Ethiopia: One step forward two steps back in fighting torture

Alternative report on Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Association for Human Rights in Ethiopia

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Ethiopia: One step forward two steps back in fighting torture

Joint Alternative Report submitted under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the 76th session of the Committee Against Torture

Review of the second and third periodic report of the Federal Democratic Republic of Ethiopia

Contributing NGOs/CSOs

- Association for Human Rights in Ethiopia/AHRE/
- Consortium of Ethiopian Human Rights Organization/CEHRO/
- Ethiopian Human Rights Council/EHRC/
- Center for Justice/CJ/
- World Organization Against Torture/OMCT/

This is a selective summary of the joint alternative report prepared and submitted under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 19 of the convention read as follows,

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

The report highlights various issues related to torture and ill-treatment in the country. It emphasizes the inadequate measures taken by the government to prevent and combat these human rights violations. The report also criticizes the lack of proper investigations and prosecutions of perpetrators of torture. Additionally, the report addresses the issue of impunity, noting that perpetrators of torture and ill-treatment often go unpunished. It raises concerns about the absence of effective safeguards to prevent torture and the failure to provide redress to victims.

Report Background

The report was produced following a workshop held on February 23rd and 24th, 2023 that assessed the second and third periodic report and the reply to the list of issues submitted by the Government of the Federal Democratic Republic of Ethiopia to the Committee Against Torture (CAT). The progresses and shortcomings on the list of issues included in the submitted report were discussed and noted during the workshop based on the work of the contributing NGOs that focused on the analysis of the legislative and institutional framework for the fight

against torture and on the current reality of its implementation. The report is therefore based on their experiences, documentation and recommendations. The NGOs responsible for writing this report have verified the information contained therein.

The report also includes interviews carried out in the field by the World Organization Against Torture (OMCT) and two network members AHRE and Ethiopian Human Rights Council (EHRCO) with victims of torture, witnesses, heads of NGOs, political parties and the media. Interviews were also conducted with representatives of the government, the National Commission for Human Rights.

Introduction

After hopes of improvement following the political reforms in 2018 that initiated closure of major detention centers such as Maekelawi and the release of thousands of political prisoners arrested on terrorism charges, Ethiopia relapsed to a wave of political turmoil since November 2020 when war broke out in the Tigray Region. This situation led to a new proclaimed state of emergency on November 2 of 2021, during which massive and gross human rights violations have been committed including acts of torture and other forms of ill-treatment. The government has not addressed all of the Committee's previous main recommendations but has rather neglected legal and policy necessary changes and adopted a more violent approach against dissidents.

Replies from the CSOs

The replies from the CSO were on the following issues raised in the report.

A. Legal safeguards

B. Definition of torture

C. Legal safeguards for detainees

D. Independence of national human rights institutions

E. Violence against women

F. Accountability of perpetrators

G. Trafficking in person

H. Expulsion or extradition of refugees

I. Education and training

J. Jurisdiction

K. Education and training

L. Training for law enforcement bodies

M. Systematic review of interrogation rules

N. Treatment of prisoners

O. Conditions of detention

Q. Minimum age of criminal responsibility

R. Death in custody

S. Incommunicado detention

T. Investigation

U. Accusation of perpetrators

V. System of confidential complaints

X. Prosecution of grave human rights violations

Y. Redress and compensation for victims

Z. Exclusionary rule

I. Excessive use of force

II. Death penalty

III. Prevention of torture and cruel and inhuman treatment against human rights defenders

IV. Corporeal punishment of children

V. Prevention of terrorism & counterterrorism

VI. COVID -19

Highlight From the Report

B. Definition of torture

Despite the 2011 Committee concerns regarding the definition of torture under Ethiopian law (article 424 criminal code), it still fails to fully comply with Article 1 of the Convention Against Torture. "Acts of torture falling outside the definition provided in Article 424 of the revised Criminal Code are punishable only as the offence of "abuse of power". This means that there is a lack of adequate punishment for acts of torture occurring during public demonstrations or in custodial settings. Article 9 of the Ethiopian Constitution provides that every international agreement ratified by Ethiopia are an integral part of domestic law. Unfortunately, judges don't directly refer to the Convention to adjudicate cases of torture.

