organ of the government. Moreover, it will also be a base for potential researchers to conduct further studies on the issue and academicians too.

1.8 LIMITATION OF THE STUDY

Writing a comparative thesis is not a simple task. As a result, the researcher faced so many challenges. Among these limitations, accessing the laws of the selected countries is the first and major one. Second, despite the effort that exerted by the researcher, the research adopting qualitative methodology together with the complex and wide nature of proscription of organization as a terrorist is vulnerable to challenges on limiting the scope. Thirdly, the lack of previous researches which are conducted on Ethiopian legal frameworks that regulate the proscription of group or organization as a terrorist and books written as well is also a major challenge that the researcher faced.

1.9 ORGANIZATION OF THE STUDY

This thesis consist of five chapters. The first chapter deals with the introductory parts. The second chapter of the study deals about conceptual understandings and legal frameworks regarding terrorism in general and in Ethiopia and proscription of organizations as a terrorist generally. The third chapter of the thesis focuses on examining the experience of selected countries namely Nigeria, Australia and U.S. in regulating proscription of organization as a terrorist. The fourth chapter of the thesis analyzes Ethiopia‘s legal approach towards proscription of organization as a terrorist comparatively with the law of selected countries. The fifth and last chapter of a thesis is summary of finding, conclusions and recommendations.

CHAPTER TWO

CONCEPTUAL UNDERSTANDINGS AND LEGAL FRAMEWORKS OF TERROISM AND PROSCRIPTION OF ORGANIZATION AS A TERRORIST

2.1 INTRODUCTION

In this chapter, the conceptual understandings and legal frameworks of terrorism and proscription of organizations as a terrorist will be discussed. First section of the chapter covers the concept and definition of terrorism in general and the Ethiopian context specifically. The second section deals proscription of organization as a terrorist including its meaning, historical background, its consequence, international legal frame work and states` obligation while proscribing organization as a terrorist are discussed.

2.2 TERRORISM: CONCEPT AND DEFINITION

The term ‘terrorism’ comes from the Latin word ‘terrere’, which means to fear or to tremble.[37] In the twenty-first century, terrorism represents one of the biggest risks to national, regional, and international peace and security. Although the problem is not new, the events of 9/11 in the United States of America gave international efforts to detect and prevent it a renewed feeling of resolve and urgency.

The history of terrorism embraces areas like the use of terror prior to modern times in ancient Rome, mediaeval Europe, and the French Revolution; jihadist violence; state terrorism; the

[37] Hoffman. B., (n 3), p. 2-3

Red Brigades in Italy; the Red Army Faction in Germany; the Israeli-Palestinian conflict; Northern Ireland; anarchist terrorism; and the Ku Klux Klan, among lesser-known movements in Uruguay and Algeria.[38]

Coming to legal definition however, there is no recognized legal definition of terrorism.[39] Similar to crime, it has a social definition that is subject to change in response to new information. The fact that the idea of terrorism varies depending on the social and historical context is one of the main reasons it is challenging to define.[40] As a result, each states have created their own definition of terrorism, which is usually found in their penal code.

Although a binding interpretation of the term terrorism is still missing on an international level, definition of the 2004 UN Security Council Resolution 1566 currently serves as the working definition. It defines terrorism as:

> "… a criminal act with the intent to cause death or bodily injury, or taking of hostages with the purpose to provoke a state of terror or intimidate a population or compel a government or international organization to do or to abstain from doing any act, which constitutes offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature"[41].

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38 SÁNCHEZ–CUENCA, I. *The Historical Roots of Political Violence Revolutionary Terrorism in Affluent. Countries* (Cambridge University Press, 2019).

39 Perry, Nicholas J., 'the Numerous Federal Legal Definitions of Terrorism: The Problem of Too Many' (2004). Grails, M. Journal of Legislation. Available online: accessed on 30 May 2018

40 Jipson, A. 'the Post –September 11th Era: Interpretations of Security and Civil Liberties in the Political Margins of the Left and Right' (Counterterrorism and Civil Liberties Conference, Department of Criminal Justice, Central Missouri State University, 2003)

41 UNS/RES/1566, 'Establishment of a Working Group to Consider measures to be Imposed upon Individuals, Groups Or Entities other than those Designated by the Al-Qaida Taliban Sanctions Committee', 8 Oct. 2004

International Convention for the Suppression of the Financing of Terrorism (ICSFT here after) understood terrorism as a deliberate actual or threatened use of force to victimize, injure, cause death, or cause destruction of property by individuals, nationals, or subnational groups against non–combatants, states, or international organizations to obtain political, ideological, or religious objectives through coercion using psychological warfare against a broad audience beyond its immediate victims in order to change the status quo.[42]

OAUCPCT (Algiers Convention)[43], under Article 3 defines terrorism as:

> "(a) Any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:(I) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or (ii) Disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or (iii) Create general insurrection in a State.
> (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to(iii)."

Even among academics, there is disagreement regarding the meaning of terrorism, with various definitions offered. [44] For instance, according to Stewart, It is typically used to refer to "a special form or tactic of fear-generating, coercive political violence" as well as "a conspiratorial practice of calculated, demonstrative, direct violent action without legal or moral restraints, targeting mainly civilians and noncombatants, performed for its

[42] International Convention for the Suppression of the Financing of Terrorism adopted in New York on 9 Dec. 1999 and enacted 10 Apr. 2002. See Chapter Thirteen, article 21 and 22.

[43] OAUCPCT, (n 11)

[44] Golder, B. and G. Williams, 'What is' Terrorism'? Problems of Legal Definition', (2004), University of NSW Law Journal, Vol. 27(2), p. 270

propagandistic and psychological effects on various audiences and conflict parties."[45] U.S. American political philosopher Michael Walzerin also defined Terrorism as the deliberate killing of innocent people, at random, to spread fear through a whole population and force the hand of its political leaders.[46] According to Laqueur and Roberts, terrorism is the unlawful use of force against civilians in order to forward political goals. They add that attempts to move beyond a simple definition are useless because the term is so imprecise and controversial.[47]

2.2.1 Defining terrorism

While demonstrating a lack of coherence in definitions, all of these legal documents and academics also demonstrate what components should be included in any definition. The author discusses terrorism in this section by examining the fundamental components that determine whether an act qualifies as terrorism. This elemental classification is derived from scholarly publications and international instruments discussed. The author believes that these components are necessary for any definition. During the definition discussion, this thesis will focus on three essential components: the actus Reus (act), the mens rea (intention), and the purpose or motive. One of the components of terrorism that sets it apart from other crimes with the same intention and act is its purpose or motive.

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[45] Stewart, D.P, 'Terrorism and Human Rights - The Perspective of International Law', (Policy paper, The Middle East Institute, Washington, D.C,2018-4,)

[46] Oluwasey, BR 'An Attempt to define Jihad: Terrorism as a Focal Point' (2020) Journal of the African Centre for the Study and Research on Terrorism, Vol. 9(1), p.6

[47] Brian M. Jenkins. 'Reflections on Providing for "The Common Defense" '(1986) Vol. 101, No. 5 Political Science Quarterly, 773–786.

The first element is actus Reus (act). Although this is not specific to terrorism, terrorism necessitates grave criminal activity, which typically consists of violent crimes or violations of freedoms.[48] Although the majority of definitions limit acts of terrorism to physical violence against people or property, the author feels that this is an outdated definition of the crime in the modern day. Limiting acts of terrorism in the digital age to physical violence would eradicate other acts that depend on technology but do no physical harm. Even while these cybercrimes don't result in bodily harm, they may nonetheless violate fundamental rights and instill fear in the public. This part of the crime is not recognized in most definitions, including the one the researcher discussed.

The second distinguishing element of terrorism is mental element (intention). Terrorism is not a crime that can be done negligently; it always requires intention. Terrorism needs not only the desire to carry out the act but also the intention to create fear on the public or the intention to compel the government or an international organization to act or to refrain from acting.[49]

The final element which distinguish terrorism from other crimes is the motive or purpose of the act. The purpose in committing acts of terrorism is political, ideological, religious or others.[50]. This act pursues something that goes far beyond a single person's needs. "Even when committed by an individual, acts of terrorism have a collective agenda that is based on

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[48] E Chadwick, *self-determination, terrorism and international human right law of armed conflict*, (Brill | Nijho 1996), p. 2

[49] UNSC Res1566, (n 41); Marcello Di Filippo, the definition of terrorism in international law, in Ben Saul, research hand book on international law and terrorism, 2014,p. 9

[50], UNGA Res49/60, Measures to eliminate international terrorism,1994, at 3

political, ideological, religious, ethnical, or other purpose," writes Antonio Cassese, and the author concurs.[51]

2.3 CONCEPT AND DEFINITION OF TERRORISM CRIME IN ETHIOPIAN TERRORISM LAW

Ethiopia has been affected by terrorism and terrorist attacks, losing lives and causing property damage as a result of the heinous acts of terror carried out at marketplaces, hotels, transportation hubs, and other places frequented by the general public.[52] The use of violence to settle political differences is not uncommon in Ethiopia.[53] As Hiruy Wubie, three types may be used to categorize the origins of Ethiopia's terrorism threat.[54] These are the proliferation of insurgent groups and other political groups aiming at unconstitutional change; Somalia-based radicalized Islamic groups such as Al-Shabaab; and the threatening inter-ethnic conflicts.[55]

Despite the fact that Ethiopia has laws against crimes that make it illegal to do anything that endangers the nation's peace, security, or development or poses a major threat to global peace and security, On August 28, 2009, the first complete, unique, and autonomous

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[51]Antonio Cassese, 'the multi- faceted criminal notion of terrorism in international law', (2006) JICJ, Vol. 4, , 939

[52] See Statement by Lila Desta Asgedom (n 10).

[53] P Toggia, 'the revolutionary endgame of political power: The genealogy of "red terror" in Ethiopia', (2012) Vol. 10 African Identities, p. 265.

[54] HW Gebreegziabher 'The right to privacy in the age of surveillance to counter terrorism in Ethiopia' (2018) 18 African Human Rights Law Journal, p, 395

[55] RI Rotberg (Ed) *Battling terrorism in the Horn of Africa* (2005), p. 95; D Feyissa 'The experience of Gambella regional state' in D Turton (ed) *Ethnic federalism: The Ethiopian experience in comparative perspective* (2006), p. 208.

counterterrorism law—known as "Anti-Terrorism Proclamation No. 652/ 2009"—was approved and put into effect. In order to ensure peace and security, the Ethiopian government formally launched a war against international terrorism with the ATP.

Ethiopia's commitment to combat terrorism under international law, as well as the argument that the nation is vulnerable to terrorism due to both armed domestic rebel groups and its location in the unstable Horn of Africa, served as justifications for the ATP. In response to the assertion that in 2006–2007 the Islamic Courts of Somalia, a jihadist organization, declared war on Ethiopia,[56] the Ethiopian government used the status quo to intervene in Somalia in 2006. Shortly, Before the ATP was adopted in May 2008, three persons were killed in Addis Ababa by a minibus bomb detonation carried out by a Somali Islamist group.[57] Since then, multiple terrorist acts in Somalia, Uganda, and Kenya have been carried out by the Al-Shabaab, an Islamic group that collaborates with Al-Qaida.[58] Thus, in the fight against international terrorism, the Ethiopian government views the ATP as the suitable tool.

Ethiopia passed PSTCP No. 1176/2020 in 2020 with the intention of replacing Anti-Terrorism Proclamation No. 652/2009, which was enacted to prevent and suppress terrorism but had substantive and enforcement flaws that negatively impacted citizens' rights and

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[56] YIHDEGO, Z.W. 'Ethiopia's Military Action against the Union of Islamic Courts and Others in Somalia: Some Legal Implications', International and Comparative Law Quarterly. Vol. 56, No. 3. Cambridge University Press, 2007, pp. 665–676.

