HUMAN RIGHTS FIRST — ETHIOPIA

Independent Human Rights Documentation and Legal Analysis

HUMAN RIGHTS COMPLIANCE ASSESSMENT

The Tigray National Regional State *"Safeguarding the Existence and Protection of the People of Tigray" Proclamation No. 366/2026*

A provision-by-provision assessment against the Constitution of the Federal Democratic Republic of Ethiopia, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights

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July 2026

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Status, Methodology, and Limitations of This Assessment

This document is an independent legal and human rights compliance assessment prepared by Human Rights First — Ethiopia (HRF-Ethiopia). It is issued in the organization's capacity as a neutral human rights monitor. It is not a submission on behalf of, and does not represent the position of, any party to the political or military dispute between the federal authorities of Ethiopia and the authorities of the Tigray National Regional State.

The assessment proceeds from a single premise that HRF-Ethiopia applies without exception and to all parties: that the human rights of every person within Tigray and elsewhere in Ethiopia are protected by the Constitution of the Federal Democratic Republic of Ethiopia (the FDRE Constitution) and by the international human rights instruments Ethiopia has ratified, and that no security rationale — however genuinely felt — displaces those guarantees. HRF-Ethiopia records the grave and continuing suffering of the people of Tigray, and does not question the reality of the security threats invoked in the Proclamation's preamble. The purpose of this assessment is narrower and rule-of-law based: to test whether the specific legal mechanisms adopted in Proclamation No. 366/2026 conform to the human rights standards that bind every authority exercising public power in Ethiopia, including the authorities and organs in Tigray region.

Methodology

The assessment applies four analytical layers to each provision under review. First, a legality analysis asks whether the provision is prescribed by law with sufficient precision. Second, a legitimate-aim analysis asks whether it pursues an end recognized as legitimate under the applicable rights instrument. Third, a necessity-and-proportionality analysis asks whether the measure is the least restrictive means capable of achieving that aim. Fourth, a non-derogability analysis asks whether the provision trespasses on a right that may never be suspended, even in a declared public emergency. This is the structure adopted by the UN Human Rights Committee and the African Commission on Human and Peoples' Rights, and it is the structure HRF-Ethiopia uses in all of its statutory assessments. Citations follow the Oxford University Standard for the Citation of Legal Authorities (OSCOLA), 4th edn, adapted for footnote use. Where the precise wording of a provision carries legal weight, the provision is reproduced; otherwise its substance is paraphrased and cited. The English text of the Proclamation used here is the translation supplied to HRF-Ethiopia.

Applicable reporting standards

In its structure, evidential discipline and tone, this assessment is prepared in accordance with the standards that govern credible human rights fact-finding and reporting. It observes the principles of impartiality, independence and objectivity; it distinguishes throughout between the text of the law and its anticipated application; it states the applicable legal benchmark before reaching any conclusion; and it grounds each finding in an identified provision and an identified standard. Where a matter is contested or uncertain, the assessment says so rather than resolving it by assertion. These commitments reflect the methodology consolidated for United Nations and regional human rights fact-finding, which requires that findings be based on identified sources, that the applicable law be stated with precision, and that conclusions follow transparently from the material relied upon.[1]

[1]See generally OHCHR, 'Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice' (HR/PUB/14/7, 2015), on the principles of independence, impartiality, objectivity and transparency in human rights fact-finding and reporting.

Consistent with those standards, this assessment confines itself to legal analysis of the enacted text and does not purport to make findings of fact about individual cases, incidents, or the conduct of any party. Its conclusions concern the compatibility of the Proclamation with binding norms; they are not, and should not be read as, determinations of criminal or state responsibility.