The criminal code has not been amended in a way to incorporate the definition of torture provided under the convention yet. No clear timetable has been given to revise the code and the definition of torture remains to be the same. The absence of clear definition and criminalization of torturous acts under the domestic law of the country has created a huge gap in the justice system. The judiciary is punishing perpetrators using other legal provisions of the criminal law that provide lesser punishment. On the other hand, Article 28(1) of FDRE constitution criminalizes torture as part of crimes against humanity. The provision further implies that torture cannot be barred by period of limitation and is not subjected to amnesty or pardon. This implies an absolute prohibition of torture in Ethiopia.

Recommendations

The state party should:

- Enact a specific law on the prevention and prohibition of torture which, expressly define and criminalize torture in line with the convention.
- Incorporate in the law the absolute prohibition of torture in all circumstances including in non-

custodial settings and in the context of conflict and emergencies.

- Provide legal guarantee for the security and protection of victims who testify against perpetrators.
- Take action to rehabilitate the victims of torture, including through allocation of budget and the establishment of victim funds, as necessary.

E. Violence against women

The Ethiopian criminal law includes provisions that are related to Gender-based violence (GBV). For example, article 620 of the criminal code criminalizes rape, chapter three of the criminal code includes harmful traditional practices including female gentile mutilation (FGM) and early marriage. The revised family code prohibits early marriage. Ethiopia is also a party to CEDAW, the Maputo protocol and other declarations of the UN. These legal instruments are part of the law of the land, and the government is bound to respect, protect and fulfill the rights that are included in these instruments. However, the country made reservations to the Maputo protocol, which criminalizes marital rape in article 4(2)(a). Additionally, marital rape has not been criminalized in the country. Though the government revised basic laws and criminalize harmful traditional practices including the early marriage and FGM there are still several tasks to be dealt with.

Though there are remarkable changes Ethiopia is still a home to 25 million circumcised women and girls. This accounts for the largest absolute number in Eastern and Southern Africa and makes up 12.5 per cent of the 200 million women and girls who have undergone FGM globally.

Recommendations

The state party should:

- Adopt a specific law on violence against women that criminalize among others marital rape and other forms of violence especially during conflicts.
- Act with due diligence to prevent, investigate, punish and remedy all acts of violence against women.
- Lift the reservations made to article 6 (b) of the Maputo Protocol about marital rape.
- Ensure the accountability of perpetrators of GBV, in particular for security forces, as well as redress for victims.
- Conduct sensitization activities regarding FGM.
- Guarantee reparation for victims of GBV and in particular of female

genital mutilation by creating specialized infrastructures for girls and women who have fled their homes in order to escape this violence and supporting civil society initiatives aimed at providing assistance multifaceted to the victims of these acts.

S. Incommunicado detention

In relation to the state of emergency that was declared on November 2021 the Federal, Amhara and Afar region security forces were unlawfully detaining individuals. In addition to this people were unlawfully arrested and kept in detention for longer periods of time without being brought before courts of law on the basis of membership and participation in opposition political parties. In some cases, those detained remained in custody even after the lifting of the state of emergency declaration. Individuals in Amhara region were subjects of arbitrary arrest and detention, in places that are unknown, and they were not brought before courts of law in the time specified by law. In violation of the legal principles many individuals were detained and kept in incommunicado detention for several months.

In relation to journalists there were arbitrary arrests and forced disappearance and in some cases the whereabouts of the journalists was not known. In relation to this a total of 22 journalists were detained and there were about unknown by their family and their lawyers from 2019-22.

Recommendations

The state party should:

- Always ensure that the detention and arrest of individuals should be in line with the law.
- Strictly adhere to the obligations set in the international human rights instruments and national law with respect to conditions of arrest and detention.
- Close all unofficial places of detention.
- Revise its legislative framework and practice to ensure that all arrests and detentions, are subject to oversight by the judicial authorities.

I. Excessive use of force

In Ethiopia provisions governing excessive use of force are scattered across many laws and regulations. Legal frameworks governing excessive use of force includes but are not limited to criminal code, criminal procedure code and the Federal police officer's administration council of minister's regulation no 268/2012 are inadequate and do not meet human rights standards. Taking

this into consideration a new use of force law is being drafted by the ministry of justice. The ministry also established a team of experts to follow up the drafting process. However, the craft of the proclamation took years. This shows lack of commitment of the concerned body to adapt the proclamation and regulate issues related to excessive use of force.

