From 2 to 9 December, at the invitation of the Government, I conducted the first mission to Ethiopia by a mandate-holder of the United Nations (UN) Special Procedures since 2006. Throughout the mission, in which I evaluated the situation of freedom of opinion and expression in the country today, I met with Government officials, members of Parliament and the Judiciary, human rights defenders and academics in civil society, journalists, students and other participants in the rapid legal, institutional and political change taking place in Ethiopia today. At the end of a productive and illuminating visit, for which the Government offered considerable support and facilitation, and for which I offer my gratitude, I express my hope that this is the first of a long list of such visits, by my mandate and other UN experts reporting to the Human Rights Council. I supply further details and background at the conclusion of this statement.

i. Introduction

Ethiopia is a vast and diverse country marked by the excitement, uncertainty and, in some quarters, fear of what one close observer called "tectonic" shifts in the institutional, legal and political environments. Beginning in April 2018, Prime Minister Abiy Ahmed ended the state of emergency, released journalists, activists and opposition figures from prison, legalized civil society organizations, and halted rampant government censorship. His Government continued with the launch of a formal process of legal and institutional reform, introducing a public participatory process of legislative drafting and advice that should be a model for democratic processes worldwide. Applying this model, Ethiopia has adopted a progressive law on civil society organizations and is in the process of considering other laws related to media and access to information, counter-terrorism, and computer crime. In May, Addis Ababa played host to World Press Freedom Day, unthinkable just a year earlier.

Nothing should take away from the progress, promise, and boldness of this transformation, as long as the Government invests in it the commitment and momentum of its early days. The world community should support it where it can and, where appropriate, with robust diplomatic and financial contributions. While everyone involved should recognize that there may be bumps along the road to reform, there can be no turning back to the era of repression that ruled Ethiopia for over a quarter century.

And yet the oft-noted fragility of the current moment threatens violence and discord. In October, political unrest led to the killing of a reported eighty-six people in violent conflict across ethnic lines and amidst allegations of social media's role in allowing or exacerbating it. Such outbreaks threaten
public confidence in governance and reform. Meanwhile, the Government continues to deploy the much-despised Anti-Terrorism Proclamation (ATP) even as its effort to repeal and replace it seems stalled in Parliament. The Government has shut down the Internet a reported eight times this year. The media remains under-developed, still suffering from the trauma of the previous regime. All of these issues will become increasingly salient in advance of national elections scheduled for May 2020.

Ethiopia's leaders can begin to address some of these concerns with national dialogue and legal, policy and educational initiatives. This is also true of inter-ethnic tension. Addressing intolerance must involve a commitment to Ethiopia's obligations under international human rights law. The draft “Hate Speech and Disinformation Proclamation”, however, would threaten freedom of expression. As constructed presently, it could reinforce rather than ease ethnic and political tensions.

I come away from this Mission with hope and concern. My hope derives from the fact that the Government has initiated an ambitious process supported by the democratic tools of public participation. My concern, however, is that the momentum of and commitment to that process face barriers much larger than those that legal reform alone can resolve. Inter-ethnic conflict spurred on by hate speech and disinformation demand not just legal solutions but political ones in which the Government and its opposition pursue reform at each state and district level. Law can support that process, but ultimately political will must exist to allow it to survive and thrive.

These preliminary observations highlight -- but do not extensively document and analyze -- the opportunities and threats for freedom of expression in the current moment in Ethiopia. My evaluation is founded principally on the human right to freedom of expression guaranteed by Article 19 of the International Covenant on Civil and Political Rights -- which Ethiopia ratified and, by virtue of its Constitution, is a part of Ethiopia's domestic and international obligations. At the 44th session of the Human Rights Council in June, I will present a detailed report on this mission and my findings. In preparing that report, I look forward to working with the Government and the people of Ethiopia at this critical moment for their emergent democracy.

ii. The long-term promise of the reform process

Ethiopia, for nearly three decades, was a place that jailed and tortured journalists and human rights defenders, redefining them as terrorists. The Government repressed civil society organizations through restrictions intent on limiting their independence and efficacy. The authorities controlled the media with constant propaganda, limited access to information, and conducted surveillance of its perceived adversaries at home and abroad. This baseline should be kept in mind as observers examine its efforts to transform its human rights compliance.