EXECUTIVE SUMMARY

This assessment evaluates the Safeguarding the Existence and Security of the People of Tigray Proclamation No. 366/2026 against the Federal Democratic Republic of Ethiopia Constitution, the international human rights treaties binding on Ethiopia, and the relevant regional and comparative jurisprudence. It is issued by Human Rights First–Ethiopia as an independent, objective and impartial legal analysis. It takes no position on the underlying political dispute between the federal and regional authorities; its sole concern is the compatibility of the enacted text with binding human rights standards.

The Proclamation pursues an aim — the protection of a population that has endured grave harm during and after the northern Ethiopia conflict — that is, in itself, legitimate. A number of its provisions are, moreover, to be welcomed: the guarantee of counsel at the preliminary investigation stage (article 69(4)), the suspension of grave convictions pending appeal (article 66(2)), and the retention of executive commutation of death sentences (article 72(2)) each align with international standards. The difficulty lies not in the Proclamation's objective but in the means chosen to pursue it.

Principal findings

First and most gravely, article 83(2) applies a series of serious offences retroactively to 3 November 2020. Retroactive criminal liability is prohibited absolutely by article 22 of the FDRE Constitution and by article 15 of the ICCPR — a guarantee from which no derogation is permitted even in a declared state of emergency. This is the single clearest incompatibility in the instrument and admits of no cure short of repeal of the retroactivity clause.[2]

Second, the Proclamation authorizes capital punishment across seventeen articles, extends it to offences that do not involve the intentional taking of life, and in at least one instance (article 49(8)) prescribes a mandatory death sentence. This is incompatible with the restriction of the death penalty to the 'most serious crimes' under article 6(2) of the ICCPR and with the settled prohibition of mandatory capital sentencing.

Third, the definitional provisions — in particular the notions of 'enemy' (article 2(13)) and 'crime against the existence, security and sovereignty' (article 2(18)) — are drawn so broadly, and incorporate such open-textured concepts as 'psychological' and 'national' harm and the 'socio-economic life' and 'heritage' of the people, that they fail the requirement of legal certainty and invite arbitrary enforcement against protected expression and association.

Fourth, the speech and information offences (articles 17, 18, 21 and 22) criminalize 'obstruction', 'dishonoring the struggle' and 'false rumors' in terms that would chill legitimate dissent, journalism and historical inquiry, contrary to article 29 of the FDRE Constitution and article 19 of the ICCPR.

Fifth, the enforcement chapter — categorical bail denial (article 65), trial in absentia on newspaper notice (article 68), anonymous and untested witness evidence (article 70), warrantless arrest and search under executive command (articles 76–77), reversed burdens of proof (articles 31(5), 49(9)) and statutory sentencing floors (article 67(2)) — operates cumulatively to erode the fair-trial guarantee, and reproduces the substance of emergency powers without the safeguards that a lawful state of emergency requires.

[2]FDRE Constitution, art 22; ICCPR, arts 15 and 4(2) (non-derogability of art 15).

Sixth, the Proclamation repeatedly transfers to the executive functions that belong to the legislature and the judiciary: the definition of crimes and creation of courts by regulation (article 6(7)), the licensing and revocation of media (article 6(4)), and the designation of terrorist organizations (article 52(8)). It also asserts, in article 4(1), a universal personal jurisdiction that exceeds both the recognized bases of criminal jurisdiction in international law and the regional competence delimited by article 55(5) of the FDRE Constitution.

Overall conclusion

The assessment concludes that, while several provisions are compatible or commendable, the Proclamation in its current form contains multiple serious incompatibilities with the binding domestic and international framework, of which the retroactivity clause and the proliferation of capital punishment are the gravest. The report's recommendations, set out in full in Part IV, identify the specific amendments required to bring the instrument into conformity while preserving its legitimate protective purpose.

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INTRODUCTION

Objective of the Assessment

This assessment examines Proclamation No. 366/2026 of the National Regional Government of Tigray, cited as the "Safeguarding the Existence and Protection of the People of Tigray" Proclamation. The Proclamation is a comprehensive criminal statute. It creates more than fifty distinct offences, ranging from failure to answer a mobilization call to genocide; it establishes new security and media institutions; it confers extraordinary arrest, search, and trial powers on the executive and the police; and it provides for capital punishment across a wide range of conduct. It applies, on its face, to any person anywhere in the world.