In Ethiopia there are many instances in which police officials violate human rights of citizens by excessive use of force. For instance, in Wolayita Zone on 9 and 10 August, 2020 Security forces injured more than eighteen people, On August 17, 2021 following the protest broke out in eastern Oromia in response to the continued detention of prominent Oromo opposition leaders Jawar Mohammed and Bekele Gerba, security forces arrested, beat, and used excessive force against scores of protesters, and allegedly killed over 40 people in eastern Oromia, Over 170 people were killed, some by security forces following the killing of Hachalu Hundesa, on October 23, 2019, following social media posts by the prominent activist Jawar Mohammed accusing the authorities of threatening his security, protests were erupted and 86 people died during the protests, on July 2019, least 17 people have been killed in Sidama because clashes between Ethiopian security forces and activists seeking a new autonomous region for their Sidama ethnic group, on September 2018 number of civilians were injured and killed in burayu, and

on January 20, 2018, dozens were killed in woldiya by security forces. Using excessive use of force in peaceful demonstrations and assemblies is becoming common in the country. Even though various types of human rights violations, particularly excessive use of force, are committed by government organs the possibility of being responsible is very rare. No criminal investigations are conducted, and no redress is provided for victims. According to interviews conducted by AHRE it is understood that all human rights violations are ignored by the government. The crime was supposed to be promptly and effectively investigated and all suspects for criminal acts must be brought to justice, on contrary perpetrators are awarded promotions for their act rather than being accountable. In most cases Perpetrators go unpunished and this creates a challenge to victims to claim their right.

Recommendations

The state party should:

- Ensure that impartial and thorough investigations are conducted without delay into any allegation of excessive use of force, torture, ill-treatment or extrajudicial executions targeting political opponents, human rights defenders and members of civil society organizations, and bring proceedings as necessary.
- Promptly prosecute security officers who are implicated into human rights through excessive use of force during peaceful demonstrations.
- Prioritize the enactment of the law on the maintain of order prohibiting illegal, unnecessary and disproportionate use of force by law enforcement officers.
- Develop and implement clear guidelines on the use of force and weapons, and bring the laws and regulations governing the use of force into line with international standards, in particular the Basic Principles

IV. Corporeal punishment of children

Corporal punishment against children in the school and home setting is a culturally accepted, widely practiced phenomenon in Ethiopia. Article 576 of the Criminal Code 2005 recognizes the power of parents and others with parental responsibilities to take "a disciplinary measure that does not contravene the law, for the purpose of proper upbringing" and article 258 of the Revised Family Code 2000 states that "the guardian may take the necessary disciplinary measures for the purpose of ensuring the upbringing of the minor". These provisions need to be amended but the government fails to take any measure. Furthermore, no visible steps are taken to create awareness, investigate cases of corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings.

Recommendations

The state party should:

- Raise awareness among the general population about corporal punishment and its consequence.
- Amend article 576 of the criminal code and 258 of the revised family code.
- Ensure proportionate accountability for perpetrators of corporal punishment of children.
- Prohibit corporal punishment in all circumstances, including at home.

Please find the full report on AHRE's website

https://ahrethiopia.org/posts/assessment

Association for human rights in Ethiopia (AHRE) is a non-governmental, non-partisan, and not-for-profit organization dedicated to the advancement of human rights in Ethiopia established in 2015.

AHRE has been registered and accorded legal personality with registration number 5223 on November 12, 2020, as a local organization in accordance with the Civil Society Organization Proclamation No. 1113/2019.

Mission

AHRE aspires to contribute to the improvement of the human rights situation in Ethiopia by conducting in-depth research, advocacy, and training on human rights. It is also the organization's mission to assist the government in its effort of boosting the state of human rights in the country.

Vision

AHRE aspires to envision Ethiopia where basic human rights are upheld and the rule of law and democracy prevail.

Values

- Non-discrimination
- Integrity
- Confidentiality
- Non-partisan
- Transparency
- Accountability

Physical Address Bole, Behind DH Geda Tower
Dr. Abebe Building 2nd Floor.
Phone: +251995000160
Email: contact@ahrethiopia.org
Website: https://ahrethiopia.org/
https://t.me/AHREEthiopia
https://twitter.com/AhreFor
https://www.facebook.com/AHREthio.org
https://www.linkedin.com/company/association-for-human-rights-in-ethiopia/

Association for Human Rights in Ethiopia



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