Within days of his elevation into leadership in April 2018, Prime Minister Abyi promised an end to repression and the beginning of democratic legal and institutional change. Freedom of expression was near the top of that agenda, with proposals to open up civil society and the rule of law, develop media freedom and independence, end repression by the ATP, and guarantee access to information. Ethiopia is at the early stages of what may be a fragile and possibly contested process of building the essential institutions of democratic life in Ethiopia, and these comments should be taken with that perspective in mind.

1. Rule of law and civil society participation

The Government launched its reform agenda with an unusually inclusive process. On 30 June 2018, the Attorney General's office established the Advisory Council for Legal & Justice Affairs, supported by a set of working groups that research subjects and prepare draft legislation for the Council to review and transmit to the Government's Council of Ministers for approval. I understand that approximately 160 lawyers, journalists, and academics participate on a voluntary basis in the working groups, led by a professional secretariat committed, as they and others told me, to an effort aimed at preparing drafts consistent with Ethiopia's Constitutional and international obligations. Following Council approval, the Government presents the legislation to Parliament, where legislators will typically subject the draft to analysis, public hearings, and ultimately debate and adoption or rejection.

The first major piece of relevant legislation that went through this process and was approved by
Parliament was, appropriately enough, the Organization of Civil Society Proclamation. The new law serves to support and promote the independence of civil society organizations (CSOs). For instance, it established the Civil Society Organization Agency (CSOA), opened the door to foreign funding and registration, and ensured tax and duties privileges for CSOs. The CSOA Board includes government, academic, and CSO representation. In discussions with its leadership, I detected a genuine - and I hope sustainable - commitment to ensuring the success and growth of independent civil society in Ethiopia.

Throughout the mission, individuals in Government and civil society repeatedly expressed an important point: laws are not enough. Many stakeholders emphasized the importance of careful implementation with sustained attention and oversight. This is certainly true with respect to the CSOA; it requires major resources to develop the kind of promotion and protection for civil society that the law envisions. Given the transformations promised, the Government will need to set in motion a range of resource-intensive trainings, administrative regulations, and other policies. As the Government moves from legal change and institutional establishment to implementation, leaders in ministries I visited seem to understand the importance of continuing and deepening the process of genuine civil society participation.

I also wish to note here the critical importance of expanding gender equity within Government and other areas of public life. While Prime Minister Abiy admirably appointed a cabinet with gender balance, nearly all of my meetings in Government offices -- apart from the Ministry of Peace -- involved almost entirely male interlocutors. I would urge all public authorities, but perhaps especially the CSOA, to devote resources to expanding opportunities for women to participate in all levels of governance and professions.

2. Media Freedom, Reform and Independence

The democratic process cannot survive without the watchdog role of a free and independent press -- and many of the officials with whom I met, from the leadership of the Ethiopian Broadcast Authority (EBA) to the Office of the Federal Attorney General and many others, embraced this axiom. And yet, informed observers offered similar diagnoses of the situation for the media today, such as the decimation of media during the period of repression and the consequent limited experience in professional and ethical standards of journalism; extremely limited resources to conduct their work or receive remuneration for it; extensive presence of mis- and dis-information, particularly on the rapidly growing social media platforms; the difficulty in accessing government-held information; and a regulatory machinery that is only now converted to ally, rather than adversary, of the media.

When it comes to the treatment of journalists, Ethiopia is certainly not yet out of the woods. While the Prime Minister released all journalists from prison in 2018, the Committee to Protect Journalists has found that, as of 1 December, Fekadu Mahtemework, managing editor of the privately-owned weekly publication Ghion, is in prison on pretextual tax charges filed by the previous regime in 2014. I urge the Government to reconsider the case. Others reported cases of even short-term detention of journalists which, while credible, I could not verify in the short time of this visit. Harassment common elsewhere occurs in Ethiopia as well; some journalists reported that their personal information had been posted online by non-governmental actors to intimidate them not to report. I recognize the Government’s concern about the spread of disinformation and believe the promotion of a diverse and pluralistic media landscape is an effective way to address this problem. In this context, I particularly welcome that under the new Electoral and Political Parties Proclamation from 24 August 2019, political parties are under the obligation to cooperate with the media and refrain from obstructing the work of journalists.