HRF-Ethiopia's objective is to determine, provision by provision, whether the Proclamation conforms to three bodies of binding law: the FDRE Constitution; the international human rights treaties Ethiopia has ratified, chiefly the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the African Charter on Human and Peoples' Rights (the African Charter or ACHPR) together with the specialized African Union instruments Ethiopia has accepted.[3]

The assessment does not ask whether the Proclamation is politically wise, nor whether the security concerns it recites are well founded. It asks only whether its provisions can be reconciled with the rights guarantees that bind every organ of state in Ethiopia — including, by the express terms of the FDRE Constitution and of the Tigray Regional Constitution alike, the organs of a regional state.

About the Proclamation

Legislative context: the 2022 Pretoria Agreement, the security rationale, and the stated objectives

The Proclamation is a product of the aftermath of the 2020–2022 armed conflict in northern Ethiopia and of the subsequent, fragile peace. Its preamble recites that the existence and security of the people of Tigray have been placed in grave danger; that "the enemy" has failed to fulfil obligations under the 2022 Cessation of Hostilities Agreement concluded at Pretoria; that restrictions on movement have intensified; and that the people and Government of Tigray have an inherent constitutional right to protect themselves from destruction.[4]

The Agreement for Lasting Peace through a Permanent Cessation of Hostilities, signed at Pretoria on 2 November 2022 by representatives of the Government of Ethiopia and the Tigray People's Liberation Front, provides the essential backdrop.[5] The Pretoria Agreement commits the parties to a permanent cessation of hostilities, to disarmament, to the restoration of constitutional order and federal authority in the region, and to the protection of civilians and of human rights. A statute enacted in the name of that people, and invoking that Agreement, therefore falls to be assessed not only against domestic and

[3]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (ACHPR). Ethiopia ratified the ICCPR and ICESCR on 11 June 1993 and the African Charter on 15 June 1998.

[4]Proclamation No 366/2026 of the National Regional Government of Tigray, 'Safeguarding the Existence and Protection of the People of Tigray' (1 June 2026) Preamble ('Proclamation 366/2026'). Subsequent references are to article numbers of this Proclamation unless otherwise stated.

[5]Agreement for Lasting Peace through a Permanent Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front (TPLF) (Pretoria, 2 November 2022) ('Pretoria Agreement').

international human rights law but also against the letter and spirit of the very Agreement its preamble cites.

The Proclamation states its organizing aim as the protection of the "existence, security, and sovereignty" of the people of Tigray. HRF-Ethiopia accepts that the protection of a population from destruction and the maintenance of public order are, in principle, legitimate aims recognized by every human rights instrument. The difficulty, as the analysis below shows, lies not in the aim but in the means: in the breadth of the offences created, the severity and inflexibility of the penalties, the reversal of core procedural protections, and above all the retroactive reach of the criminal provisions.

Structure of the Proclamation

The Proclamation is divided into four Sections comprising eighty-three Articles. Section One (Articles 1–4) contains the short title, definitions, a gender clause, and a scope-of-application clause asserting universal personal jurisdiction. Section Two (Articles 5–7) issues the "National Call to Ensure Existence and Security," establishes a Central Command, a Tigray Army, a financial institution, and a Media Authority, and addresses the judiciary. Section Three (Articles 8–63) is the criminal core: it graduates from fine-only regulatory offences, through serious offences against property, the economy, and public order, to the gravest offences — treason, espionage, genocide, war crimes, terrorism, and rape — many carrying life imprisonment or death. Section Four (Articles 64–83) sets out jurisdiction, procedure, penalties for legal persons, execution of the death penalty, and the entry-into-force and retroactivity clauses.

