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Ethiopia's Compliance with The International Covenant on Civil and Political Rights Suggested List of Issues Relating to the Death Penalty

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 160 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. This submission addresses Ethiopia's compliance with its human rights obligations with regard to its use of the death penalty. Ethiopia retains the death penalty and has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).
2. Ethiopia has failed to uphold its obligations under the ICCPR and has not acted to limit the application of the death penalty to offences that can be deemed the "most serious" crimes. The last known execution in Ethiopia was in 2007.¹ Ethiopia continues to oppose the UN General Assembly's resolution on a moratorium on the use of the death penalty.²
3. The Government of Ethiopia retains the death penalty for non-violent crimes, including, *inter alia*, terrorism "causing serious to historical or cultural heritages" and acting as an accessory to an offense that causes severe bodily injury.³
4. Since 2019, Ethiopia has made no official statement suggesting it intends to formally abolish the death penalty or ratify the Second Optional Protocol. In the meantime, civil society organizations continue to report torture, unfair trials, and a general lack of due process protections, particularly in terrorism-related cases.

Ethiopia fails to uphold its obligations under the International Covenant on Civil and Political Rights

I. Ethiopia has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty and maintains the death penalty as a legal form of punishment.

5. In its 2011 Concluding Observations, the Human Rights Committee expressed concern that Ethiopia authorizes the death penalty for "crimes which appear to have a political dimension, as well as following in-absentia trials without adequate legal safeguards."⁴ The Committee recommended that Ethiopia consider abolishing the death penalty and ensure that the death penalty, if it is imposed, applies only to the most serious crimes and in compliance with article 14 of the Covenant.⁵ In addition, the Committee expressed concern about reported human rights violations in the Somali Regional State of Ethiopia and advised the Government of Ethiopia to take legislative action to ensure that its anti-terrorism legislation "defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly."⁶

¹ Reuters, *Ethiopia carries out rare execution*, Aug. 6, 2007, <https://www.reuters.com/article/idUSL06550887>.

² UN General Assembly Resolution 73/175, U.N. Doc. A/73/PV.55 (Dec. 17, 2018), also available online at <https://undocs.org/en/A/73/PV.55>.

³ Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020, Part 2, Section 3, ¶ 2 (Ethiopia); Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909/2015, Part Two, ¶ 6 (Ethiopia).

⁴ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 19.

⁵ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 20.

⁶ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 16.

6. In its Second Periodic State Party Report, Ethiopia notes that it has not conducted any executions during the reporting period, despite the sentencing of 211 individuals to death by the courts in the period between 2009/2010 and 2017/18.⁷ Ethiopia also asserts that it appropriately limits its use of the death penalty.⁸
7. In its 2019 Universal Periodic Review, Ethiopia received 15 recommendations to ratify the Second Optional Protocol or adopt a de jure moratorium on the death penalty.⁹ The State Party noted all such recommendations.¹⁰
8. Ethiopia seems to have observed a de facto moratorium on executions since 2007, the year of the last reported execution.¹¹ The Penal Code leaves the method of execution to the discretion of the applicable Federal or Regional prison administration.¹² Based on Amnesty International's reports, there were likely 10 people under sentence of death as of 2019.¹³
9. Ethiopia maintains the death penalty as an eligible punishment for many crimes, including offenses that do not constitute "most serious crimes." In March 2020, Ethiopia adopted the

⁷ Human Rights Committee, *Second periodic report submitted by Ethiopia under article 40 of the Covenant, due in 2014*, U.N. Doc. CCPR/C/ETH/2, ¶ 51.

⁸ Human Rights Committee, *Second periodic report submitted by Ethiopia under article 40 of the Covenant, due in 2014*, U.N. Doc. CCPR/C/ETH/2, ¶ 52.

⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Ethiopia* (July 5, 2019), U.N. Doc. A/HRC/42/14, ¶¶ 163.18 Ratify the Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Spain); 163.20 Ratify international human rights instruments such as the Optional Protocols to the International Covenant on Civil and Political Rights (Estonia); 163.21 Consider acceding to the Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Ukraine); 163.22 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro); 163.23 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Croatia); 163.24 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Cyprus); 163.25 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Czechia); 163.145 Abolish the death penalty (Iceland); 163.146 Consider adopting a de jure moratorium on executions with a view to formally abolishing the death penalty (Italy); 163.147 Abolish definitively the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Luxembourg); 163.148 Abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Portugal); 163.149 Consider imposing a de facto moratorium on the use of the death penalty with a view to its total abolition (Rwanda); 163.150 Formally abolish the death penalty by removing capital punishment from the Penal Code (Sweden); 163.151 Establish a formal moratorium on the death penalty as a step towards its complete abolition (Australia); 163.152 Abolish the death penalty (Costa Rica).