The future of the country’s democratic process is tied directly to its ability to develop a free, independent, self-regulating, professional media -- broadcast, print, electronic. The media is now a place seen by many as a source of disinformation and incitement, particularly when connected to the perceived disinformation factory of social media. I cannot assess the level of disinformation and incitement on media sources, but I can report that most, if not all, interlocutors raised concerns about these issues. There is no scenario that I can see in which the reform process continues without an independent media reporting, criticizing, supporting, and analyzing it.
Many officials seem to recognize this reality. At the institutional level, the EBA aims to help open up media space and ensure the increasing development and professionalism of the media. No longer reporting to the Government, the EBA is under Parliamentary supervision, a welcomed break from the political control that stunted its development for decades. It has begun the process of monitoring broadcast and electronic media which, while concerning if undertaken for controlling purposes, instead aims to provide confidential feedback to media outlets to help them improve their attention to professional ethics. The law should protect against abuse. The EBA leadership articulated strong support for media self-regulation, explaining a plan to support the development of a media council, publishers association, editors guild, journalists association, and a variety of trainings. These reflect the steps of an institution whose leadership seems genuinely committed to developing the media space as a tool for democracy.

In tandem with the development of the EBA, the Advisory Council has also approved a draft Media Proclamation. I received a draft of the legislation during the mission and anticipate providing the Government with more considered comments following the visit. Among the key elements of the draft, I am happy to see that it evidently would, if adopted in its present form, decriminalize defamation (Art. 84); establish the Ethiopian Media Authority as an autonomous agency accountable to the House of People’s Representatives (Art. 5); and establish safeguards to ensure board members of the Ethiopian Media Authority are free from political influence (Art. 12). The draft contains fines of up to 300,000 ETB for civil defamation. I would encourage the Government to ensure that public figures cannot abuse civil defamation to silence legitimate expression such as public debate and criticism.

3. Access to information

Despite strong Constitutional and statutory legal protections, the right to access information is impeded by hurdles stemming from a lack of initiative and capacity. These difficulties were reported on a number of fronts: government ministries failing to respond to media queries, a lack of electronic information databases, journalists inadequately informed about press briefings, and an absence of a grievance mechanism to remedy human rights violations and abuses. While I appreciate the role of the Ombudsman to provide information to the public, I heard throughout the week reports that the Government could do more to communicate its actions to the public. The law should promote access to information held by public authorities, and Government should develop a public advocacy campaign, while building capacity, to inform the public of how to exercise this basic right.

It is not clear that the Government sees access to information as a priority. The most alarming example of this position is frequent resort to shutting down the internet in times of public protest and even school exams. In fact, during the visit, the Information Network Security Agency confirmed that the internet was shut down in order to address a cyber-attack on government and private banks. No Government official could articulate for me a legal basis for such actions, but some continued to justify it. Internet shutdowns have been widely condemned as disproportionate measures under international human rights law, and I am particularly concerned that such actions are undertaken without constraint under law or policy. I strongly urge the Government to discontinue the use of this tool.

Internet access in Ethiopia, a vital tool to expand access to information, is relatively strong in urban areas but limited beyond. The country’s 15% internet penetration and 44% mobile penetration rates, according to the most recently available information, are comparatively low. Deepening internet penetration will be essential both for freedom of expression and economic development. The Ministry of Information and Technology described a strong, multi-sectoral approach to empower the country’s technological advancement and connectivity, including increasing mobile penetration to 90% and household internet access to over 80% within five years. The Ministry’s leadership described a well-developed vision for extending internet access across the country, a vision that deserves broad donor support and Government prioritization.