Summary of Principal Human Rights Concerns and High-Risk Provisions

HRF-Ethiopia's central findings, developed in the body of this assessment, are the following. Each is expanded, cited, and rated in the Parts that follow.

- **Retroactive criminalization.** Article 83(2) applies Article 31(6) and Articles 35–48 — including newly defined offences carrying the death penalty — retroactively to 3 November 2020. This is the single gravest defect in the Proclamation. It violates the non-derogable prohibition on retroactive criminal law in Article 22 of the FDRE Constitution and Article 15 of the ICCPR, from which no derogation is ever permitted.
- **Federal competence and constitutional supremacy.** A regional state has enacted a self-standing penal code, asserted universal jurisdiction over non-residents and foreign nationals (Article 4(1)), and criminalized genocide and war crimes (Articles 46–47) — matters that engage exclusive or predominantly federal competence under Articles 55(5) and 9 of the FDRE Constitution.
- **Proliferation of the death penalty.** At least seventeen articles authorize capital punishment, several for offences involving no loss of life (for example infrastructure damage under Article 29 and property offences under Article 30). This runs contrary to Article 6 of the ICCPR, which confines the death penalty to the "most serious crimes."
- **Vagueness and overbreadth.** Foundational definitions — "enemy" (Article 2(13)) and "crime against the existence, security, and sovereignty" (Article 2(18)) — sweep in "psychological," "economic," and "socio-economic" harm without limiting criteria, offending the principle of legality (*nullum crimen sine lege certa*).
- **Speech and press offences.** Articles 17, 18, 21, and 22 criminalize "dishonoring the struggle," spreading "false rumors," and incitement, with penalties up to twenty-five years and license

revocation, creating a severe chilling effect on expression protected by Article 29 of the FDRE Constitution and Article 19 of the ICCPR.

- **Reversal of procedural guarantees.** Categorical bail denial (Article 65), trial in absentia on newspaper notice (Article 68), anonymous witnesses and closed hearings (Article 70), warrantless arrest and search on executive command (Articles 76–77), a financial informant-incentive system (Article 78), and reversed burdens of proof (Articles 31(5) and 49(9)) together displace the presumption of innocence and fair-trial rights under Article 20 of the FDRE Constitution and Articles 9 and 14 of the ICCPR.
- **De facto emergency without declaration.** The cumulative effect of these powers replicates a state of emergency, but without the declaration, temporal limits, and oversight that Article 93 of the FDRE Constitution requires — and even a valid Article 93 declaration could not authorize retroactive punishment or the other non-derogable breaches identified here.

Alongside these concerns, the Proclamation contains a number of provisions that mitigate its severity — a right to counsel at preliminary investigation (Article 69(4)), mandatory suspension of the gravest convictions pending prosecutorial appeal (Article 66(2)), and presidential commutation of death sentences (Article 72(2)). These are assessed in Chapter 8. They are welcome but do not cure the structural defects.

PART I — FOUNDATIONS OF THE LEGAL ASSESSMENT FRAMEWORK

Before any individual provision can be assessed, the benchmarks against which it is measured must be stated. Part I sets out two things: the constitutional and international standards that bind the Tigray regional legislature (Chapter 1), and the general principles governing when and how those standards permit rights to be limited (Chapter 2). These benchmarks are then applied to the text of the Proclamation in Parts II and III.

1 Constitutional and International Benchmarks

1.1 The structural supremacy test: Articles 9(1) and 39(1) of the FDRE Constitution and the status of regional enactments

Every enactment of a regional state in Ethiopia operates within, and beneath, the federal constitutional order. Article 9(1) of the FDRE Constitution is categorical:

> *"The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect."*[6]

The phrase "any law" is unqualified. It reaches regional proclamations as fully as federal ones. A provision of Proclamation No. 366/2026 that contravenes a right guaranteed by the FDRE Constitution is, by force of Article 9(1) itself, of no legal effect — not merely voidable on challenge, but void. Article 9(2) reinforces the point by imposing on all organs of state, expressly including regional organs, a duty to observe and obey the Constitution.