[57] MALONE, B, TADESSE, T. Explosion rocks Ethiopian capital, three dead: police. *Reuters*, (20 May 2008); POWELL, A. Somali Islamist group claim responsibility for deadly attack in Ethiopia. *Associated Press*, (29 May 2008)

[58] HOME OFFICE. Newly, the rise and expansion of Islamic State (ISIS) from the Middle East to Africa posed also a threat to Ethiopian citizen, 2017. In 2015, the ISIS killed 30 Ethiopian citizens in Libya

freedoms.[59] The new law would adequately protect citizens' rights and freedoms and emphasize the importance of law enforcement agencies being held accountable. According to the PSTCP, Ethiopia must work with nations that have anti-terrorism policies to prevent and suppress terrorist acts. It also must implement international treaties that Ethiopia has ratified, including those ratified by the African Union and the United Nations, as well as resolutions adopted by those organizations.[60]

2.3.1 Definition of terrorism crime under PSTCP

The PSTCP defines neither terrorism crime nor terrorist acts. Instead Article 2 sub article 2 of PSTCP listed list of criminal acts as Terrorism Crime. Accordingly those criminal acts provided under Articles 3, 5 to 11, 29, and 30 of the Proclamation are amount as terrorism crime.

Article 3 of the PSTCP explains 'terrorist acts' as

> "Acts to causes serious bodily injury to person, endangers the life of a person, commits hostage taking or kidnapping, causes damage to property, natural resource or environment and/or seriously obstructs public or social service; with the intention of advancing political, religious or ideological causes for terrorizing, or spreading fear among the public or section of the public or coercing or compelling the Government, Foreign Government or International Organization."

Furthermore it criminalizes the planning and preparation for Commission of Terrorist Acts provided for under Article 3 of this Proclamation.[61] Acts to intimidate to commit any of the terrorist acts provided for under Article 3 of the Proclamation are also criminalized under article 5 of the proclamation. Moreover, Article 7 criminalizes conspiracy to carry out or

[59] PSTCP, (n 21), preamble, para. 2

[60] Ibid, preamble, Para. 3.

[61] Ibid, Article 6

cause to carry out terrorist acts provided for under Article 3 of the Proclamation. False Threat of Terrorist Act is also a terrorism crime as per article 8 of the proclamation. Knowingly supporting or assisting directly or indirectly the commission of a terrorist act or with the intent to support a terrorist Organization[62] is also criminalized. Article 10 criminalizes intentional inciting of another person by inducing, promises, money, gift, threat or any other similar means shall be punishable with a punishment provided for the offence provided that the crime was attempted or committed. The possession of such property or makes use of it knowing that the property is associated with terrorism crime, or makes use of it is criminalized under article 11 of the proclamation.

With regard to criminal acts attached to proscribed terrorist organization, Article 29(1) criminalizes the heading of an Organization proscribed as a Terrorist Organization as a whole or a part there of. And Article 30 (1) criminalizes joining with the Organization as member or took training with knowing that the Organization is a Terrorist Organization or should have known such fact.

There are also Inchoate Acts which Considered as Terrorism Crimes. Inchoate Acts are acts which involve the inclination to commit, or indirect participation in, a criminal offense or acts just began but not completed. These Inchoate Acts under the PSTCP includes; Articles 5(intimidates to commit any of the terrorist acts), article 6(Planning and Preparation for Commission of Terrorist Acts), article 7(committing conspiracy to carry out or cause to carry out terrorist acts), article 9(knowingly supports or assists directly or indirectly the commission of a terrorist act or with the intent to support a terrorist Organization by

[62] Ibid, article 9

Preparing, providing or hands over documents or information, by Providing technical, counseling or professional support, Prepares, makes available, by providing, or selling any explosive, dynamite, inflammable substances, firearms or other lethal weapons or poisonous substances; or by Providing training or recruits members)and article 10(intentional inciting another person by inducing, promises, money, gift, threat or any other similar means shall be punishable with a punishment provided for the offence provided that the crime was attempted or committed). These are criminalized inchoate offences which are attributable to terrorist act as defined under Article 3 of the same proclamation.

2.4 PROSCRIPTION OF ORGANIZATIONS OR GROUPS AS A TERRORIST

2.4.1 Definition and concept proscription

As a means of combating terrorism, governments are required by the UN Charter to proscribe organizations as a terrorist and to freeze, seize, and forfeit their assets through Security Council resolutions which empowered to secure international peace and security under chapter VII of the charter.[63]

Proscription plays a crucial role in making actions that give financial and political backing to groups that use terrorism as a tactic to further their political, ideological, or religious goals illegal. It also serves to discourage individuals who support the organization's objectives from being further involved. The designating actor converts the typically imprecise definition of terrorism into precise directives that specify how counterterrorism measures can be

[63] SCR 1373, (n 4) ; The SCR 1267 (1999)

implemented by placing a person or organization on the list.[64] By putting talk into practice, the proscription system creates a number of preconceived notions about the characteristics of particular groups. Sometimes based more on political factors than on solid legal proof, the government assumes the validity of the companies that are prohibited. The presumption ignores the prospect of using force as a last resort against a repressive regime and further legitimizes the acts taken against the prohibited entities.[65]

Generally, proscription is often used for three reasons: first, to express the "public aversion" to political violence groups; second, to prohibit public demonstrations that could incite rioting or other disturbances; and third, to stop funding these groups.[66]

An organization may be proscribed as a terrorist organization at the national, regional, or worldwide levels. National prohibitions are imposed either by the use of regional or Security Council listings, or through procedures established by domestic law for the listing of extra terrorist organizations, their members, and/or related persons.[67]

Coming to its history, proscription is not a contemporary invention; the authority to banish group from a designated territory or political community is a longstanding feature of

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[64] Thomas J. Badey, 'Defining International Terrorism: A Pragmatic Approach,' (1998), Terrorism and Political Violence, Vol. 10, no. 1, 90.

[65] Mark Muller, 'Terrorism, Proscription and the Right to Resist in the Age of Conflict,' (2008), Denning Law Journal 20, 125

[66] Lord Lloyd of Berwick & P Wilkinson, (n 7), p. 29-30; Haspeslagh, S. 'Listing terrorists: The impact of proscription on third-party efforts to engage armed groups in peace processes – A practitioner's perspective', Critical Studies on Terrorism, (2013), Vol. 6, (1), p. 189.

[67] United Nations Global Counter-Terrorism Coordination Compact, (n 7), p 4,

sovereign power.[68] The maxim "power of life and killing" (vitae necisque potestas) characterized up this privilege in ancient Roman law.[69] It took the form of "outlawry" in pre-Magna Carta Britain, where the ruler was still able to declare their adversaries as ‘caput lupinum’, or "may his be a wolf's head."[70] The prohibitions of antiquity and the middle Ages serve as a reminder that one of the long-standing privileges of sovereignty is the prohibition of or banishment from the state of opponents.[71]

While the notion of terrorism and its application in policy dates back to the early 1900s, the process of designating and outlawing purported terrorist groups through blacklisting regimes gained significant traction following the events of 9/11. The most well-known national ranking comprises; USA: Foreign Terrorist Organization (FTO) Designation and Terrorist Exclusion List (TEL); in Australia: Listing of Terrorist Organizations; in Nigeria proscribed terrorist organizations; in UK: List of Proscribed Terrorist Group; in Canada: Currently Listed Entities; in Russia: Terrorist Watch List; in India: Banned Organizations.[72]

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[68] Jarvis L and Legrand T. Preaching to the converted: Parliament and the Proscription (2017) 65(4) Ritual 947–965

[69] Westbrook, R (1999) Vitae necisque potestas, Historia: Zeitschrift f€ur Alte Geschichte, (H. 2), 203–23

[70] Richards, HE. Is outlawry obsolete? (1902) 18 Law Quarterly Review 297

[71] C. Steel. Rethinking Sulla: The Case of the Roman Senate,” (2014) 64(2) The Classical Quarterly 657–68

[72] E. U. Ejeh, A. I. Bappah & Y. Dankofa (2020): Proscription of terrorism in Nigeria: a comparative legal study, Commonwealth Law Bulletin, DOI: 10.1080/03050718.2020.1753087, p. 5

2.4.2 The international framework on proscribing organizations as a terrorist.

As Haspeslagh, [73]at the UN level, proscription regimes come in three different varieties. Regarding the Taliban and Al-Qaida, UNSCR 1267, 1988, and 1989 are the first proscription regimes. Sanctions on armed group on a specific conflict are second category of proscription regimes. Instance in this category is UNSC SC/10348, 2011 in Somalia conflict. Thirdly, UNSCR 1373, 1540 and 1624 which allows states to take various counter-terrorism measures against non-state armed groups. UN counterterrorism regime's cornerstone is Resolution 1373, adopted following 9/11. All governments were required by this resolution to comply with uniform, mandatory counterterrorism measures, which included asset freeze and the proscribing of organizations as a terrorist. In order to oversee adherence and enable the delivery of technical support to governments, Resolution 1373 instituted a Counter-Terrorism Committee.

Here, the researcher wants to remind that, not all UNSC resolutions are legally enforceable, but member states are bound by decisions made in resolutions voted under UN charter chapter VII when the situation is considered a danger to global peace and security.[74] Accordingly, every state is required to abide by all Security Council resolutions adopted in accordance with United Nations Charter Chapter VII as provided under article 25 of the charter.

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[73] Haspeslagh, S. 'The effect of proscription on pre-negotiation: a comparative analysis of making peace with Colombia's FARC before and after 9/11', (A thesis submitted to the Department of International Relations of the London School of Economics for the degree of Doctor of Philosophy, London, September 2018), p73

[74] United Nations Security Council, 2019, "Technical guide to the implementation of United Nations Security Council Resolution 1373 (2001) and other relevant resolutions", https://www.undocs.org/en/S/2019/998.

Coming to the OAUCPCT (Algiers convention), it obliges ratifying countries to "review their national laws and establish criminal offences for terrorist acts..."[75] Moreover, The Algiers Convention requires States to "adopt any legitimate measures aimed at preventing and combating terrorist acts" in Article 4(2). Proscription of organizations or groups as terrorist may fall under this category. States Parties are also required under Article 23 of the ACHPR to enact lawful measures that are in line with the requirements of this Convention as well as their own national laws with the goal of preventing and combatting terrorist activities.

2.4.3 Consequences of proscription

Proscription is used to impose a variety of direct and indirect punishments and penalties in the name of national and international security. It is not, however, an extremely precise tool. Therefore, it is known to have unforeseen or at least unexpected consequences; this is especially true for people, political groups, and ethnic diasporas who may find themselves entangled in proscription sanctions. Naturally, this also has larger implications for international organizations, basic liberties, and national security.[76] Moreover, the classification of a group as a terrorist organization carries consequences for the states that proscribe, including the ability to freeze property and the criminalization of providing financial or other assistance to the group. Additionally, a variety of unanticipated or at least unacknowledged indirect repercussions are brought about by proscription regimes. Proscription laws, for instance, have the potential to exacerbate efforts at rapprochement and

[75] OAUCPCT , (n 11), Article 2(a)

[76] Lee Jarvis and Tim Legrand, 'The Proscription or Listing of Terrorist Organizations: Understanding, Assessment, and International Comparisons', Terrorism and Political Violence, (2018), Vol. 20, no. 2, p. 9

peacemaking by "codifying unfavorable relations between states and sections of their societies," among other things.[77]

For those affiliated with specified organizations, the repercussions may be dire. Numerous jurisdictions, including as Australia, Nigeria, and United States jurisdictions, have proscription regimes that include "status" offences related to membership, which criminalize people for who they are instead of what they have done.

Generally, under proscription, it is illegal to be a member of, or to profess to be a member of, a proscribed organization, to arrange, manage, or assist in arranging or managing a meeting with knowledge that the meeting is to support or further the activities of a proscribed organization, or to be addressed by a member of, or profess to be a member of, a proscribed organization, to address a meeting if the purpose of the address is to encourage support for, or further the activities of, a proscribed organization, or to wear, carry, or display items in public in a way that raises a reasonable suspicion that a person is a member or supporter of the proscribed organization.