4. The Anti-Terrorism Proclamation

I am glad to note the Government’s effort to repeal the ATP. Earlier this year, several mandate-holders and I submitted comments to the Government on its draft ATP reform package (see OL ETH 3/2019). But here I would note considerable concern within civil society about the place of the
currently in-force ATP, which the new administration has committed to repeal. The broad interception and surveillance power afforded to the Security Service and National Intelligence can create a chilling effect on the work of these groups. The Government confirmed its continued use, including against activists and journalists in the past months’ outbreaks of violence. Although I understand the journalists who had been charged under the Proclamation were subsequently released, the use of this particularly restrictive legislation may erode public trust in the ongoing reform process. I would strongly encourage the Government to promptly repeal the Proclamation and replace it with a new law that clearly and narrowly defines the crime of terrorism.

The existing ATP also provides the Government with broad, unaccountable powers of surveillance. The previous Government conducted targeted hacking against individuals in and outside of Ethiopia without any evident judicial authorization or oversight. In order to meet the standards of human rights law, surveillance must be constrained by law and subjected to independent, preferably judicial, oversight. Moreover, given the opacity of past use of surveillance technologies, I would urge the Government to investigate and publish findings concerning the use of surveillance tools, including identifying the private companies from which it acquired such tools and service.

III. The near-term threat of inter-ethnic politics and advocacy of hatred

The situation for freedom of expression in Ethiopia at this moment requires noting what is obvious to those familiar with the contemporary political situation: the reform process may be at risk from the near-term threat of inter-ethnic politics and the emergence -- or at the very least the perceived emergence -- of hatred and disinformation as tools of politics. The basket of problems I am describing is deeply political and beyond the scope of my mandate to review fully. I will highlight here the connection to freedom of expression and note my strong belief that solving all of these requires a national commitment to reconciliation and to the democratic reform process -- and a set of legal and policy responses built upon the foundation of human rights law.

1. Tensions and public protest

The tensions between the diverse ethnic groups in Ethiopia are deeply connected to a federal structure that defines its constituent states by ethnic identification -- even though assimilation and inter-marriage rates are so high as to render many people reluctant to identify by ethnicity. As part of the reform process, the Government established a Ministry of Peace, described by its Minister as involving a bottom-up approach that involves CSOs, law enforcement, and other tools to engage a national process down to the district (“woreda”) level. It may be that this Ministry could serve a critical function in drawing together some of the disparate elements of Ethiopian politics that are now competing for influence and power.

My interlocutors expressed a range of views about the origins of the kind of violence that erupted in October. I would leave that evaluation to country experts and analysts. But I would note two key elements that are essential to ensuring protection of members of the public and the reform process, from the perspective of my mandate. First, political and community leaders must play a leading role in tamping down advocacy that can lead to violence. One activist showed me an inspiring video in which, in the face of an impending "mob attack" on an ethnically-identified bank, community elders and some youths stood between the attackers and the bank and prevented violence. Leaders across Ethiopia should take major steps to develop a diverse culture of tolerance and respect. I recognize that this is difficult in a system in which ethnicity defines regional states and political parties. Nonetheless, and in this connection, I would urge the Government to consider the lessons of Human Rights Council Resolution 16/18 (2011), which calls for tolerance and concrete steps to address hatred.

Second, the Government must develop strong human rights-oriented protections of public protest and peaceful assembly. Two previous Special Rapporteurs developed ten principles for the management of peaceful protests (A/HRC/31/66). A meeting with the Federal Police Commission demonstrated its officials’ commitment to ensuring the implementation of practices that are consistent with human rights standards such as these. Implementation of these principles may involve legislation, but in any event it should involve regular law enforcement authorities and prosecutors, armed with regular and focused training, to ensure protections of human life and rights to expression and protest.
Across public authorities and civil society, I heard often grave concern about the rise of hate speech and disinformation, particularly on social media but also in other media outlets, broadcast and print. In Bahir Dar, one interlocutor noted that the region enjoyed few media outlets and that its only print outlet was government media, which underlines the importance of the EBA’s vision of a pluralistic media. In the state media-dominated environment, it was noted, “the thing posing a huge problem is social media.” Some version of this comment was replicated throughout the mission. Some recognized the variation in hate speech’s salience; in some regions, it is not in evidence, while in others, it is alleged that “elites” use hate speech and disinformation to demonstrate, seek or reinforce their power. Whatever the reality, there was a seeming consensus among interlocutors that social and broadcast media are fueling disinformation and hatred.