¹⁰ Human Rights Council, *Addendum to the Report of the Working Group on the Universal Periodic Review: Ethiopia* (July 5, 2019), U.N. Doc. A/HRC/42/14/Add.1, ¶ 3.

¹¹ Reuters, *Ethiopia carries out rare execution*, Aug. 6, 2007, <https://www.reuters.com/article/idUSL06550887>.

¹² The Criminal Code of the Federal Democratic Republic of Ethiopia, art. 117(3), Proclamation No. 414/2004 (Ethiopia).

¹³ Amnesty International, *Death Sentences and Executions 2017*, ACT 50/7955/2018, 2018, also available online at <https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF>; Amnesty International, *Death Sentences and Executions 2018*, ACT 50/9870/2019, 2019, also available online at <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>; Amnesty International, *Death Sentences and Executions 2019*, ACT 50/1846/2020, 2020, also available online at <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020 to replace the controversial Anti-Terrorism Proclamation, which criminalized and made punishable by death *inter alia* “caus[ing] serious damage to property,” caus[ing] damage to natural resource, environment, historical, or cultural heritages,” or “endanger[ing], seiz[ing] or put[ting] under control, caus[ing] serious interference or disruption of any public service.”¹⁴ The Prevention and Suppression of Terrorism Crimes Proclamation criminalizes and makes punishable by death similar categories of non-violent crime, however, including “caus[ing] damage to property, natural resource or environment” and “causing serious damage to historical or cultural heritages or infrastructure or property or natural resource environment.”¹⁵

10. The adoption of the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation in 2015 makes participation, even “as being a member, a leader or coordinator of an organized criminal group or where the crime is committed in large scale,” in any offense stipulated under Articles 3 and 5 of the proclamation that results in “severe bodily injury or death to the victim” punishable by death.¹⁶

II. The State subjects people suspected of crimes and convicted of crimes to torture and other cruel, inhuman, or degrading treatment.

11. In its 2011 Concluding Observations, the Human Rights Committee expressed concern about the reports of torture of individuals detained in the Somali and Oromia Regional States.¹⁷ The Committee also recommended that the State Party guarantee the investigation and subsequent prosecution of all allegations of torture.¹⁸ The Committee followed this recommendation with a request that the Government of Ethiopia provide disaggregated data on all allegations of torture.¹⁹
12. In its State Party Report, the Government of Ethiopia stated that “[t]he prevention of acts of torture, cruel, or degrading treatment and ensuring accountability constitute the core of the ongoing political reforms.”²⁰ Ethiopia further stated that it had acknowledged that security and law enforcement agencies had systematically violated the right to be free from torture and other cruel, inhuman, or degrading treatment and that it was taking concrete steps, through the empowerment of existing human rights institutions, to better address complaints and expose acts of torture.²¹
13. During its 2019 Universal Periodic Review, Ethiopia received and accepted 6 recommendations to consider incorporating a definition of torture that covers all the elements

¹⁴Anti-Terrorism Proclamation No.652/2009, Part Two, ¶3 (Ethiopia).

¹⁵ Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020, Part 2, Section 3, ¶ 1-2 (Ethiopia).

¹⁶ Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909/2015, Part Two, ¶6 (Ethiopia).

¹⁷ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 17.

¹⁸ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 18.

¹⁹ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 18.

²⁰ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ethiopia* (Feb. 25, 2019), U.N. Doc. A/HRC/WG.6/33/ETH/1, ¶ 39.

²¹ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ethiopia* (Feb. 25, 2019), U.N. Doc. A/HRC/WG.6/33/ETH/1, ¶¶ 40-41.

contained in Article 1 of the Convention against Torture, to prioritize the prevention of acts of torture and cruel or degrading treatment, and to hold state perpetrators, specifically senior officials and the armed forces, accountable.²²

14. Reports of the use of torture during interrogation and extended pre-trial detention remain widespread, however, especially for persons accused of terrorism-related offenses. Multiple civil society organizations, including Human Rights Watch and Amnesty International, have reported on the use of arbitrary arrest, detention, torture, and other ill-treatment, as well as the absence of effective accountability mechanisms.
15. Human Rights Watch notes that in November 2018, Ethiopia arrested some high-level officials. At the same time, it reported that there was a lack of public transparency regarding the trials of the operators of the Somali region's notorious Jail Ogaden, where "torture, rape, and death were common" occurrences.²³
16. According to Amnesty International, Tigray Regional State security forces targeted with torture and other ill-treatment, on the basis of their Amhara identity, for speaking Amharic, or listening to Amharic music, supporters of the Wolkait Amhara Identity Committee after the Committee petitioned for the Wolkait district to join the Amhara Regional State.²⁴
17. The Association for Human Rights in Ethiopia has documented several cases of people being subjected to torture during interrogation to extract confessions. One individual charged for alleged involvement with the Oromo Liberation Front recounted that he was advised, after being "beaten, tortured, and [...] made to do a heavy physical exercise for 43 days," to simply "admit everything before they kill me and [...] later deny and tell the court it was a forced confession when my file is officially open."²⁵ Other methods of torture deployed to extract confessions included pulling out finger and toe nails while individuals were conscious, the tying of water bottles to the genitals, and electrocution.²⁶

²² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Ethiopia* (July 5, 2019), U.N. Doc. A/HRC/42/14, ¶¶ 163.55 Consider incorporating into its legislation a definition of torture in line with the Convention against Torture (Brazil); 163.153 Introduce a definition of torture in the Penal Code that covers all of the elements contained in article 1 of the Convention against Torture (Kyrgyzstan); 163.154 Continue to prioritize the prevention of acts of torture and cruel or degrading treatment, and ensure that accountability constitutes the core of ongoing political reforms (South Africa); 163.155 Adopt all necessary measures so that acts of torture are not repeated, by ensuring that those responsible are brought to justice (Spain); 163.156 Continue strengthening laws and policies on the prevention of acts of torture and cruel or degrading treatment by senior officials and, in particular, by the armed forces (Botswana); 163.157 Continue independent and transparent investigations into all allegations of torture in places of detention (Czechia).; Human Rights Council, *Addendum to the Report of the Working Group on the Universal Periodic Review: Ethiopia* (July 5, 2019), U.N. Doc. A/HRC/42/14/Add.1, ¶ 3.

²³ Human Rights Watch, "Ethiopia Events of 2019," accessed Aug. 3, 2020, <https://www.hrw.org/world-report/2020/country-chapters/ethiopia>.

²⁴ Amnesty International, "Ethiopia 2019," accessed Aug. 5, 2020, <https://www.amnesty.org/en/countries/africa/ethiopia/report-ethiopia/>.

²⁵ Association for Human Rights in Ethiopia, *Ethiopian Political Prisoners and Their Accounts of Torture*, February 2018, 26, also available online at <https://ahrethio.org/wp-content/uploads/2018/02/Ethiopian-prisoner-and-their-accounts-of-torture.rep2018.pdf>.

²⁶ Association for Human Rights in Ethiopia, *Ethiopian Political Prisoners and Their Accounts of Torture*, February 2018, 25-27, also available online at <https://ahrethio.org/wp-content/uploads/2018/02/Ethiopian-prisoner-and-their-accounts-of-torture.rep2018.pdf>.

III. Violations of the rights to due process and a fair trial threaten the right to life.

18. In its Concluding Observations, the Human Rights Committee expressed concern that none of the national courts in Ethiopia have invoked provisions of the ICCPR, and that the ICCPR has been neither translated into local languages nor published in full in the Federal Negazit Gazette.²⁷ The Committee also expressed concern about reports that restrictions imposed upon non-governmental organizations by the Proclamation to Provide for the Registration and Regulation of Charities and Societies No 621/2009 impedes the provision of free legal aid, especially in light of the lack of capacity of the Public Defender Office.²⁸ The Committee suggested that the State party ensure that all tribunals and courts in Ethiopia operate in accordance with the principles of article 14 of the ICCPR and paragraph 24 of the Committee's general comment No. 32 (2007).²⁹
19. In its State Party Report, Ethiopia stated its commitment to an independent judiciary and that "[a] number of laws have been enacted at the federal and regional levels to further ensure the independence of the judiciary."³⁰ In addition, the Government affirmed its commitment to the principle of the presumption of innocence and that all suspects are brought to a court of law within 48 hours of arrest.³¹
20. During its 2019 Universal Periodic Review, participants in the interactive dialogue acknowledged this change in the organizational set-up and legal framework of key democratic institutions, security agencies, and the judiciary.³² Ethiopia received and accepted 6 recommendations to strengthen and ensure the independence of the judiciary.³³
21. Nonetheless, reports of due process violations persist. Amnesty International has shown that, in the region of Oromia alone, authorities detained approximately 10,000 people through mass

²⁷ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 5.

²⁸ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 20.

²⁹ Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 102nd session (July 11 – 29, 2011)*, U.N. Doc. CCPR/C/ETH/CO/1, ¶ 23.

³⁰ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ethiopia* (Feb. 25, 2019), U.N. Doc. A/HRC/WG.6/33/ETH/1, ¶ 57.

³¹ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ethiopia* (Feb. 25, 2019), U.N. Doc. A/HRC/WG.6/33/ETH/1, ¶ 60.

³² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Ethiopia* (July 5, 2019), U.N. Doc. A/HRC/42/14, ¶ 10.