The Proclamation invokes Article 39(1) of the Tigray Regional Constitution and the corresponding self-determination principle as its enabling authority. Article 39 of the FDRE Constitution recognises the right of nations, nationalities, and peoples to self-determination.[7] But self-determination is exercised within the constitutional order, not above it. Article 39 does not confer on a regional legislature a power to disapply the human rights guarantees of Chapter Three of the Constitution, which are declared inviolable by Article 10 and which bind every level of government. A self-determination clause is a shield for a people's identity and autonomy; it is not a licence to suspend the individual rights of the very persons in whose name it is invoked.

This produces the first and most important interpretive rule of this assessment: the security and self-determination rationale of the Proclamation cannot be used to displace a constitutional right. Where the two conflict, Article 9(1) resolves the conflict in favour of the right.

1.2 Federal competence over criminal legislation: Article 55(5) and the limits of regional legislative power

The FDRE Constitution allocates law-making power between the federation and the regional states. Article 55(5) assigns to the House of Peoples' Representatives the power to enact a penal code, while preserving a residual regional competence:

[6]Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995 (adopted 8 December 1994, entered into force 21 August 1995) art 9(1) ('FDRE Constitution').
[7]FDRE Constitution (n 5) art 39(1).

> *"[The House of Peoples' Representatives] shall enact a penal code. The States may, however, enact penal laws on matters that are not specifically covered by Federal penal legislation."*[8]

The constitutional design is therefore one of federal primacy with a bounded regional residue. Regional penal legislation is competent only where the matter is "not specifically covered by Federal penal legislation." The Criminal Code of the Federal Democratic Republic of Ethiopia of 2004 is a comprehensive code that already covers, in detail, homicide, rape, robbery, treason, offences against the constitutional order, genocide, and war crimes.[9]

Large parts of Proclamation No. 366/2026 replicate, and re-penalise with different (generally heavier) sentences, conduct that the federal Criminal Code already addresses — most starkly genocide (Article 46), war crimes (Article 47), rape (Article 50), treason (Articles 41–42), and terrorism (Article 52), the last of which is also the subject of a dedicated federal statute.[10] To the extent the Proclamation legislates on matters "specifically covered" by federal penal legislation, its competence under Article 55(5) is doubtful; to the extent it prescribes penalties conflicting with the federal Criminal Code, Article 9(1) subordinates it to the federal instrument.

This is not a merely formal objection. The constitutional allocation of penal competence to the federation exists precisely so that the definition of serious crime, and the severity of punishment, are uniform across Ethiopia and are set by the body politically accountable to the whole federation. A parallel regional penal code, with its own — and heavier — sentencing scale and its own capital offences, fractures that uniformity and creates the prospect that identical conduct is punished by death in one region and by a term of years elsewhere.

1.3 The interpretive incorporation rule: Article 13(2) and alignment with the ICCPR, ICESCR, the African Charter, and AU instruments

Article 13(2) of the FDRE Constitution is the bridge between domestic and international human rights law:

> *"The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia."*[11]

Two consequences follow. First, the constitutional rights invoked throughout this assessment are not to be read narrowly or in isolation: they take their content from the ICCPR, the ICESCR, the African Charter, and the case law of the bodies that interpret them. Second, Article 9(4) makes all ratified international agreements "an integral part of the law of the land," so that the ICCPR and the African Charter are not merely interpretive aids but themselves part of Ethiopian law.[12]

The specialised instruments most relevant to this Proclamation are the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol), which sets survivor-centred standards for the treatment of sexual violence, and the African Union Convention for the Protection and Assistance