2.5 DUE PROCESS OF LAW VIS-A-VIS PROSCRIBING ORGANIZATIONS AS A TERRORIST

There are two components to due process of law: procedural and substantive.[78] The procedural side of due process guarantees a minimal level of procedure that is due before an

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[77] Ibid

[78] Micah Wyatt, 'Designating Terrorist Organizations: Due Process Overdue', Golden Gate University Law Review, (2009), Volume 39, p.233-234

individual is deprived of his "life, liberty, or property," while the substantive due process of law governs how the government might restrict individual freedoms.[79]

2.5.1 Human rights obligation and proscribing organizations as a terrorist.

As discussed above, after the terrorist attacks of 9/11, all states were required by Security Council Resolution 1373 to comply with uniform, mandatory counterterrorism measures, including as asset freeze and the listing of proscribed organizations. However, the resolution itself provides such taking of measures should be in conformity with the relevant provisions of national and international law, including international standards of human rights.[80] Furthermore the Security Council and UN General Assembly limited it in later resolutions by requiring them to operate in accordance with human rights principles.[81] Effective counterterrorism measures must be complementary to respect for human rights, fundamental freedoms, and the rule of law, according to the Security Council, which makes this clear. The main idea of these Security Council resolutions was that states needed to adopt a balanced strategy, meaning that while they needed to take action against terrorism to stop citizens and/or entities from committing violent crimes, they also needed to make sure that those actions did not violate citizens' rights as guaranteed by international human rights treaties and other relevant agreements. Furthermore, states are required by human rights law to safeguard the lives and security of people living under their control. To this end, they have the right and the duty to implement strong counterterrorism measures, to stop and discourage terrorist

[79] Erwin Chemernisky, *Substantive Due Process*, Touro Law Review, (vol.15), pp. 501

[80] SCR. 1373 (n 4), para. 2 (f),

[81] Security Council resolution 1624 (2005) preamble and para. 4; see also General Assembly resolution 60/158; United Nations Global Counter-Terrorism Strategy, General Assembly resolution 60/288; UN General Assembly Resolution A/RES/63/185 Para 18 Dec 2008

attacks in the future, and to bring criminal charges against those who carry out these acts. Simultaneously, combating terrorism presents significant obstacles to safeguarding and advancing human rights.[82] So, States have an obligation to safeguard citizens within their borders, and part of that obligation is to pursue the complementary and mutually reinforcing goals of effective counterterrorism measures and human rights protection.

2.5.2 Proscribing organization as a terrorist and Procedural safeguards of the organization

Proper procedural safeguards, also known as procedural fairness, should be developed in line with applicable domestic law to guarantee that the use of proscription orders is carried out in compliance with international human rights obligations and within a framework of the rule of law. Procedural safeguards include the capacity of the organization to contest the decision or ask for a review of it, as well as the procedure and authority used to execute a proscription order in a particular situation. This could include issues such as notice within a reasonable time, a right to be heard, the right to challenge (appeal) the decision, and the right to an effective remedy in case of violation. As study commissioned by the U.N., the basic due process requirements for blacklisting at a minimum includes,[83]: notice to the listed party of the case against it (although confidential material may in some cases be withheld); An opportunity for the party to be heard and challenge that case; and An opportunity to appeal the listing decision to an independent tribunal that must have access to the confidential materials and be empowered to grant an effective remedy.

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[82] Office of the United Nations High Commissioner for Human Rights on Human Rights, Terrorism and Counter-terrorism, (n 9), at 7-8

[83] A 2006 study commissioned by the U.N. Office of Legal Affairs, (n 25); See Bardo Fassbender, (n 25)

Fair trial standards under the ICCPR are found principally within article 14. Although the right to a fair trial is not listed as a non - derogate right under article 4(2) of the ICCPR, the Human Rights Committee has treated the right to a fair trial as one which may not be subject to derogation where this would circumvent the protection of non-derogate rights.[84] Even in situations when derogation from article 14 is permissible, the principles of legality and the rule of law require that the fundamental requirements of fair trial must be respected.[85]

Authorities should make sure that all counterterrorism measures, including proscription orders, are subject to court or other independent scrutiny or review in order to uphold the rule of law and prevent arbitrary procedures. In this regard, The Basic Human Rights Reference Guide by UN, provides an entity on a national proscription list, shall have the right to apply for review of the proscription.[86] Such entities should have the right to court review of the decision resulting from such an application; and to make a fresh application for review of the proscription in the event of a material change of circumstances or the emergence of new evidence relevant to the listing. Moreover, According to Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Periodic and independent review of the proscribed organizations, and the sanctions that flow from such proscription, is essential to ensure their continued need and proportionality.[87] Periodic review

[84] Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism Fact Sheet No. 32 (July 2008), paras 6 and 59; UN Human Rights Committee, General Comment 29 (States of Emergency), UN Doc CCPR/C/21/Rev.1/Add.11 (2001), paras. 7 and 15.

[85] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, (n 9), para. 12.

[86] United Nations Global Counter-Terrorism Coordination Compact , (n 7), p.18

[87] Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, (n 9), para. 29.

should include mechanisms allowing for a genuine review to ensure that the measures continue to be necessary and that the evidence upon which the proscription is based still supports continuing the restrictive measures.[88]

Moreover, National decisions on the proscription of organizations or related sanctions against organizations must be made on a case-by-case basis. Decisions to proscribe must be necessary and proportionate, taking into account the particular nature of the impact of the proscription or related sanctions.[89] Each case must be determined according to its particular circumstances.[90]This is in accordance with the right to a fair trial, to judicial review and the presumption of innocence.[91] In these situations, proscription and its repercussions ought to be included in a short-term plan as well. Its objective is to disrupt the funding of those believed to be terrorists who have not yet been convicted of terrorist offences. Proscription needs to be used case-by-case and is not a replacement for a commitment to prosecute terrorist crimes. Any decision to impose restrictions must, at the very least, satisfy the proportionality and necessity standards.

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[88] Ibid, para. 34. This is also reflected in Security Council resolution 1735 (2006) para. 14, which notes that proscribed individuals or organizations should be considered for removal from the proscription list depending upon, "among other things (i) whether the individual or entity was placed on the Consolidated List due to a mistake of identity, or (ii) whether the individual or entity no longer meets the criteria set out in relevant resolutions"; see also Security Council resolution 1822 (2008), paras. 24 to 26.

[89] United Nations Global Counter-Terrorism Coordination Compact, (n 7), p.13

[90] Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism, (n 9), 44; Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, (n 9), para. 26.

[91] United Nations Counter-Terrorism Implementation Task Force, (n 9), Guideline 3.

2.5.3 The Principle of legality

The principle of legality prohibits the imposition of criminal liability on acts which doesn't constitute an offence under national or international law, at the time when the act was committed.[92] It needs to protect human right against retroactive, broad, and vague penal law provisions.[93] States may utilize unduly ambiguous or expansive definitions of terrorism to encompass nonviolent actions aimed at safeguarding human rights, labor rights, or minority rights, or, more broadly, to suppress any form of political dissent. In this regard, The International Centre for Counter-Terrorism (ICCT) provides States should ensure that the law that provides for the use of an administrative measure which includes proscription of organizations or endows an executive authority with a mandate to impose an administrative measure, is clear, predictable, and accessible to the public.[94]

A State's arbitrary use of its authority should be discouraged by the requirements of legal certainty and predictability, sometimes known as foreseeability. In order to enhance legal certainty, specifically predictability, all laws must be sufficiently explicit to enable an individual to reasonably anticipate how the law will be applied in practice and the potential repercussions of a certain activity. Therefore, the law should be unambiguous in defining when and what counter terrorism measures can be implemented. It should also avoid using

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[92] ICCPR (n 23), Art 15, Universal Declaration of Human Rights, (1948), Art 11

[93] Dan Meagher, 'The Principle of Legality as Clear Statement Rule: Significance and Problems', (2014), Sydney Law Review, p. 420

[94] The International Centre for Counter-Terrorism (ICCT), the Expanding Use of Administrative Measures in a Counter-Terrorism Context: In Need of Rule of Law Safeguards, Policy Brief, November 2021, P. 5.

ambiguous language or broad terms, and it should specify exactly when and under what circumstances administrative measures can be implemented.[95]

2.6 CONCLUSION

In this chapter the researcher tried to discuss concept definition of terrorism in international level and in Ethiopian legal frame work and concept and nature of proscribing organizations as a terrorist. Terrorism has no universally agreed definition. However, without the agreed definition UN Security Council in its resolution obliges member states to counter terrorism. The absence of a binding definition for the term terrorism has been posing a serious problem to evaluate the compliance of individual states‟ counter-terrorism laws with their international commitments. Among counter terrorism mechanisms proscription of organizations as a terrorist is the main which many states are applying. Even if there is no international agreement on specifically deals with proscriptions of organizations as a terrorist, but as a means of countering terrorism, states should comply with international obligations of respecting human rights and protecting procedural safeguards of the organizations.

[95] Ibid

CHAPTER THREE

THE EXPERIENCE OF OTHER SELECTED COUNTRIES

3.1 INTRODUCTION

Notably, the use of proscription of organization as a terrorist orders in combating terrorism is a response mechanism practiced by many countries of the world mainly as a strategy for suppression of terrorism. The UN, through SCRes.1373 of 2001 enjoined member states to institute mechanisms to deal with terrorism and terrorists financing. The legislative responses to these demands by member states were fast. As such Australia, U.S. and Nigeria governments enacted laws which enables to proscribe terrorist organizations. Thus, the objective of this chapter is to assess the legal framework of proscription of organizations as a terrorist in these selected countries so as to explore best experience.

3.2 PROSCRIPTION OF ORGANIZATIONS AS A TERRORIST UNDER U.S. LAW.

3.2.1 Process of proscription

The power to designate and impose sanctions on terrorist entities is part of a larger effort to protect the country from terrorism, which is governed by a myriad of different laws.[96] In

[96] See generally Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (2004) (codified as amended in scattered provisions of 50 U.S.C.) (Amended fourteen times since its enactment); Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified as amended in scattered provisions of 8 U.S.C.) (Amended six times since its 1996 enactment); Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in scattered provisions of 8 U.S.C.) (Amended 168 times since its enactment). Most of these laws were further amended or expanded by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. Pub. L. No. 107-56, 115 Stat. 272 (2001) (codified in scattered sections of 18 U.S.C.) (Amended in 2005 and 2006).

general, The US designates terrorist organizations into three categories. Designation of Foreign Terrorist Organizations (FTOs) are the first categories. Under section 219 of the Immigration and Nationality Act (INA), as amended, foreign organizations are designated by the Secretary of State. An organization must meet three fundamental requirements in order to be classified as an FTO: 1) The organization must be foreign-based; 2) It must engage in terrorist activity as defined by section 212 (a)(3)(B) of the INA (8 U.S.C. § 1182(a)(3)(B)); 3) The organization's terrorist activity or terrorism must pose a threat to the security of American citizens or the national security (national defense, foreign relations, or the economic interests) of the United States.[97] Under category II, After determining that an organization engages in terrorist activity as defined by section 212(a)(3)(B)(iv) of the INA (8 U.S.C. § 1182(a)(3)(B)(iv)), the Secretary of State may designate terrorist organizations for immigration purposes, either in consultation with or up on the request of the Attorney General.[98]. This authority is known as the "Terrorist Exclusion List (TEL)" authority. A TEL designation will generally exclude aliens associated with entities on the TEL from entering the United States.[99] An organization can be placed on the TEL if the Secretary of State finds that the organization: commits or incites to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity; prepares or plans a terrorist activity; gathers information on potential targets for terrorist activity; or provides material support to further terrorist activity. Because category III organizations, unlike category I and category II organizations, are classified as terrorist organizations only by

[97] http://www.state.gov/j/ct/rls/other/des/123085.htm

[98] Immigration and National Act (INA), (n 96), section 212(a)(3)(B)(vi)

[99] http://www.state.gov/j/ct/rls/other/des/123086.htm

virtue of their operations and do not go through the formal designation procedure, they are also known as "undesignated terrorist organizations." Rather, the possibility of a group being classified as a category III organization is decided case-by-case while an application for an immigration benefit is being reviewed. Over time, category III organizations emerge and transform.

Because, the ability of the secretary of state to designate FTO as such for the purposes of prohibiting material support, increasing surveillance, and freezing financial assets has been an important tool for U.S. counterterrorism efforts[100] and for the sake of exploring best experience, the researcher focused on FTO designation.