I appreciate the Government’s commitment to stabilizing Ethiopia’s democracy and recognize that its democracy can be threatened by hate speech that incites violence. In fact, the Government is obligated under Article 20(2) of the International Covenant on Civil and Political Rights to prohibit by law “advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility and violence.” In that sense, part of the approach to the problem of hatred in the media should involve legal steps. But that is only part of the approach, for hate is very much a function of politics and, as such, it requires first and foremost a political, national solution.

That said, the Government’s draft Hate Speech and Disinformation Proclamation, which it recently presented to Parliament, goes far beyond the command of Article 20(2) and the limitations on restrictions required by Article 19(3) of the ICCPR. (See my comments in the attached document.) Unlike other draft legislation proceeding through the Advisory Council, this proclamation was developed outside that process. I am concerned that the draft Proclamation will exacerbate ethnic tension, which in turn may fuel further violence.

While the attached comments note my concerns as a matter of human rights law, I would note a few other points that arose during the course of the mission. First, because of the failure to limit the offense by principles of intent, context, and other factors found in the Rabat Plan of Action, by its terms the draft could lead to the criminalization of people who merely re-post or otherwise share content deemed “hate speech” or “disinformation”. The scope of such an approach could be enormous, in particular because the problem of hate speech is often not merely the content but its virality, the ease by which it may be shared by hundreds or thousands of people. Second, in this context, the draft’s excessive vagueness means that officials at the federal and regional level would have practically unbounded discretion to determine whom to investigate and prosecute, leading to an almost certain inconsistency in approach and a potential wave of arbitrary arrests and prosecutions. The Government committed to adopting administrative guidelines to govern use of the Proclamation, but there is no substitute for law that itself is consistent with human rights standards. Third, several interlocutors expressed the fear that the law could be used to silence critics. This is not fantasy. Because of the ethnic definition of politics and governance at the national and regional level, it is possible that robust political debate could be penalized under the Proclamation. The draft Proclamation would also criminalize the dissemination of disinformation.

According to information I have received, the Ethiopian Criminal Code troublingly penalizes such actions as spreading “alarm among the public” or “deliberately spreading false rumours” (Art. 485), “inciting the public through false rumours” (Art. 486), and spreading “false, exaggerated, or biased news” (Art. 813). Such prohibitions have been understood to protect public officials from criticism and, as such, are in stark contrast to Ethiopia’s obligations under international human rights law. In this context, I understand that the Government may seek to repeal some or all of these provisions, which I support. With this in mind, I encourage the Government, with the support of civil society, to review the entirety of the Criminal Code with a view to repealing those provisions so manifestly at odds with the right to freedom of expression (under the Constitution and international law).

There are numerous steps, especially those related to media literacy, professional training and self-regulation, and implementation of existing criminal provisions on incitement to violence, that Ethiopia could take to confront these problems. Combating hate speech is a delicate endeavour, which requires an in-depth knowledge of the local context, proficiency in local languages, and understanding of social
an in-depth knowledge of the local context, proficiency in local languages, and understanding of social and cultural habits, among so many others. Social media should be part of the solution. I would strongly encourage social media companies to engage in regular contact with Ethiopian authorities and civil society to better understand the local context and specific issues faced in the country. At a minimum, social media companies should establish regular and rapid-reaction mechanisms to enable civil society to report the most concerning kinds of content on their platforms.

As public hearings on the draft Proclamation are foreseen over the coming weeks, I would like to urge relevant decision-makers to dedicate sufficient time to consult with regional law enforcement authorities, the National Human Rights Commission, the Office of the UN High Commissioner for Human Rights, civil society organizations and other members of the public, and national and international experts.