³³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Ethiopia* (July 5, 2019), U.N. Doc. A/HRC/42/14, ¶¶ 163.89 Ensure the independence of the Ethiopian Human Rights Commission, the Ombudsman and the judiciary (Germany); 163.106 Take appropriate measures to strengthen the capacity and the independence of the Ethiopian National Human Rights Commission, the Ombudsman and the judiciary (Bulgaria); 163.184 Strengthen the independence and capacity of the judiciary, the Ombudsman and the Ethiopian Human Rights Commission (Netherlands); 163.185 Strengthen the judiciary and its independence, and ensure that the Ethiopian Human Rights Commission functions independently and in line with the Paris Principles (Spain); 163.186 Ensure the independence of the judicial system and continue its efforts towards accountability for past atrocities (Austria); 163.187 Accelerate the pace of reforms to ensure the independence of the judiciary, and amend restrictive legislation, including the Anti-Terror Proclamation, as well as media and electoral laws, in line with international standards (Canada).; Human Rights Council, *Addendum to the Report of the Working Group on the Universal Periodic Review: Ethiopia* (July 5, 2019), U.N. Doc. A/HRC/42/14/Add.1, ¶ 3.

arrests between January and September 2019.³⁴ Individuals were also subject to re-arrest, and courts often failed to provide them with a legal remedy.³⁵ Individuals also faced retaliation and beatings in detention when authorities discovered that the individuals' families had petitioned the court for their release.³⁶

22. Amnesty International also noted that hundreds of political opposition members have faced unfair trials in terrorism-related prosecutions. For example, the police arrested the prominent Oromo Liberation Front member Colonel Gemechu Ayana and detained him for eight months.³⁷

IV. Suggested questions for the Government of Ethiopia:

- What steps have Ethiopian authorities taken to reduce the number of crimes eligible for the death penalty and to limit the availability of the death penalty to the “most serious” crimes in accordance with the International Covenant on Civil and Political Rights?
- Under the new Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020, what offenses are eligible for the death penalty and in what circumstances?
- How many people are currently under sentence of death? What are the crimes for which they were convicted? How long have they been imprisoned on death row?
- Please provide disaggregated data broken down by age (including current age and age at the time of the offense), race and ethnicity, nationality, and sex relating to all persons sentenced to death or executed during the reporting period, including: the crimes of conviction; location and date of arrest; duration of pre-trial detention; date legal counsel was provided or obtained; location, date, and duration of trial; date of sentencing; location of post-trial detention; and location and date of execution, if applicable.
- What procedures are in place to promote public transparency with respect to criminal proceedings in which a person may be sentenced to death and with respect to death sentences and executions?
- What procedures exist when a defendant in a criminal proceeding alleges having been tortured or otherwise ill-treated? What measures are taken to hold persons who commit acts of torture accountable and to compensate victims of torture?

³⁴ Amnesty International, *Beyond Law Enforcement: Human rights violations by Ethiopian security forces in Amhara and Oromia*, AFR 25/2358/2020, May 29, 2020, 20, also available online at <https://www.amnesty.org/en/documents/afr25/2358/2020/en/>.

³⁵ Amnesty International, *Beyond Law Enforcement: Human rights violations by Ethiopian security forces in Amhara and Oromia*, AFR 25/2358/2020, May 29, 2020, 20-23, also available online at <https://www.amnesty.org/en/documents/afr25/2358/2020/en/>.

³⁶ Amnesty International, *Beyond Law Enforcement: Human rights violations by Ethiopian security forces in Amhara and Oromia*, AFR 25/2358/2020, May 29, 2020, 23, also available online at <https://www.amnesty.org/en/documents/afr25/2358/2020/en/>.

³⁷ Amnesty International, “Ethiopia 2019,” accessed Aug. 5, 2020, <https://www.amnesty.org/en/countries/africa/ethiopia/report-ethiopia/>.

- Please describe the extent to which the State provides systematic training to law enforcement, prosecutors, investigators, prison officials, and judicial officers regarding human rights as a standard component of training curricula, covering the topics of the prohibition of torture, interrogation techniques that comply with international human rights standards, conditions of detention, and the treatment of people in detention.
- What steps has the State taken to ensure that no coerced or forced confession is accepted as evidence in court, except against a person accused of torture or other ill-treatment as evidence that the “confession” or other statement was made?
- What concrete measures is the government taking to ensure respect for the rights of defendants to a fair trial and adequate legal representation, particularly in terrorism-related cases and in other cases in which the defendant is at risk of being sentenced to death?
- What steps has the State taken to expand the provision of legal aid, particularly for people at risk of being sentenced to death, and to reduce barriers to the provision of legal aid under the new Civil Society Organizations Agency Proclamation No. 1113/2019?
- How does the State ensure and protect the full independence and impartiality of the judiciary and guarantee that it is free to operate without pressure and interference from the executive?