3.2.2 Procedural safeguards and review mechanisms

Procedural safeguards are provided following the State Department's designation of an FTO. The Secretary of State notifies Congressmen and provides notice to designees in the Federal Register in accordance with AEDPA.[101] FTOs then have thirty days to challenge their designation in the U.S. Court of Appeals for the District of Columbia Court.[102] This layer of judicial review prevents the designation from being made arbitrarily[103] and mandates some

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[100] Letter from the Chairman of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-terrorism Addressed to the President of the Security Council (June 15, 2006), Enclosure: Response of the United States of America to the Counter-Terrorism Committee: United States implementation of Security Council resolution 1624 (2005), at 5–6, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/395/24/PDF/N0639524.pdf?OpenElement at 8.

[101] AEDPA (n 96), section, 302(a) (2) (A) (codified as 8 U.S.C. section, 1189(a) (2) (A)).

[102] Ibid section, 302(b).

[103] Under the AEDPA, courts have the power to set aside the State Department designation of an FTO if it is arbitrary, capricious, and an abuse of discretion or if it is not based on substantial evidence. AEDPA section, 302(b) (3) (codified as 8 U.S.C. section, 1189(c) (3)). Courts have, however, been extremely deferential to the

disclosure of the procedures used by the State Department to reach its conclusion.[104] If it is determined that the designation was made outside of the legally mandated procedures, the D.C. Circuit has the authority to overturn. Until it is cancelled through judicial or administrative review, the FTO designation is valid. The burden is on the FTO to contest its designation in any scenario.

Because the consequences of FTO designation can be severe, including the ability of financial intuitions to block or freeze assets of an FTO,[105] the barring of FTOs from entry into the United States,[106] and potential material support charges,[107] the procedural safeguards are even more important. More importantly, An FTO listing must be reviewed by the Secretary of State after five years to determine whether delisting would be appropriate unless reviewed on application by the entity in that period.[108]

If the Secretary determines that the facts have changed to justify revocation or that rescinding the listing would be in the best interests of US national security, they may do so at any

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State Department, choosing not to review classified evidence in some instances, but relying instead on State Department affirmations of substantial evidence to support its designation decision.

[104] E.g., *People's Mojahedin Org. of Iran v. United States Dep't of State*, 613 F.3d 220, 231 (D.C. Cir. 2010) (holding that the government had violated due process by failing to give an FTO the opportunity to view unclassified evidence prior to making a final decision denying petition to revoke designation as an FTO).

[105] USA PATRIOT Act (n 96), section, 2339B (a) (2).

[106]INA (n 96), section 1182(a) (3) (B) (I) (IV)-(V) (2006).

[107] USA patriot act, (n 96), section 2339B (a) (1). The constitutionality of the FTO designation process authorized by Executive Order No. 13,224 and various statutes was upheld by the U.S. Supreme Court in *Humanitarian Law Project v. Holder*. *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010).

[108] INA (n 96), section, 1189(a) (4) (C), (a) (6) (2006). If no review has been made of an FTO designation for five years, the secretary of state must review the listing to determine whether it should be revoked due to a change in the organization's mission and actions or due to a change in the national security assessment by the United States.

time.[109] After two years from the date of listing or two years from the outcome of its most recent petition for de-listing, the entity may apply to the Secretary of State to be removed from the list. In order to justify delisting, the FTO must show proof of significantly altered conditions.

3.3 PROSCRIPTION OF ORGANIZATIONS AS A TERRORIST UNDER AUSTRALIA LAW

3.3.1 Process of proscription

Australian authorities possess the authority to prohibit persons and groups through two different methods. One of them requires the Minister of Foreign Affairs to impose restrictions on any entity, individual, or resource in order to implement the UN Security Council's designations.[110] In the second mechanism, The Attorney-General may make a regulation proscribing an organization where he or she is satisfied ‘on reasonable grounds’ that the organization:

a. “Is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).
b. Advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur)”[111]

In this process, the Australian Security Intelligence Organization (ASIO) supports the Attorney General by providing a statement of reason and particular pertinent information that can be used to make a decision. The statement of reasons contains an assessment by ASIO (after a process of consultation with the Department of Foreign Affairs and Trade

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[109] Ibid, section, 1189(a)(6)(A)

[110] 1 Charter of the United Nations Act 1945, as amended by the Suppression of the Financing of Terrorism Bill 2002, sects. 15–25

[111] Australia, Criminal Code Act 1995, sect. 102.1 (2).

(‘DFAT’))[112] of the relevant organization against at least six factors, namely; Engagement in terrorism; Ideology and links to other terrorist groups or networks; Links to Australia; Threats to Australian interests; Proscription by the United Nations or like-minded countries; and Engagement in peace/mediation processes. The purpose of the Statement of Reasons is to outline how the organization meets the legislative factors for listing.

The Attorney General shall also brief the head of the opposition and confer with the leaders of the States and Territories prior to promulgating any regulations.[113] And to consult with the leaders of the States and Territories. In accordance with the Intergovernmental Agreement on Counter-Terrorism Laws, the Attorney General shall not issue a regulation if a majority of the States and Territories object. [114]

3.3.2 Procedural safeguards and review mechanisms

According to Australian legislation, a terrorist organization must be evaluated for listing every three years in order to maintain a regular review process for the organizations on the list and to determine if the organization still meets the requirements for listing. The facts regarding an organization's involvement in the doing, preparing, planning, assisting, fostering, or advocating of terrorism after it was last listed would be provided in the ASIO's

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[112] Attorney-General's Department, Australian Security Intelligence Organization, Australian Federal Police and Commonwealth Director of Public Prosecutions, Submission No 10 to Parliamentary Joint Committee on Intelligence and Security ('PJCIS'), Parliament of Australia, Inquiry into the Terrorist Organization Listing Provisions of the Criminal Code Act 1995, 2007, 2

[113] Criminal Code, (n 111), section 102.1(2A)

[114] Intergovernmental Agreement on Counter Terrorism Laws ('IGA') (25 June 2004) div 3 [3.4(2)]

Statement of Reasons for an organization being considered for re-listing.[115] An organization can apply to be delisted at any time.

After listing, the listing and any supporting documentation can be examined by the Parliamentary Joint Committee on Intelligence and Security (PJCIS).[116] The PJCIS may suggest that Parliament reject the listing if it finds that there is not enough evidence to warrant it. The Attorney General's office has released information stating that this procedure "provides openness, transparency and accountability in the listing process."[117] Furthermore, the PJCIS has the discretion to review any regulation as soon as possible after it is made and to report its comments and recommendations to each House of Parliament before the end of the fifteen-day parliamentary disallowance period.[118]

The judiciary also has oversight powers regarding the listing process. The judiciary can examine the Attorney General's decision to make sure it was based on "logically probative evidence" and that it was an appropriate use of authority that was "not flawed by irrelevant considerations, improper purpose, or exercised in bad faith."[119]

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[115] Australian Government, Attorney-General's Department, Protocol, Listing Terrorist Organizations under the Criminal Code.

[116] Criminal Code Act, (n 111) section, 102.1A (2). See also Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, Inquiry into the Terrorist Organization Listing Provisions of the Criminal Code Act 1995 (2007).

[117] Australian Government, Attorney-General's Department, Protocol, Listing Terrorist Organizations under the Criminal Code.

[118] Criminal Code Act, (n 111), section 102.1A (1).

[119] The Administrative Decisions (Judicial Review) Act 1977 (Cth) ('ADJR Act') or s 75(v) of the Constitution and s 39B of the Judiciary Act 1903 (Cth).

3.4 PROSCRIPTION OF ORGANIZATIONS AS A TERRORIST UNDER NIGERIAN LAW.

The war against terrorism has been in the top agenda of the Nigerian government.[120] The government declared a "zero tolerance policy towards all forms of terrorism and terrorism acts" and these attempts culminated into the passage of the Nigerian Terrorism Prevention Act 2011 which repealed as Terrorism (Prevention and Prohibition) Act of 2022 (TPPA here after). The TPPA, 2022 establishes measures for the successful implementation of the Conventions on the prevention, suppression of financing of international terrorism, and combatting of terrorism, as well as for the prevention, prohibition, and combating of terrorist activities and funding in Nigeria.

3.4.1 Process of proscription

The TPPA, 2022 is the primary legislation on terrorism in Nigeria. Section 48 of this legislation provides for the proscription of terrorist organizations and the procedure for such proscription thus;

"Where two or more persons associate for the purpose of or where an organization engages in

a. Participating or collaborating in an act of terrorism;
b. Promoting, encouraging or exhorting others to commit an act of terrorism: or
c. Setting up or pursuing acts of terrorism, the judge in Chambers may on an application made by the Attorney General, National Security Adviser or Inspector General of Police on the approval of the President declare any entity to be a proscribed organization and the notice should be published in official gazette."

A combined reading of sections 48(1) and (2) of the Act, shows that the procedure for obtaining a declaration proscribing a group as a terrorist organization requires that: the

[120] Hope A. Ikedinma, 'Challenges Of Counter-Terrorism Strategies And Human Rights In Nigeria', African Journal of Politics and Administrative Studies (AJPAS), (June, 2021), Volume 14, Issue 1

President, by way of proclamation, gives approval to the Attorney-General of the Federation or National Security Adviser or Inspector-General of Police to apply to the Judge in Chambers by way of ex-parte application for issuance of an order of Court declaring a specified entity a proscribed organization. Upon presentation of this application, the Court may grant the order declaring the specified entity a proscribed organization.

In Nigeria, Designations under United Nations Security Council Resolutions 1267, 1988 and successor resolutions have immediate application.[121]

3.4.2 Procedural safeguards and review mechanisms

Under section 57 the TPPA provides Application for judicial review. Where organizations believe they have been unfairly or inappropriately proscribed, they may seek redress from the court within 60 days of proscription. The court after hearing both parties may dismiss the application for vacation of the order of proscription or grant same according as the justice of the case dictates.[122]

As per section 48(3), If the Attorney General is satisfied that a proscribed organization has ceased to engage in the acts specified in sub-section (1) of this section and that there is no likelihood of the organization engaging in such acts in the future, he may withdraw the order with the President's approval as per The proscribed organization or person affected by the order made an application on notice.. The withdrawal will be published in the official gazette.

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[121] Terrorism (Prevention and Prohibition) Act of 2022 (TPPA here after), Section 52

[122] Ibid, Section 57(2)

3.5 COCLUSION

These states have implemented a number of response mechanisms in the process, one of which is the deployment of proscription orders. By using this tactic, violent groups are labelled as terrorist groups and are therefore barred from operating, subject to fines and other repercussions. These selected countries have different approaches towards proscribing, banning, listing and designating organizations involved in terrorist attacks. In these countries there is involvement of judiciary in proscription process. Moreover in Australia and U.S. well advanced procedural rights of the organizations proscribed are guaranteed. Furthermore there is high standard of oversight mechanism in these countries. And periodic review is also there in U.S. terrorism law. The proscription or designation of individuals and organizations must be undertaken in compliance with international human rights law, bearing in mind that such proscription or designation may adversely effect on human rights.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF PROSCRIBING ORGANIZATIONS AS A TERRORIST IN ETHIOPIA

4.1 INTRODUCTION

In the foregoing chapters, what proscription of organization as a terrorist? And states` obligation while proscribing organizations as a terrorist and essentiality for states to ensure that their law of terrorist organization proscription remain proportionate, transparent, and respectful of human rights principles are established. International collaboration and sharing best experience can also contribute to the development of a more effective and rights-respecting approach to countering terrorism. And hence, laws of selected countries on proscription of organizations as a terrorist also considered. Under this chapter, a comparative exploration of some lesson on legal framework on proscribing organizations as a terrorist will be presented with a view of searching lessons on how to proscribe organizations as a terrorist without interfering on rights of these organizations and human right standards.

4.2 PROCESS OF PROSCRIPTION OF ORGANIZATION AS A TERRORIST IN ETHIOPIA

As mentioned in chapter two, proscribing organizations as terrorist and the freezing, seizure, and forfeiture of their assets is an obligation of states endorsed by the UN Charter. The SCR 1267 (1999), which first targeted Osama Bin Laden, also allowed states to establish a range of terrorist designation mechanisms at a national level.