In summary, Ethiopian and foreign observers, official and in civil society, repeatedly shared concerns that it is not hate speech alone that could result in harming individuals and undermine the reform process. Hate speech, however defined, is a widely-condemned problem in Ethiopia, but it is also a function and symptom of politics, a tool used to mobilize supporters in a country whose organizational structures center on ethnic identity. As such, no law alone can address the potential of hatred, or even disinformation, to be used to rally one's supporters. What is needed is not necessarily more law but more speech -- that is, more professional sources of verifiable information -- and a broad and deep national dialogue aimed at creating an agreed process for addressing grievances and building democratic institutions.

IV. Background to the visit

In addition to the Government's cooperation before and during the Mission, I would also like to thank the Office of the UN Resident Coordinator and the Office of the High Commissioner for Human Rights – East Africa Regional Office for their valuable support.

During my visit, I met with various Government officials, including the Federal Minister of Peace, the Federal Minister of Innovation and Technology, as well as representatives from the Attorney General Office, the Federal Police Commission, and the Ministry of Foreign Affairs. I also met with representatives of the legislative branch and the judiciary, including the Chairman and members of the Parliament's Standing Committee on Legal and Justice Affairs, as well as with the President and Vice-Presidents of the Federal High Court. Further, I met with the Chief Commissioner of the Ethiopian Human Rights Commission, members of the National Electoral Board, the director of the Broadcasting Authority, the director and deputy director of the Agency for Civil Society Organizations, as well as members of the Legal and Justice Affairs Advisory Council whose working methods are a model for the region and beyond.

In the past week, I also had the opportunity to discuss with numerous civil society organizations representatives, journalists, lawyers, academics, among others. Although most of my meetings were in Addis Ababa, I enjoyed the opportunity to travel to Bahir Dar, where I met with representatives from the regional Attorney General Office, civil society, students, and experts on freedom of expression issues. I would like to warmly thank every individual I met for their hospitality and openness in sharing their experiences with me. I am particularly grateful to those who approached me for their testimonies, recommendations and insights.

9 December 2019

Addis Ababa

Annex

Draft "Hate Speech and Disinformation Prevention and Suppression Proclamation"
Informal and Preliminary Comments of the UN Special Rapporteur on Freedom of Opinion and Expression
5 December 2019

Introduction

In the context of my current mission to Ethiopia, your Office shared with me and my team draft legislation pertaining to a number of key areas of your Government's legal reform. In my meetings with others, including the Parliamentary Committee on Legal, Justice, and Democracy Affairs, I shared my sense of the good faith effort the Government is undertaking during this reform process. (I will also share with the Committee these comments.)

Your Office also shared the draft Proclamation concerning "hate speech and disinformation" that I understand the Council of Ministers has approved and your Government has presented to Parliament. Over the course of the week, and during my preparations leading up to the Mission, I have heard repeated testimony highlighting the prevalence of "hate speech" and various forms of disinformation, particularly in the media, including print, broadcast, digital, and social media. Many individuals have decried the spread of speech that has, according to them, incited violence against others on a variety of grounds, including national, religious or ethnic hatred. Some testimony has further highlighted in particular the intersection of hateful speech, false information, and violence.

In light of that testimony, I understand the motivation behind the draft legislation and would welcome efforts by the Government, the media, civil society organizations and individuals to take steps to counter such hateful advocacy. I believe that there are numerous steps, especially those related to media literacy, professional journalism training and self-regulation, and greater attention by social media companies, that Ethiopia and others should take to confront these twin problems. I also believe that there is an important place for vigorous prohibition of incitement to violence in the current atmosphere. I wish for these preliminary comments to be read in that context (and without prejudice to other concerns that I am not sharing at this time).

Generally, however, I want to encourage consideration of an approach to "hate speech" that is rooted in applicable international human rights standards. In particular, Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) obligates States to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." As with any restriction on expression, the State also remains constrained by ICCPR Art. 19(3)'s standards of legality, necessity and proportionality, and legitimacy. (See General Comment 34 of the Human Rights Committee, CCPR/C/GC/34.) In my preliminary reading, the draft does not align itself with those standards. At the same time, I would note that Article 20(2) deals directly with the kind of expression that is of most concern to democratic society (that is, advocacy of hatred that constitutes incitement to violence and discrimination) and would achieve at least part of the aim that seems to underlie the draft.