[8] FDRE Constitution (n 5) art 55(5).
[9] Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No 414/2004 (entered into force 9 May 2005) ('Criminal Code 2004'), Book III (crimes against the state) and Book II, Title II (crimes against humanity, genocide and war crimes).
[10] A Proclamation on Prevention and Suppression of Terrorism Crimes, Proclamation No 1176/2020 (Federal Negarit Gazette).
[11] FDRE Constitution (n 5) art 13(2).
[12] FDRE Constitution (n 5) art 9(4). On the domestic status and application of ratified treaties in Ethiopia, see Takele Soboka Bulto, 'The Monist–Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia' (2009) 23 Journal of Ethiopian Law 132.

of Internally Displaced Persons in Africa (the Kampala Convention), which governs the forced displacement addressed in Articles 40, 46, and 47.[13]

1.4 Competence over constitutional interpretation: Article 64(7) of the Proclamation and the federal architecture

Article 64(7) of the Proclamation assigns final and unappealable authority over any question of constitutional interpretation arising under it to the "Constitutional Interpretation Commission of the National Regional State of Tigray." This sits uneasily with the federal architecture. Under the FDRE Constitution, constitutional disputes are resolved by the Council of Constitutional Inquiry, which investigates and advises, and ultimately by the House of Federation, which holds the power of final constitutional interpretation.[14]

A regional commission cannot render a final and binding interpretation of the FDRE Constitution; that power is reserved to the House of Federation. To the extent Article 64(7) purports to foreclose recourse to the federal constitutional-interpretation machinery on federal-constitutional questions, it conflicts with Articles 62 and 83–84 and, by Article 9(1), cannot have that effect. This matters for every rights-holder under the Proclamation, because it is the federal machinery — not a regional commission established by the same authority that enacted the Proclamation — that provides the ultimate check on the constitutionality of the measures assessed below.

[13]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) ('Maputo Protocol'); African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012) ('Kampala Convention'). Ethiopia ratified the Maputo Protocol in 2018 and is a party to the Kampala Convention.

[14]FDRE Constitution (n 5) arts 62(1), 83 and 84. Article 84 assigns the Council of Constitutional Inquiry the function of investigating constitutional disputes and submitting recommendations to the House of Federation, which under art 62(1) has the power to interpret the Constitution.

2 General Human Rights Limitation Principles

Most human rights are not absolute. They may be limited where a limitation satisfies a structured test. But some rights are absolute and non-derogable, and no test can justify their breach. Chapter 2 states the test for limitable rights and identifies the non-derogable core that the Proclamation must not touch.

2.1 The principle of legality: accessibility, precision, and foreseeability (nullum crimen sine lege certa)

The principle of legality has two limbs. The first, nullum crimen sine lege, forbids punishment for conduct that was not a crime when committed; it is the subject of Chapter 9. The second, lex certa, requires that a criminal law be drafted with sufficient precision that a person can know, in advance, what conduct is prohibited. A norm that is so vague that its application depends on the discretion of the enforcing official is not "law" in the sense the principle requires.[15]

The African Commission has repeatedly held that vaguely worded security offences, capable of being applied to legitimate political activity, violate the Charter.[16] This benchmark is applied in Chapter 3 to the definitions of "enemy" and "crime against the existence, security, and sovereignty," and throughout Part II to the speech and security offences.

2.2 Legitimate-aim verification: "existence, security, and sovereignty" as an organizing rationale

The second stage of the limitation test asks whether the measure pursues an aim recognized as legitimate by the relevant instrument — for expression, under Article 19(3) of the ICCPR, the protection of national security, public order, or the rights of others. HRF-Ethiopia accepts that the protection of the physical existence and security of a population is a legitimate aim of the highest order. The preamble's invocation of that aim is not questioned.

But a legitimate aim is a necessary, not a sufficient, condition. Every repressive measure in history has been defended by reference to security. The invocation of "existence, security, and sovereignty" therefore opens the inquiry; it does not close it. The organising rationale must still be tested, provision by provision, against the requirements of necessity and proportionality — and it cannot be invoked at all to justify the breach of a non-derogable right.