In Ethiopia, it was ATP 652/2009 proclamation that the first time concept of proscription of organization as a terrorist introduced. In Ethiopia today the power to proscribe an organization sits amongst a wide range powers to subject individuals and organizations to financial and other restrictions such as targeted asset-freezing sanctions. In 2011, the House designated Al–Qaida and Al–Shabaab as terrorist groups, along with other domestic armed rebel groups, namely the Oromo Liberation Front, the Ogaden National Liberation Front, and the Arbegnoch–Ginbot 7. In June 2018, in the framework of reform by the new Prime Minister, the Ethiopian parliament removed the above three domestic–armed groups from the list of terrorists upon an agreement of peace.[123] Again most recently, On May 05 2021, HPR proscribed the TPLF and the Oromo Liberation Army which the government called *shene* as a terrorist group in accordance with The Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020.[124]

Article 20 of the proclamation provides for the procedure to proscribe a terrorist organization. According to this article, the Federal Attorney General believes that an Organization has committed or is in the act of committing a terrorist crime which fulfills one of the conditions provided for under Sub-article (1) of Article 19 of the Proclamation, it shall submit a recommendation to the Council of Ministers for the proscription of the Organization as a Terrorist Organization. The recommendation of federal attorney general to proscribe organization as a terrorist should include detailed reasons for the proscription.[125] But the recommendation may not include confidential matters in detail save to general information

[123] MAMDANI, M. The Trouble with Ethiopia's Ethnic Federalism. *The Network Times*, (3 Jan. 2019)

[124] Attorney general Press Release, (n 17)

[125] PSTCP, (n 21), art. 20(3)

about the confidential information which enable the house to pass a resolution.[126] According to article 20(6), the information shall be deemed to be confidential as provided for under Sub-article (4) of this Article where the Council of Ministers believes that the releasing of the information will bring damage to the national security, public security and peace, sources of information or Foreign Relations. Where the Council of Ministers approves the recommendation submitted by the Federal Attorney General, it shall refer it to the HPR.[127] The House may accept or reject the recommendation by scrutinizing the recommendations presented by the Council of Minister, evidence submitted by the Organization and evidence obtained on its own initiative.[128]

In Ethiopia, proscription of organization as Terrorist by United Nations Security Council has immediate application after Council of Ministers officially announces the decision through media.[129]

Once an organization is designated as a terrorist organization, the Federal Attorney General shall request the competent court for the dissolution of the Organization.[130] Any transactions or dealings of an Organization become null and void as of the effective date of the proscription.[131] The law further stipulates that, the asset of the Organization proscribed as a Terrorist Organization shall be confiscated by Government up on a court order.[132]

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[126] Ibid art. 20(4)

[127] Ibid art, 20(2

[128] Ibid art,.20(4)

[129] Ibid art, 19(2)

[130] Ibid art, 22(2)

[131] Ibid art, 22(1)

[132] Ibid art, 22(3)

4.2.1 Proscribed terrorist organizations in Ethiopia under PSTCP

Press release by general attorney on May 10, 2021 provide, TPLF and OLA proscribed as terrorist organizations by the HPR and is considered proscribed organizations due to several attacks committed by the organizations in different parts of the country targeting civilians and public infrastructure over the past couple of years.[133] TPLF after entered in to peace agreement with Ethiopian government On November 3, 2022, was removed from the country's list of terrorist group on March 22, 2023.[134]

On the other hand, the proscription of OLA as a terrorist organization which has been the armed wing of the Oromo Liberation Front (OLF) that has sought self-determination for its people in the Oromia region[135] and refused to disarm during 2018s peace agreement with the federal government by separating with OLF rises many issues. Legality of the proscription by itself is the main. Many supportive and on the contrary arguments are raised by different peoples on legality of proscription of OLA (shene). For instance Soretti Kadir on contrary argument for proscription says "The Oromo Liberation Army is not a terrorist organization". The main argument she raised is;

> "Armed struggle against a nation or state is not, by default, considered terrorism under international law, even if the given nation or state that the struggle is taken up against, labels the said armed

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[133] Attorney general Press Release, (n 16); 'Ethiopia to designate TPLF, OLF-Shene as "terror" groups', *Al Jazeera*, (1 May 2021)

[134] 'Ethiopian lawmakers remove Tigray group from terror list', *AP News. (*22 March 2023) Retrieved 15 July 2023.

[135] 'Oromo Federalist Congress (OFC)', *Landinfo*, *Respons Etiopia*, (9 March 2022), p. 7; DIS, 'Ethiopia Political opposition parties – recent developments', (March 2021), p. 9

> operation as terrorist activity. So, the fact that the OLA engages in an armed struggle cannot, in and of itself, constitute them as a terrorist organization".[136]

Regarding to this issue, the OAUCPCT under Article 3, states that;

> "…..the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts."

Some African countries have also specifically excluded liberation movements from the definition of terrorism.[137] The PSTCP, on the other hand, is silent on the extent to which it could affect national and liberation movements. Though Article 3 of the PSTCP outlaws terrorist acts perpetrated to advance political, religious or ideological causes, it does not seem to recognize use of force by some liberation or self-determination movements. However, the researcher don`t think the recognition of national liberation movement is relevant in our context in the absence of the precondition like the presence of colonial power of alien domination. Moreover, the FDRE constitution in its article 47 and 39 recognizes the legal way to exercise the right to self-determination up to secession.

4.3 PROSCRIBING ORGANIZATIONS AS TERRORIST IN ETHIOPIA IN VIEW OF OTHER JURISDICTIONS.

The discussion in the following section will explain how the legal framework of Ethiopia restricts the procedural rights of the organization proscribed and human rights of individuals

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[136] Soretti Kadir, 'The Oromo Liberation Army is not a terrorist organization', *the African report*, (July 27, 2021) **https://www.theafricareport.com/111812/ethiopia-the-oromo-liberation-front-is-not-a-terrorist-organisation/**

[137] Section 1(1(xxvi)(4) of South African Protection of Constitutional Democracy Against Terrorist and Related Activities Act No. 33/2004

that are members of the organizations or associated with them. In that it will compare the Ethiopian legal framework with the U.S., Australia and the Nigerian legal framework with the guide set by different UN Security Council resolutions and documents adopted for this purpose and special rapporteurs on protecting human rights while countering terrorism as a bench mark.

4.3.1 Grounds for proscribing organization as a terrorist Or Designation criteria

The definition of the relationship between the group or entity and the terrorist act also needs to be precise and unambiguous. It leaves room for arbitrary group or entity inclusion on terrorist lists since neither the States nor the groups/entities themselves can decide with confidence which groups/entities should be subject to inclusion on terrorist lists. Being overbroad and vague is the most common and often most serious problem with legal definitions of terrorism under national laws; as a basic legal principle, such laws fail to give reasonable notice of what actions are covered; many are so broad that they cover common crimes that should not reasonably be deemed terrorist or acts that should not be considered crimes at all; their scope leaves them susceptible to arbitrary and discriminatory enforcement by the authorities—often against political parties, religious or ethnic communities, or other particular groups.[138]

[138] As the UN special rapporteur on human rights and countering terrorism has noted, many countries have overbroad definitions of terrorism that are used by government authorities "to stigmatize political, ethnic, regional or other movements they simply do not like. See Security Council Counter-Terrorism Committee, "Statement by Mr Martin Scheinin, special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism," October 24, 2005, http://www.un.org/en/sc/ctc/docs/rights/2005_10_24_rapporteur.pdf (accessed June 12, 2012), para. 7a.

Coming to Ethiopia, article 19(1) of the PSTCP states that an organization shall be proscribed as a terrorist organization if: -

> "It operates by carrying terrorist crimes as its objective; or the management or the decision making body of the Organization practices or officially accepts the Crime or leads its operation; or the crime defines the Organization through its operation and conduct or most of its employees carry out its activities with knowledge of the Crime."

As the researcher discussed in chapter two section 2.3.1, Terrorism crimes are defined under article 2(2) as those criminal acts provided under Articles 3, 5 to 11, 29, and 30 of the Proclamation. (For further discussion, look section 2.3.1 above).

So, if these terrorist acts (provided under article 3), are committed intentionally with the intention of terrorizing, or spreading fear among the public or section of the public or coercing or compelling the Government, Foreign Government or International Organization for the purpose of advancing political, religious or ideological causes by the organization itself or by the management or the decision making body of the organization or by most of its employees, the organization would proscribe as a terrorist organization.

Furthermore, if these inchoate acts, like Intimidation to Commit Terrorist Act,[139] planning and preparation for commission of terrorist Acts,[140] conspiracy to carry out terrorist acts,[141] false threat of terrorist act,[142] knowingly supporting or assisting directly or indirectly the

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[139] PSTCP (n 21), article 5

[140] Ibid, article 6

[141] Ibid, article 7

[142] Ibid, article 8

commission of a terrorist act or with the intent to support a terrorist organization,[143] and inciting to commit these terrorist acts[144], are committed intentionally with the intention of terrorizing, or spreading fear among the public or section of the public or coercing or compelling the Government, Foreign Government or International Organization for the purpose of advancing political, religious or ideological causes by the organization itself or by the management or the decision making body of the organization or by most of its employees, the organization would proscribe as a terrorist organization. Possessing Property Associated with Terrorism Crime,[145] heading an Organization proscribed as a Terrorist Organization as a whole or a part there of[146] and joining terrorist organization as member or took training with terrorist organization[147] are also ground for proscription of an organization as a terrorist.

There are many concerns on these ground to proscribe. Firstly, in article 3, the proclamation tries to define and list terrorist acts. This article provides "Whosoever, with the intention of advancing political, religious or ideological causes for terrorizing…" as moral element or mens rea. From this it is clear that terrorist act is committed if that is 'for terrorizing' with the purpose of advancing political, religious or ideological. This led to conclude terrorist is a person who act those acts for the intention of terrorizing for the purpose advancing political, religious or ideological causes. This cause circularity and uncertainty problem because

[143] Ibid, article 9

[144] Ibid, article 10

[145] Ibid, article 11

[146] Ibid, article 29

[147] Ibid, article 30

nowhere in the proclamation defined what terrorizing mean. This circularity and certainty problem causes difficulty in application.

Second, these acts are open for interpretation and requires clear standard and definition, For instance, In respect of planning and preparation (article 6), the definition of what might constitute planning and preparation under Article 2(6) –"to identify or decide the condition, place, time the terrorist act is to be carried out or similar matters beyond the mere intention of committing the crime" - creates a challenge of legal certainty, and legal concerns of *nullem crimen sine lege*. Conspiracy (article 7) also raised similar concerns. Article 5 of the PSTCP also provides "Intimidation to Commit Terrorist Act" as a terrorism crime. Therefore an organization if intimidate to commit these terrorist acts listed under article 3 of the PSTCP will proscribe as a terrorist organization. But the offence as enacted is vague and lacks legal certainty. It is unclear what acts would rise to the level of intimidation creating the possibility of over-reach.

The Secretary-General on Terrorism and human rights on its Report states that the principles of legal certainty and legality require that criminal laws specify precisely the types of behavior and conduct that constitute a criminal offence, as well as the consequences of committing such an offence.[148] ICCPR under article 15 also provides the requirements of *nullum crimen sine lege* (all elements of a crime must be defined by the law), *nulla poena sine lege* (all punishments must be defined by the law), accessibility (the law must be publicly available), precision (the line between permitted and prohibited conduct must be clear), and foreseeability (the law must enable an individual to anticipate the consequences of

[148] 2021 Report of the Secretary-General on Terrorism and human rights, Seventy-sixth session, Item 75 (b) of the provisional agenda at 5.

his or her conduct) while states enacting their criminal law. Moreover, The High Commissioner for Human Rights and United Nations human rights mechanisms have consistently recommended that States review their counter - terrorism legislation in order to clarify and narrow the definition of the offences concerned.[149] Therefore, defining terrorist acts in such vague, circular and uncertain manner is non-compliance with Ethiopia's international obligation and has much effect on application of the law. And is not complies with the requirements of necessity, proportionality and legal certainty.