My mandate has undertaken considerable study of the human rights law pertaining to hate speech and disinformation, and by this informal comment I wish to share with you some of that work. In particular, I wish to share with you (1) my recent report to the UN General Assembly (A/74/486) evaluated the law related to online hate speech, providing recommendations for both States and the internet companies on which platforms so much hateful speech spreads; and (2) the 2017 Joint Declaration on 'Fake News,' Disinformation and Propaganda.

Preamble

While, as you will see below, I am wary of efforts to "suppress by law" the category of expression defined as "disinformation," I appreciate the framing of the draft in the preamble. I am especially mindful of the need to protect all persons in Ethiopia against violence such as the tragic killings that took place in the Fall of this year. Given Articles 9(4) and 13(2) of the Constitution of Ethiopia, it would seem to be advantageous to note in the draft that international human rights agreements also govern the State's obligations as a matter of domestic and international law. This could be particularly valuable to state alongside the constitutional protection, under Article 29 of Ethiopia's Constitution, of the right of everyone to freedom of opinion and expression.

Definitions

I am concerned that the definitions provide excessive scope for interpretation and, by their breadth, would not meet the legality standard in Article 19(3). In particular, in Section 2.2, it is unclear what
may be covered by speech that "promotes" hatred, discrimination or "attack against a person..." I would be especially concerned that individuals – and law enforcement authorities – would not be sufficiently guided by this language as to what constitutes "hate speech," an offense subject to serious penalties, and that it would provide prosecutors with excessive discretion to apply the definition to individual speakers. By contrast, Article 20(2) provides a specific and internationally-recognized definition of hateful advocacy, which international mechanisms have interpreted. The mandate has found the language of "hate speech," untethered from Article 20(2), to be problematic over the course of many years. My predecessor found it common that legal frameworks attempting to regulate hate speech risked interfering, and in fact did interfere, with freedom of expression principles, when insufficiently grounded into international human rights law. He concluded, "Accordingly, laws to combat hate speech must be carefully construed and applied by the judiciary not to excessively curtail legitimate types of expression." (A/67/357.)

The current draft reaches speech that may be considered hateful but would not constitute incitement under Article 20. While States may wish to address "hate speech" that does not constitute incitement, applying criminal penalties would generally be inappropriate and, in any event, would require a high degree of scrutiny that the bill does not contemplate. As a result, I am particularly concerned that the lack of clarity of such an excessively broad definition may lead to arbitrary interpretation to suppress legitimate expression.

I am also deeply concerned by the definition of "disinformation" in Section 2.3. I appreciate the effort to limit such a term to those instances in which a person "knew or should reasonably have known the falsity of the information". Nonetheless, the definition raises a number of concerns. First, it is important to note that Article 19 does not, by its terms, limit the freedom of expression to "truthful" information; rather, it applies to "information and ideas of all kinds". Second, while the definition seems to assume that "false" has a fixed meaning, it does not. As a result, the definition raises serious overbreadth concerns under the legality test of Article 19(3), which does not provide for such restrictions. Third, it is unclear whether the knowledge standard applies not only to falsity but to the likeliness of causing a public disturbance. Finally, the definition evidently excludes the element of intention. Thus, even if a person were to share false information, knowing it was false, but intended to imply disagreement with the content, or to raise an alarm that such false information were circulating, the definition may yet cause that person's action to be deemed a criminal offense. This is also particularly concerning given that defamation is still criminalized in current legislation.

Prohibitions Under Section 4 and 5

The prohibition of "disseminating hate speech" is problematic given the breadth of the term "disseminating". International human rights law obligates States to prohibit "advocacy of national, racial or religious hatred," but it does not address mere "dissemination," given the infinite reasons why a person might share hateful speech. While I understand that the draft seeks to exempt some forms of dissemination from the ambit of the law, in Section 6, it does not cover all kinds of sharing that might not only be perfectly legitimate but also desirable for purposes of awareness-raising, criticism, and other reasons.

