

Association for Human Rights in Ethiopia



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TOR for the Assessment on

**Policy dialogue on the state of Human Rights during state of emergency in
Ethiopia**



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Policy dialogue on the state of Human Rights during state of emergency in Ethiopia

1. Background

In certain circumstances it may be necessary that there be a restriction to certain rights of citizens when there are circumstances that demand a special declaration. State of emergency is also known as “state of exception,” a “state of siege” or “martial law,” is a politico judicial regime that involves “governmental action taken during an extraordinary national crisis that usually entails broad restrictions of human rights.”¹ Such declaration is used as a way to set things back in order and restore the normal circumstances of the state as opposed to the harsh conditions that are there. In the case of state of emergency states have the right to set restrictions on some human rights of individuals.

The international human rights instruments have provided the conditions in which there could be a declaration of a state of emergency. Thus, most of the international human rights instruments have provided the conditions in which states may derogate from their human rights obligations in case of state of emergency while at the same time setting the proper safeguards against abuse. The safeguards are: the delimitation of the nature of the exigent circumstances which warrant a state of emergency, provision of restrictions on derogation, and regulation of the nature of state response and conduct in handling the emergency.²

Ethiopia has signed and accepted various human rights treaties at the international and regional level. The state has thus a human rights obligation to accept to and to uphold the principles that have been provided in the human rights documents that the state has signed. At the domestic level the state has incorporated the human rights principles in the Federal Democratic Republic of Ethiopia Constitution. The constitution has also set the principles that are to be applied in the

¹ Claudio Grossman, “A framework for the Examination of States of Emergency Under the American Convention on Human Rights”, 1 AM. U. J. INTL L. & POL’Y (1986) 35

² International Covenant on Civil and Political Rights (ICCPR) opened for signature Dec 9,1966, S. EXEC. Doc. No. E, 95-2 (1978), 999 U.N.T.S. 171m Art 4; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), opened for signature Nov. 4,1950, 213 U.N.T.S. 222, Art. 15; American Convention on Human Rights (ACHR), opened for signature Nov. 22,1969,1144 U.N.T.S. 123 Art. 27



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circumstances where the state of emergency is to be declared. We need to take a look at article 93 of the FDRE Constitution which has set the grounds on which there will be a declaration of a state of emergency and sets out the ground rules of the declaration. In addition to this the international standards that are set in the human rights treaties that Ethiopia will be a part to will be applicable. This is through article 13 of the FDRE constitution which provides that human rights principles will be applicable through the human rights treaties.

In the past several years the country has been faced with various issues and there have been many declarations of state of emergency. There have been four declarations of state of emergency: the 2016 declaration for the maintenance of public peace and security³, the 2018 state of emergency for the constitution and constitutional order defence from threat⁴, the 2020 state of emergency to counter and control the spread of COVID-19 and mitigate its impacts⁵, and the last declaration that has been made was the declaration made in relation to the conflict in the northern part of the region⁶. The declaration was made in November 2/202 and it was finally lifted ahead of time on January 26/2022.

Accordingly, Proclamation No. 5/2021 has been selected for this particular assessment for an analysis and study. There will be a qualitative doctrinal type assessment that will be conducted on the proclamation regarding its elements and how it has been drafted. The assessment will try and consider the standards that need to be employed in relation to the applicability of a declaration of state of emergency. It will then use those grounds as a way to evaluate the articles in the proclamation. The whole project is meant to show stakeholders what has been done and what needs to be improved and the string points for future reference in relation to state of emergency.

³ State of Emergency for the Maintenance of Public Peace and Security No. 1/2016

⁴ State of Emergency Proclamation Issued to Defend the Constitution and Constitutional Order from Threat Council of Ministers Proclamation No. 2/2018

⁵ State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate its Impact Proclamation No. 3/2020

⁶ A State of Emergency Proclamation Enacted to Avert the Threat Against National Existence and Sovereignty Proclamation No. 5/2021



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AHRE will be taking a closer look at the declaration that was made and will involve a desk review of the work. The project will be making an analysis of the declaration considering the international standards that have been set in human rights treaties as well as the FDRE constitution. And finally, a workshop will be held where the paper will be presented, and a panel discussion involving experts in the area and concerned stakeholders will be held. It is mainly aimed at assessing the impact and the standards of application that are used in its implementation.

Rationale

In the past several years there has been various declarations of state of emergency to deal with issues of peace, a national epidemic and now a conflict in the northern part of the country. In relation to the declaration of a state of emergency the international human rights treaties have set standards. The domestic legal instruments of Ethiopia have also given recognition to human rights and the issue of state of emergency declaration as well. The article on state of emergency in the FDRE Constitution has provided the steps to be followed and the way that a declaration of emergency is to be made. Through the use of proclamations a declaration of state of emergency is to be made and the past declaration of emergency is no different.

In the past several years a state of emergency has been issued by Ethiopia and in some cases this has resulted in the abuse of rights. This past year due to the conflict that has erupted in the north a state of emergency has been declared to ease the effects of the war. There needs to be an assessment of the declaration and a review of the articles. With this consideration Association for Human Rights in Ethiopia (AHRE) has initiated this project to assess proclamation 5/2021 in light of the international standards that have been set on state of emergency declaration.

2. Objectives

General Objective

- To assess the state of emergency declaration in light of human rights standards set in the international human rights law legal framework



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Specific Objectives are to:

- To make an analysis of the proclamation's articles in light of human rights treaties
- To evaluate the proclamation in light of previous state of emergency declarations
- To assess the articles in light of the standards set forth in the FDRE constitution
- To produce an assessment document that will be used for advocacy

3. Methodology

3.1.Primary Data Collection

For primary data collection international human rights documents, domestic legal documents and proclamations will be used. The materials to be used will be determined in consultation with the lead consultant.

3.2.Secondary Data Collection

Secondary data will be collected from office documents, studies, evaluation reports, policy documents and regulatory frameworks and other related literatures.

4. Final report

The findings of the assessment shall be presented as a assessment paper and the outline will be developed in collaboration with the lead consultant.

5. Time Frame

This is to be provided by the Principal Consultant and the time frame for the assessment is a total of 2 weeks for the assessment process. The consultant is required to provide the breakdown of the timeframe that is specific to the activities that are to be completed at each step.

6. Qualification And Experience Required

- Master's degree in law (LLM) or similar subject is required.
- The Consultant/firm must have over five years of expertise in conducting assessment/research.
- High level of written and spoken English and Amharic languages

7. Legal Requirements

Interested applicants should submit:



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- Valid Certificate of Consultancy Service
- Valid Trading License
- Valid Tax Registration Certificate (indicating TIN and VAT Number)
- Full and accurate physical, postal, telephone and email addresses

8. Application Procedure

All interested consultants can apply by presenting the following documents:

- Letter of Application
- Comprehensive technical and financial proposals
- Reference/certificates evidencing that the consultants have carried out similar assignments.
- Updated CVs for the team of consultants

How To Apply:

In the application procedure part of this TOR, interested applicants can submit separate technical and financial proposals, as well as supporting credentials, in two sealed envelopes through the following address:

AHRE Head Office located at Bole Sub-city, Woreda 02, Behind DH Geda Tower Dr Abebe Building 2nd Floor or send scanned versions of the above documents via Email address: mahletnegussie12@gmail.com