Moreover, the PSTCP gives the HPR broad powers to outlaw organizations as "terrorist" on the basis that, among other actions, they, either the manager of the organization or employees - plan, conspire and incite in favor of a terrorist act—without any need for the organization to be actively involved in a terrorist act. It may well be legitimate to ban groups that actively engage in, or prepare for, terrorism. However, it is not justifiable to ban whole organizations merely because someone within that organization "plan, conspire or incite‟ the doing of a terrorist act.

Regarding to grounds to proscribe, these selected countries also rise many concerns on definition of terrorist acts. For instance, Both the UN special rapporteur on human rights and countering terrorism and the UN Human Rights Council (UNHRC) have expressed concern over Australia's definition of a "terrorist act."[150] As them, Australia's overly broad definition

[149] See for example, A/HRC/28/28, para. 22; A/HRC/43/46/Add.1, para. 60 (a); CCPR/C/GNQ/ CO/1, paras. 22 –23; CCPR/C/BEL/CO/6, paras. 11 –12; CCPR/C/FIN/CO/7, paras. 10–11; CCPR/ C/KEN/CO/4, paras. 16 –17; CCPR/C/TUN/CO/6, paras. 31–32; and CCPR/C/BHR/CO/1, paras. 29 –30.

[150] See UNHRC, "Report of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Australia: Study on Human Rights Compliance while

of “terrorist act” does not require an element of intention.[151]Furthermore, there is ‘Advocacy’ for the doing of a terrorist act (whether or not a terrorist act has occurred or will occur) as a ground. The meaning of “advocates” is broadly interpreted and includes “urging, counselling or providing instruction”, as well as “directly praising” the commission of a terrorist act.[152] The broad definition of "advocate," which includes endorsing a terrorist act or subtly encouraging the commission of a terrorist act, may "unjustifiably infringe" on the rights to freedom of expression and association, as the Human Rights Law Centre of Australia pointed out in 2011. The criminalization of association may subject members of banned organizations to legal ramifications even though they are not directly engaged in illegal activities, provided that they fall under the broad definition. This is an exceptional, unwarranted use of the proscription power.

Section 48of TPPA of Nigeria, for a group or organization to be proscribed ‘two or more persons must associate for the purpose engaging in-‘ participating or collaborating in an act of terrorism’;[153] ‘promoting, encouraging, or exhorting other to commit an act of terrorism’;[154] or ‘setting up or pursuing acts of terrorism.’[155] However, no meaning was given to the phrase “participating,” “collaborating,” “promoting” or “exhorting” under the Act, it is left for the Court to choose the most appropriate definition to these terms. Recent

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Countering Terrorism,” UN Doc A/HRC/4/26/Add.3 (2006); UN Human Rights Committee, “Concluding Observations: Australia,” UN Doc. CCPR/C/AUS/CO/5 (2009)

[151] Ibid, UN Doc A/HRC/4/26/Add.3, para. 15; UN Doc. CCPR/C/AUS/CO/5 (2009), para. 11

[152] Criminal Code Act, (n 114), section 102.1.

[153] TPPA (n 121), Section 48(1)(a),

[154] Ibid, Section 48(1)(b)

[155] Ibid, Section 48(1)(c)

documentation on digital data base of civic space crackdowns in West Africa[156] and an independent report provide there is ample evidence of the misuse and overbroad interpretation of anti-terrorism laws to target dissenting groups or peoples who, among other things, criticize government actions or demand good governance.

The INA defines terrorist activities quite broadly in the U.S as well, covering both groups and behaviors that are not often associated with terrorism and terrorists. Interestingly, most rebel organizations would be seen to be involved in terrorist activities even if they were fighting against an authoritarian regime because there is no legal exception for "freedom fighters." Terrorism also includes the preparation and execution of terrorist acts, the encouragement of others to carry out similar crimes, the provision of material support to terrorist organizations, the raising of funds or the recruitment of new members for such groups.[157]

4.3.2 The power to proscribe

It is clear that there are widely divergent views on whether the power to proscribe an entity is best exercised by a court or the executive with a degree of parliamentary oversight. According to Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, the decision to proscribe must be made by an independent judicial body.[158] The proscription organizations as a terrorist by courts or independent judicial body has many implication on ensuring check and

[156] www.closingspaces.org

[157] INA, (n 96), section 212(a) (3) (B).

[158] Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, (n 9), para. 26.

balance for the act of executive, accountability and transparency of the government and generally on procedural safeguard of the organization.

The governments of Australia conduct of such a proscription and de proscription through the Attorney General's Department upon the advice given by The Australian Security and Intelligence Organization.[159] In U.S, according to section 219 of the INA, if the Secretary of State believes an organization satisfies the criteria as set out, he must consult with the Secretary of the Treasury and the Attorney- General before the designation is finally made. In Nigeria, the procedure for obtaining a declaration proscribing a group as a terrorist organization requires that: the President, by way of proclamation, gives approval to the Attorney-General of the Federation or National Security Adviser or Inspector-General of Police to apply to the Judge in Chambers by way of ex-parte application for issuance of an order of Court declaring a specified entity a proscribed organization.[160] Upon presentation of this application, the Court may grant the order declaring the specified entity a proscribed organization.

However, in Ethiopian case the PSTCP empowered the HPR which may be controlled by one party or coalition of the parties to proscribe or de proscribe an organization as a terrorist organization up on the submission of the government, which may be formed by one political party or coalition of parties that has greatest number of seats in the house. It might be argued that proscribing an organization through an elected parliament instead of a branch of a government, as it is the case in the Australia and US which applies executive approach

[159] Nicola McGarrity & George Williams, 'The Proscription of Terrorist Organizations in Australia', (2018) Terrorism and Political Violence, Vol. 30:2, p. 216-235

[160] TPPA, (n 121), Section 48

ensures that political organization with non-violent agenda will not be targeted. However, this argument works only if there is a real representation of all parties with varying views in parliament. In such kind of model of organizing the executive and legislature, the will of the party with the greatest number of seats which is simultaneously the holder of political power as provided in the constitution[161] may always prevail. Furthermore, this is the other rhetoric that may arise from the move of the legislature as it puts itself on the throne to decide the destiny of any organization whether it is a terrorist or not in accordance with the criteria enacted by the legislature itself. Not only this, but this may be a legislative power grab through legislation from the judiciary, even though judicial power vested on the judiciary by the supreme law of the land.[162]

Therefore, empowering the court instead of the executive and the parliament to proscribe organization as a terrorist is in line with international legal frame works specifically article 14 of ICCPR and avoids all these problems because of courts independency and it is more acceptable in fairness and protection of human rights since courts are the main protector of rights of individuals and groups. Moreover, listing amounts to a finding of guilt and an imposition of punishment by the executive and is inconsistent with the doctrine of the separation of powers. Hence the Nigerian proscription regime is more impartial and ensures the more checks and balance. More importantly, Unlike the Ethiopian, Australian and U.S. case generally the rationale behind organizing an independent judiciary was to check any abuse of power by the legislator and the executive. But in Ethiopia in the reverse the

[161] FDRE constitution, (n 19), Article 56,

[162] Ibid, article 79

executive and the legislator stand together and undermine the judicial organ which may back fire on the development of democratic system of government.

On the other hand who involve in what role also matters for fairness of the proscription procedure and to balance the crisis which faced due to exclusion of judiciary through proscribing organ. Because the way how to gather and analyze evidences and information also has great role for impartiality of proscription. So, establishing a neutral organ which has subject matter knowledge in both security and rights based approach by law is essential for balancing rights of the organizations and national security. In this regard Australia balance this problem (giving the power to executive) by allowing independent bodies to give advice and counselling on proscription of an organization. As an independent advisory, in Australia, PJIS, the parliamentary committee, even can suggest the parliament the listing if it finds not enough evidence for disallowance of proscription. Within fifteen days of disallowance period, it has the discretion to review any regulation and report its comment and recommendation. Therefore, the presence of such independent advisory panel in proscription regime is so great with regard to fairness and it is strong safeguards against the arbitrary use of the proscription power.

4.3.3 Procedural safeguards

The Monitoring Team established to support the 1267 Committee noted in its November 2007 report:

"…There is continued concern that sanctions have a punitive effect, whatever is said about them as a preventive measure, and that the listing process should therefore incorporate higher standards of fairness."[163]

The PSTCP recognized, some procedural rights under article 21. The right to notice and to give its opinion on the proscription; the right to know and access evidence, with the exception of confidential information and the right to submit any evidence to the House in objection to the recommendation. There is no appeal right against the decision recognized under the proclamation. The right to take an appeal against a decision is one of the absolute rights provided under ICCPR[164]and the FDRE Constitution.[165]

Within 30 days of the designation being published in the Federal Register, a designated FTO in the United States may contest the designation or request judicial review of the designation in the US Court of Appeals for the District Court of Columbia.[166] If the Court determines that the designation is arbitrary, capricious, an abuse of discretion, or not otherwise permitted by law, in violation of any constitutional right, power, privilege, or immunity, excessively broad in its statutory jurisdiction, authority, or limitation, or falling short of any statutory right, or in the absence of substantial support from the administrative record considered in its entirety, from classified information, or from failing to follow legal procedures, the Court shall set aside the designation.[167] Moreover, The Court of Appeals for the District of Columbia in one case has concluded that FTO's with a substantial presence in the USA are entitled to due

[163] Report of the Analytical Support and Sanctions Monitoring Team pursuant to resolution 1735 (2006) concerning Al-Qaida and the Taliban and associated individuals and entities, UN Doc. S/2007/677, p. 11, available at http://daccessdds.un.org/doc/UNDOC/GEN/N07/606/64/PDF/N0760664.pdf?OpenElement.

[164] ICCPR, (n 23), Art 14(5)

[165] FDRE Constitution, (n 19), Art 20(6)

[166] INA (n 96), section, 1189(b)(1)]

[167] Ibid, section,1189 (b)(3)]

process rights. This includes prior notice and a meaningful opportunity to be heard in opposition [168]

In Australia, appeal on the legality of a decision to list is available in the ordinary courts under the Administrative Decisions (Judicial Review) Act 1977 (ADJR).[169] In Nigeria also, where organizations believe they have been unfairly or inappropriately proscribed, they may seek redress from the court within 60 days of proscription. After hearing from both sides, the court may decide to deny the application for a vacation of the proscription order or approve it based on the merits of the case.[170] However, there is no any appeal procedure against the decision of the HPR in Ethiopia. This denial of appeal against the proscription decision is non-compliance with due process standard provided under international human right instruments and deviance from nation's experience.

Not only this, in sub 2, article 21 of the PSTCP provides except confidential information, The Organization shall have the right to know and access evidence and may submit any evidence in objection to the recommendation to the house. Here, the issue is, the basis for proscription does not exclude secret evidence which may not be tested or challenged openly by the organization affected, and may also be inaccessible to the members of the House of Peoples' Representatives. The Proclamation excludes 'detailed' confidential information but allows for 'general information about confidential information' is not an adequate protection for the rights of groups. Article 21 expressly denies organizations the right to access, review and test

[168] *People's Mojahedin Organization of Iran v Department of State,* (n 104); *National Council of Resistance of Iran v Department of State* 251 F.3d 192 (D.C. Cir.2001).

[169] Administrative Decisions (Judicial Review) Act (ADJR), (n 119)

[170] TPPA, (n 121), Section 57(2),

such confidential information due to national security ground. In U.S., under section 1189, in principle the secretary of state when designating FTO may not disclose classified information. But should disclose for certain members of congress and courts for ex parte and in camera reviews.[171]

In addition, the right to a fair trial requires that all rights and obligations—criminal, civil, or administrative—be determined by a qualified court of law in a fair and public hearing.[172] Therefore, the political authorities' proscribing process runs counter to a fair trial.

Under PSTCP, fair trial is further impacted by the fact that these political bodies—the HPR and executive bodies—have different procedures and makeup than a courtroom. The same criteria of impartiality and independence that apply to courts do not apply to these entities. Furthermore, since these organs operate outside of the judicial system, policies intended to ensure fair trials might not be followed. Certain court procedures, such as cross-examination, evidence disclosure, and the standard of proof, may not be followed by the political body making the decision to proscribe.