In my recent report to the General Assembly, I approvingly cited the Rabat Plan of Action, an expert-level interpretation that recommends a six-part threshold test in determining whether the severity of incitement to hatred rises to the level of criminalization under Art. 20. These factors include: (a) context, (b) speaker, (c) intent, (d) content and form, (e) extent of the speech act, and (f) likelihood, including imminence, of incitement leading to violence. Rabat also recommended that criminalization be left for the most serious sorts of incitement under Art. 20, and that, in general, other non-criminal approaches deserve consideration first. (See A/74/486). The draft proclamation does not provide the sort of guidance that would limit the operation of this provision. As a result, it could very well lead not only to illegitimate prosecutions but it could cause people to self-censor when they might share information that the public would need to know. I would encourage focusing on strengthening policy approaches that counter hate speech and foster tolerance and inter-community respect, much as the objective noted in Section 3.2 identifies. In this regard, I would make note of Human Rights Council Resolution 16/18 and the Istanbul Process, designed to share best practices to counter intolerance and hatred.
The prohibition of "disseminating of disinformation" raises similarly serious concerns. The 2017 Joint Declaration, noted above, noted that "[g]eneral prohibitions on the dissemination of information based on vague and ambiguous ideas, including 'false news' or 'non-objective information', are incompatible with international standards for restrictions on freedom of expression." I have repeatedly urged States, such as Italy, Malaysia, and Singapore, not to adopt such prohibitions for the same reasons. I fear the general prohibition on disinformation in the Proclamation runs afoul of these principles. I have repeatedly seen that such "disinformation" or "fake news" laws have been used for purposes that undermine public debate and the free flow of information. While I recognize the problem that your Government has identified, I strongly believe that prohibition and criminalization would be a dangerous legal path.

**Criminal Liability and the Repeal of Criminal Code Art. 486**

I recognize and appreciate that the draft would repeal Article 486 of the Criminal Code, which has abused individuals' right to expression under the guise of protecting against violent political, racial, and religious disturbances. However, I am concerned that the proposed criminal liabilities would not meet the standards of necessity and proportionality provided under Article 19(3) of the ICCPR. As it stands, the draft would involve penalties of 50,000-100,000 birr, in addition to providing for a maximum prison sentence of five years. These are very significant sanctions. The Human Rights Committee, in General Comment 34, referred to Article 19(3)'s conditions as "strict tests," under which restrictions "must be directly related to the specific need on which they are predicated."

Accordingly, the harsher the penalty, the greater the need for demonstrating strict necessity. It may be that criminal penalties would be appropriate if the definitions and prohibitions apply to the expression identified in Article 20(2) of the ICCPR and the draft included the careful factors identified in the Rabat Plan of Action. However, criminal punishment on the basis of the unclear scope of the law would likely be unable to meet the standards of Article 19(3).

It may also be worth noting one typical consequence of criminalization. The process of investigating and prosecuting "hate speech" usually provides a new platform for speakers to restate their expression, justify it, give them an aura of 'innocent defendant', and potentially give the expression a broader reach that it had before prosecution. I would encourage the Government to consider this natural result of criminalization, which could undermine the basic principles and objectives set out in the preamble and Section 3.

**Duties of Institutions and Service Providers**

I welcome the approaches identified in Section 8, but I would raise two potential concerns. The first involves Section 8.1 and Section 8.2, to the extent that they rely upon terms ("disinformation" and "hate speech") that are not defined well in the previous sections of the draft. Second, in Section 8.4 and Section 8.7, the draft alludes the possibility of civil liability. It may very well be that your Government may wish to adopt principles to hold social media companies accountable for a failure to counter the spread of content Ethiopian law may deem unlawful. However, in so doing, I would urge the Government to approach such intermediary liability with some caution, taking into account the applicable international human rights law I identified in my report to the Human Rights Council in 2018 (A/HRC/38/35).