Generally Compared to Ethiopia in which all confidential information which deemed by the proscribing organ are denied to examine; an opportunity to appeal the listing decision to an independent tribunal that must have access to the confidential materials denied; a qualified court of law in a fair and public hearing un recognized; evidence disclosure, and the standard of proof - the basic procedural safeguards are violated, Australia, U.S. and Nigeria proscription regimes ensure a good degree of fairness. Because at least all these nations

[171] INA (n 96), section, 1189(a)(3)(B) and (c)

[172] ICCPR, (n 23), article 14(1)

involve courts either as proscribing body in case of Nigeria or as appellate court in case of Australia and U.S and all these countries also recognize appeal right of the organization. Moreover, In Australia and U.S. there is a clear commitment to base proscription decisions to the maximum extent possible on publicly available information. The Statement of Reasons is a form of public notification and recognizes that a listed entity needs to know the case against it.

4.3.4 Review and oversight mechanisms

A procedure that enables an examination of whether the decision was based on the correct facts is the review and oversight mechanism. An efficient institutional guarantee of legality and protection against rules that exceed authority is offered by the review and oversight process. It differs from an appeal in that it is not always started by the party being proscribed; instead, the relevant government body may examine the proscription body's act in accordance with legal provisions as a check and balance mechanism.

It has many advantages on proscribing process; first, review and oversight ensures that the proscription process follows established legal and regulatory frameworks, guaranteeing fairness and constitutional rights. Second, it prevents arbitrary or politically motivated proscriptions and safeguards against potential abuse of power by authorities. Third, it promotes transparency in the proscription process, enabling the public and civil society organizations to understand the rationale behind designating specific organizations as terrorists. This transparency encourages trust and legitimacy in the decision-making process. Fourth, effective review and oversight helps safeguard individuals' human rights and prevents infringements such as illegal detentions, torture, or extrajudicial actions. It ensures that the proscription of organizations occurs within the boundaries of the law and respect for basic human rights.

In Australia, the court and the parliament both have the authority to supervise executive action. Following listing, the listing and the documentation supporting it can be examined by the parliament.[173] According to materials issued by the Attorney general's office, this process "provides openness, transparency and accountability in the listing process."[174] Furthermore, the Attorney General's decision may be reviewed by the judiciary to make sure it was supported by "logically probative evidence" and that it was an appropriate use of authority that was "not flawed by irrelevant considerations, improper purpose, or exercised in bad faith."[175] In US, the layer of judicial review protects against arbitrariness in the designation[176] and requires some disclosure of the basis upon which the State Department made its determination.[177] As parliamentary oversight, by section 219(2) (b) the consideration of proscription of terrorist organization must be laid before US Congress who is to deliberate on it and reject the proscription or approve same as the case may be.

In Ethiopia, There is no judicial review and oversight mechanism in Ethiopia. However, The House of Peoples' Representatives (the designating body) may revoke the proscription of an Organization when the Organization ceases to engage in Terrorist activities and known that it may not engage in such activities through a recommendations submitted by the Council of

[173] Criminal Code Act, (n 111), section, 102.1A (2).

[174] Ibid.

[175] Australian Government, Attorney-General's Department, Protocol (n 115)

[176] INA (n 96), section 1189(c)(3))

[177] *People's Mojahedin Org. of Iran v. United States Dep't of State*, (n 104)

Ministers.[178] UNCHR many time in its report provides, any proceeding that has legal consequence including proscribing of organizations as a terrorist shall be done through a review by an independent, impartial, and competent court which is established by law.[179]

Therefore, with broader areas of consideration, the executive, legislative, and judicial branches participate in the proscription proceedings in the United States and Australia. There are no such oversight responsibilities for the Federal Houses of Legislatures exist in Nigeria. So, it is only the executive and the judiciary in Nigeria,[180] and only the executive and legislative in Ethiopia are involved. So, Unlike Australia and U.S., there is no sufficient oversight mechanism recognized in Nigeria and Ethiopia.

In addition to this, the special rapporteur states the need to have periodic review to assess changes in circumstances.[181] The special rapporteur suggest that there is a need to review the list with in a reasonable amount of time. With this the case of mistaken identities need to be resolved quickly.[182] Periodic review by the proscribing organ for revocation or delisting is also there in U.S. and Australian terrorism law. In U.S. FTO listing must be reviewed by the Secretary of State after five years to determine whether delisting would be appropriate unless

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[178] PSTCP, (n 21), Article 24,

[179] UNCHR, annual report of human rights on the protection of human rights and fundamental freedom while countering terrorism, A/HRC/4/88(2007), at 17-22; UNCHR, annual report of human rights on the protection of human rights and fundamental freedom while countering terrorism, A/HRC/8/13(2008), at 8;

[180] Michael D. Hanson, 'Examining the Effectiveness of the Use of Proscription Orders in Combating Terrorism in Nigeria', Department of Jurisprudence and International Law, Faculty of Law, University of Uyo, Nigeria

[181] UNGA, the report of special rapporteur on the promotion and protection of human rights and fundamental freedom while countering terrorism, Martin scheinin, A/HRC/16/51(2010), at 34

[182] Ibid

reviewed on application by the entity in that period.[183] Australian law also requires that a terrorist organization be reviewed for listing every three years, to ensure that a regular review of the organizations on the list occurs, and that a determination is regularly made as to whether the organization continues to satisfy the criteria for listing.[184] But the Ethiopian and Nigerian terrorism law lacks this good practice which is strong safeguards against the arbitrary use of the proscription power.

4.3.5 Implication on basic human rights

When an organization is outlawed, it can lead to severe criminal repercussions for those associated with it, including increased fundraising, membership, and association offences. It is crucial that the definition of a "terrorist organization" is accurate and that the procedure by which a terrorist organization is proscribed is open and equitable in light of this as well as the fact that proscription provides definitive evidence that the organization is a terrorist organization.

4.3.5.1 Freedom of association

The right to freedom of association is well-established under international human rights law. Various international and regional human rights treaties include the right of an individual to form, join and participate in trade unions, associations, non-governmental organizations, business enterprises and other bodies.[185] FDRE constitution also recognized freedom of association under article 31.

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[183] INA (n 96), section, 1189(a) (4) (C), (a) (6).

[184] Australian Government, Attorney-General's Department, Protocol, (n 115)

[185] Article 20 of the UDHR, (n 92); article 22 of the ICCPR, (n 23); for regional instruments, see article 10 of the ACHPR, article 16 of the American Convention on Human Rights, paras. 27(2), and article 11 of the European Convention on Human Rights.

Prohibiting organizations will violate their right to freedom of association unless they are abusing this privilege to incite terrorism or violate the rights and liberties of others. Every action taken against an association must satisfy the requirements of necessity, proportionality, and nondiscrimination. Such activity ought to have a well-defined legal foundation. The UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism has points out that;

> "The State may not make a determination that an organization is a terrorist organization on the basis of presumptions before that association has started to engage in its activities; and the decision to proscribe must be made by an independent judicial body and there must always be a possibility to appeal a proscription decision to a judicial body."[186]

In addition to ensuring that the principles of necessity and proportionality are respected in all cases, specific safeguards are required to ensure that the limitations to the right to freedom of association are construed narrowly.[187] These include ensuring that the principle of legality is respected in the definition of terrorism, terrorist acts and terrorist groups. Too wide or vague a definition may lead to the criminalization of groups whose aim is to peacefully protect, inter alia, labor, minority or human rights.

Coming to PSTCP, in the first instance, the PSTCP confers the Federal Parliament with the authority to proscribe an alleged terrorist organization. This violate the first condition of freedom of association i.e., "the decision to proscribe must be made by an independent judicial body".

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[186] Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, (n 9), para. 26.

[187] Ibid

In this regard Nigeria`s proscription regime is admirable. In Nigeria the judge in Chambers is empowered to declare any entity to be a proscribed organization.[188] In Australia and U.S, Even if executive proscribe organizations as a terrorist, The High Court of Australia[189] and US Court of Appeals for the District Court of Columbia[190] has appeal power on the decision. So, in all these jurisdictions there is involvement of court which is expected to be the defenders of human rights to determine the legality of association. In Ethiopia however, courts have no role whatsoever in challenging the decision to proscribe or de–proscribe an organization as terrorists. Furthermore the FDRE constitution also provides any justiciable matter should entertain by court of law.[191] Since proscription process has a justiciable element, i.e. right of association, the legality of an association shall be ascertained by an independent judiciary; not by the law–making organ, which tends to be open for abuse. Therefore, empowering the HPR to determine the legality of association is one instance which violate freedom of association standard and also unconstitutional. In second instance, too wide, uncertain, circular or vague definition of terrorist act, terrorism, or terrorist organizations as the researcher discussed in in section 4.3.1 above, may lead to the proscription of groups whose aim is to peacefully protest, inter alia, labor, minority or human rights and this intern has great impact on freedom of association. The denial of appeal right which is one standard of the right to freedom of association while proscribing organizations is also the other instance that the PSTCP violates freedom of association standard.

[188] TPPA, (n 121), section 48

[189] Australian Government Attorney–General's Department, Australia's counter–terrorism laws, Questions and Answers Pamphlet, p. 6.

[190] INA, (n 96),section, 1189(b)(1)]

[191] FDRE constitution, (n 19), Article 37

Moreover, a number of offences flow from association with a ‘terrorist organization’. An individual commits an offence if he or she is a member of or train with such organization, and `knows` or `should have known `that it is a terrorist organization.[192] Under article 30 the Proclamation creates a category of negligent membership of a terrorist organization (the “should have known” standard). This is to be a highly controversial provision which creates an undue burden on individuals, particularly where a wide power of proscription which might be applied to a wide variety of organizations would leave individuals vulnerable to charges of terrorism, in ways that are not consistent with international law obligations, primarily the need for necessity and clarity in legal sanction. In Australia Section 102.3 of Criminal Code Act 1995 (Cth) as amended by the Anti-terrorism Act 2004 (Cth) provide intentional membership only. An individual commits an offence if he or she is a member of such an organization, and knows that it is a terrorist organization, In Nigeria there is no such “should have known test”. As per section 3 of the TPPA, There must be evidence to show that the person charged is a member or professes to be a member of the terrorist group or proscribed organization. The same is also in U.S.

4.3.5.2 Freedom of expression.

Right of Thought, Opinion and Expression as a right is recognized under article 29 of FDRE constitution. Article 19 of the ICCPR guarantees the freedom of expression and opinion. This right encompasses the ability to communicate any kind of thought or viewpoint that can be shared with others, as long as it complies with the guidelines in Article 19, Paragraph 3, and Article 20. Any limitations on the right to free speech must be in line with article 19(3)'s specifications. The burden of proving that a given restriction complies with the Covenant's

[192] PSTCP, (n 21), Article 30

criteria rests with the State.[193] They must also, first and foremost, pursue a justifiable goal that is restricted to the ones listed in article 19(3). Secondly, restrictions must be mandated by legislation, which states that they must be "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly" and "made accessible to the public." Moreover, it “must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.[194] And third, be appropriate for the justifiable goal being pursued: Restrictions "must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[195] Restrictions must be "appropriate to achieve their protective function; they must be the least intrusive instrument [...]; they must be proportionate to the interest to be protected," in addition to being forbidden from being unduly broad.[196]

Coming to the PSTCP, First, broad powers of proscription as we have seen above, risk creating a chilling effect on the exercise of the right to freedom of opinion and expression. Second, any power to restrict rights must be compatible with the requirement that any restriction be provided by law, including the duty of accessibility in the scope of the restriction. So the PSTCP when it says “incitement” is a ground to proscribe an organization as a terrorist, it should have to show the standard of incitement enough to proscription. Third, the powers of proscription shift the burden of proof on the part of the State, which requires under para. 35 of CCPR/C/GC/34 - The State must “demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality

[193] UN HRC, UN Doc CCPR/C/GC/34 para. 11 para. 27 and 35

[194] Ibid, para 25

[195] Ibid, para. 22

[196] Ibid, para. 34

of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat". Lastly, the use of secret information in procedures not only risks wrong outcomes, it also takes away the right of the individual to control information held by public authorities and the right to have incorrect information rectified. Furthermore, it risks going contrary to the side of the right of access to information that overlap to ICCPR Article 14 and the rights of due process to those accused of a criminal offence.[197]

Generally on human right protection while proscribing terrorist organizations all these nations are not progressive the Nigeria, U.S. also Australian terrorism laws are subject to criticism .the better experience from them is found on Australia's side – which is a manual for protecting human rights while countering terrorism.[198]

4.4 CONCLUSION

the procedural and substantive standards currently recognized by the Ethiopian law of proscription of organization as a terrorist in no way fulfil the minimum standards laid down under international law [i.e. right to notice, a statement of reasons, a hearing, judicial review, and compensation for any rights violation as well as a clear definition of the grounds for imposition of sanctions and relevant evidence] and lacks many good practices as procedural safeguard mechanisms which applied by these selected countries and violate the fundamental principles of human rights and the rule of law.

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[197] Ibid, para. 18.

[198] A Human Rights Guide To Australia's Counter-Terrorism Laws (2008) https://humanrights.gov.au/our-work/legal/human-rights-guide-australias-counter-terrorism-laws

CHAPTER FIVE

SUMMARY OF FINDING, ACONCLISION AND RECOMMENDATION

5.1 SUMMARY OF FINDINGS

The general objective of this study was to assess the legal frameworks of Ethiopia and some selected countries on proscription of organization as a terrorist so as to identify the gaps and import lessons to Ethiopia There were four research questions which listed to conduct the study and the current study carried out based on the research questions. The researcher employed the qualitative research approach which is suitable for doctrinal legal research, since analyzed the laws of Ethiopia and some selected countries that regulate Proscription of Terrorist organization. To enrich the research with the perspectives of other jurisdictions, it examines the experience of selected countries namely; Australia, U.S. and Nigeria in regulating the Proscription of organizations or groups as a terrorist. Data were collected from primary sources like; laws or legislations of Ethiopia and selected countries which are directly related to the subject and international human right and counter terrorism instruments and secondary sources like; literature, researches and books.

The following major findings were associated with laws of proscription of organization as a terrorist in Ethiopia.

1. PSTCP provides wide, circular, uncertain and vague grounds to proscribe organizations as a terrorist in contradiction to ICCPR article 15 and principle of legality.

2. Law of proscription of organization as a terrorist in Ethiopia exclude courts from proscription process. The lawmaker (HPR), in which more members are part of executive body (the proscription proposing party), proscribe terrorist organization as per the law made by itself. This Violate principle of separation of power between tiers of government and Opens for politicizing the proscription power.

3. Lack of sufficient review and oversight mechanisms in the law of proscription of organization as a terrorist in Ethiopia is the other finding. Due to this, The Ethiopian law of proscription of organization as a terrorist not provide sufficient checks and balance for the act of proscribing body.

4. The Ethiopian proscription of organizations as a terrorist laws fail to protect proper procedural safe guards of organizations proscribed and is not comply with article 14 of ICCPR. The right to fair and public hearing by a competent court of law, the right to appeal for independent and impartial body, presumption of innocence, standard of proof and the right to know and examine evidence brought against are unprotected procedural rights

5. The Ethiopian proscription of organizations as a terrorist law is weak in protection of human rights of individuals associated with the proscription of organization. In its wide, uncertain, circular and vague grounds to proscribe; by excluding courts from the process of proscription, by denying of right to appeal for independent organ and by criminalizing negligent membership to proscribed organization violate freedom of association, freedom of expression, and the right to justice.

5.2 CONCLUSION

Terrorism has been shown to be perpetrated by both individuals and violent organizations. These perpetrators of terrorism have been proceeded against in variety of ways by target states and other states of the world. In doing this, many response mechanisms have been adopted by these states, one of which is the use of proscription of organizations or groups as a terrorist orders. This strategy gets violent organizations listed as terrorist organizations and accordingly prohibited from operations with penal sanctions together with other consequential effects. In Ethiopia, this response mechanism is accommodated in the PSTCP 1176/2020 and has been used against TPLF and OLA or Shene in government wording.

Absence of agreed international definition of terrorism among states has a great consequence on domestic proscription of organizations as a terrorist. However, the authorization by the SC upon on sates to take legislative and other practical measures to combat terrorism generally and to proscribe organizations as a terrorist specifically would not relieve states from their obligations to observe due process under other international laws. Moreover, in order for the application of proscription orders to be lawful it needs to meet the relevant substantive criteria and procedural safeguards, such as the obligation to the targeted organizations or groups to be informed of the proscription, and given the right to be heard, to now and cross examine evidences brought against and the right to appeal to independent tribunal invested to judicial power. Furthermore, National proscriptions must be subject to regular and independent review to ensure that they remain necessary and as such, proportionate in assuring the intended purpose of the proscription. And to insure an effective institutional guarantee of lawfulness and protection against regulations that go beyond the scope of powers provided for by the law. In accordance with the principle of legality, the law that provides a legal basis to use proscription of organization as a terrorist measures and subsequently restrict the exercise of human right, should be clear, predictable and accessible.

A comparative analysis of states` proscription of organizations or groups as a terrorist laws would be better conducted based on procedural due process rights of the organizations or groups, accountability and transparency of the procedure of proscription available checks and balance for the act of proscribing body and respecting of human rights associated with proscription that a comparative analysis of the laws of proscription of organization as a terrorist of Ethiopia, Australia, U.S. and Nigeria would be provided. Accordingly, in many respects as the deep analysis of chapter four reveals, the U.S, Australian and Nigerian proscription of organizations as a terrorist are more progressive than the Ethiopian proscription of organization as a terrorist law in terms of the procedural safeguards, accountability and transparency, available checks and balance and guarantying of human rights of individual associated with the organizations.

1. Coming to grounds for proscription of organization or groups as a terrorist. Ethiopian terrorism law provides wide, circular, uncertain and vague grounds in contradiction to ICCPR article 15 and different resolutions of the Security Council. Article 3 of the PSTCP provides terrorist acts if committed with the intention of advancing political, religious or ideological causes "for terrorizing…" amount as terrorism crime. So this defining of intention element as terrorizing is circular and uncertain which is in contradiction to ICCPR article 15 which provides principle of legality while states enacting their counter-terrorism law and the secretary generals` report of 2021 which obliges states to follow principle of legal certainty. Not only this, Article 5(Intimidation to Commit Terrorist Act), article 6(Planning and Preparation for

Commission of Terrorist Acts), article 7 (Conspiracy to Carry out Terrorist Acts) and article 10(incitement) of PSTCP are wide and uncertain. This wide, circular and uncertain definition of terrorism under the PSTCP is open for proscribing organizations or groups which are not terrorist by nature but by political view.

2. In Ethiopia, HPR Proscribe organizations or groups as a terrorist. Compare to Australia and U.S. in which the executive proscribe terrorist organization and Nigeria in which the court empowers to proscribe, the Ethiopian proscription process is open for politicized decision and against principle of separation of power enshrined under the FDRE constitution. Because the House of People Representative which may be controlled by one party or coalition of the parties to proscribe or de proscribe an organization as a terrorist organization up on the submission of the government, which may be formed by one political party or coalition of parties that has greatest number of seats in the house make the process bias and open for politics. Moreover, the exclusion of courts from proscription power is taking away the power of judiciary given by the constitution and against principle of separation of power. There are also no independent advisory bodies to advice or council the proscribing body in Ethiopia who is impartial, and specialized on national security based and rights based knowledge which help the process of proscription to be more transparent and free from politicizing.
3. Generally, selected countries guaranteed well procedural safeguards than Ethiopia. Right of appeal the main procedural right of organization while proscribing not recognized under Ethiopian terrorist organization proscription regime unlike Australia, U.S. and Nigeria. The other procedural right which is violated under

Ethiopian terrorist organizations proscription law is the right to know and defend evidences brought against. In Ethiopian law there is no mechanism of presenting confidential or classified materials in any condition even in camera or ex-parte to proscribing body unlike U.S. The right to fair and public hearing by a competent court of law, presumption of innocence and standard of proof. Are also unguaranteed procedural rights.

4. Coming to the available checks and balance for the act of proscribing body, it can conclude that, these selected countries are much better than Ethiopia. Checks and balance with in government is measured by how much that government body is accountable and transparent and this in turn is measured by presence of review and oversight mechanism. In this regard, in U.S. and Australia there is high checks and balance than in Ethiopia and in Nigeria. In U.S, and Australia there is review and oversight mechanism by the parliament and the judiciary. In Nigeria the courts is empowered to review the proscription by executive. In Ethiopia however, there is no judicial review mechanism. Moreover, U.S and Australia terrorism laws have introduced periodic review mechanisms of proscription procedures, which have been identified as an example of a best practice.
5. International human rights instruments and Article 37 of FDRE constitution enshrines every one the right to bring justiciable matters to, and obtain a decision or judgment by, a court of law or any other competent body with judicial power to independent judiciary. Therefore the absence of judicial participation in the proscription of organizations as terrorists, denial of the right to appeal and vague, wide and uncertain grounds of proscription has severe impacts on the access to justice, the right to be

presumed innocent, freedom of expression and the freedom of association. Furthermore, the "should have known" standard under article 30 of the PSTCP creates an undue burden on individuals, particularly where a wide power of proscription which might be applied to a wide variety of organizations would leave individuals vulnerable to charges of terrorism, in ways that are not consistent with international law obligations, primarily the need for necessity and clarity in legal sanction. In Australia there is an exception clause who even knowingly been a member of a terrorist organization.

5.3 RECOMMENDATIONS

Based on the above analyses and conclusions of the study, the researcher forwards the following recommendations.

1. Grounds for proscribing terrorist organization provided under article 3(moral element), article 5(Intimidation to Commit Terrorist Act), article 6(Planning and Preparation for Commission of Terrorist Acts), article 7 (Conspiracy to Carry out Terrorist Acts) and article 10(incitement) of PSTCP are circular, uncertain and it is open for another controversy and difficulty for application. To avoid such loopholes and similar problem while proscribing organizations as a terrorist, the researcher recommends that these articles of PSTCP should be amend in light with the requirement of the principle of legality provided under ICCPR.
2. Regarding to the organ to proscribe organization as a terrorist, the researcher suggests that, article 18 of PSTCP should be amended in a manner which empower the courts to proscribe terrorist organization like Nigeria.

3. The researcher also recommends that the legislature of Ethiopia is better to introduce Establishment of an independent advisory body by law like Australia. An independent advisory body consisting of persons 'with experience in security legislation and rights protection, investigation and policing' be established to advise the Attorney-General prior to a decision being made to proscribe an organization in order to curtailing the discretion of the executive and to advise the final decision maker – the HPR.
4. Ethiopian proscription of organization as a terrorist law should be amended in a way it would fully respect procedural safeguards. The law should Recognize appeal right of the organizations proscribed, the right to fair and public hearing by a competent court of law, presumption of innocence and standard of proof to be compatible with ICCPR fair trial standards and FDRE constitution. In Ethiopian law there is no mechanism of presenting confidential or classified materials in any condition even in camera or ex-parte to proscribing body.
5. Better standard of review and oversight mechanism also is necessary. Therefore, the amendment of law which allow the Legislature, Executive and Judiciary part of proscription decisions in Ethiopia should made. This would strengthen the democratic oversight mechanisms of proscription frameworks to reduce executive discretion in the proscription of terrorist organizations. This amendment again would enhance more checks and balance in the proscription process.
6. The researcher also recommends that the legislature of Ethiopia is better to introduce periodic review of the proscription to determine whether revocation of proscribing would be appropriate as U.S. and Australian law did.

7. The “should have known” test under article 30 of PSTCP creates an undue burden on individuals, particularly where a wide power of proscription which might be applied to a wide variety of organizations would leave individuals vulnerable to charges of terrorism, in ways that are not consistent with international human rights law obligations, primarily the need for necessity and clarity in legal sanction. Hence, the researcher suggests the amendment of the provision in compatible manner.
8. For better protection of human rights of individuals while proscribing terrorist organization, the researcher suggests enactment of a manual for protection of human rights while countering terrorism like Australia did.

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