2.3 Necessity and proportionality: testing sentencing ranges and enforcement powers against least-restrictive-means standards

A measure that pursues a legitimate aim is lawful only if it is necessary to that aim and proportionate to it. Necessity requires that there be no less restrictive means capable of achieving the aim to the same extent. Proportionality requires that the harm the measure does to the right not be excessive in relation to the benefit it secures.[17]

[15]The requirement that an interference be 'prescribed by law' imports both accessibility and foreseeability: the citizen must be able to foresee, to a degree that is reasonable in the circumstances, the consequences of a given action. See Human Rights Committee, 'General Comment No 34: Article 19 (Freedoms of Opinion and Expression)' (12 September 2011) UN Doc CCPR/C/GC/34, para 25; and, in comparative jurisprudence, Sunday Times v United Kingdom (1979) 2 EHRR 245, para 49.

[16]See Constitutional Rights Project and Civil Liberties Organisation v Nigeria (2000) AHRLR 235 (ACHPR 1999); and the general standard in Media Rights Agenda v Nigeria (2000) AHRLR 200 (ACHPR 1998).

[17]Human Rights Committee, 'General Comment No 27: Article 12 (Freedom of Movement)' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9, paras 14–15, articulating the least-restrictive-means requirement; and 'General Comment No 34' (n 13) para 34.

Proportionality is the workhorse of this assessment. It is the standard against which the Proclamation's very wide sentencing ranges (many offences carry, for example, ten to twenty-five years without meaningful gradation), its recourse to capital punishment for non-lethal conduct, its categorical denials of bail, and its warrantless enforcement powers are all measured. A sentencing range so wide that it hands the entire calibration of punishment to the sentencing court, with a statutory floor that forbids leniency (Article 67(2)), is difficult to reconcile with the individualised proportionality that both the Constitution and the ICCPR require.

2.4 Presumption of innocence and reversed burdens: the rebuttable presumptions in Articles 31(5) and 49(9)

Article 20(3) of the FDRE Constitution and Article 14(2) of the ICCPR guarantee the presumption of innocence: the prosecution must prove every element of the offence, including the mental element, beyond reasonable doubt. A statutory presumption that shifts the burden of disproving an element onto the accused is compatible with that guarantee only if it is confined within reasonable limits, is rationally connected to a proved basic fact, and remains rebuttable.[18]

The Proclamation contains at least two such presumptions. Article 31(5) presumes that forest product in a person's possession was "acquired unlawfully and without a permit" unless the accused proves lawful development. Article 49(9) presumes that a person charged under the trafficking article "acted with the intent to extort, unlawfully traffic individuals abroad, or secure an illicit benefit." The second is the more serious: it reverses the burden on the mental element of a life- and, in aggravated form, death-eligible offence. These presumptions are assessed in Chapters 5 and 6.

[18]FDRE Constitution (n 5) art 20(3); ICCPR (n 3) art 14(2); Human Rights Committee, 'General Comment No 32: Article 14 (Right to Equality before Courts and to a Fair Trial)' (23 August 2007) UN Doc CCPR/C/GC/32, para 30. For the comparative test that reverse burdens must be confined within reasonable limits which take account of the importance of what is at stake and maintain the rights of the defence, see Salabiaku v France (1988) 13 EHRR 379, para 28.

The two-tier constitutional order and the position of the Tigray Regional Constitution

Ethiopia's federal design creates two constitutional tiers that operate concurrently. Each regional state has its own constitution — for Tigray, the Constitution of the National Regional State of Tigray (Proclamation No. 45/2001, as amended), on which the Proclamation expressly relies. But a regional constitution is itself subordinate to the FDRE Constitution: Article 50(5) of the FDRE Constitution requires that the state governments be structured in conformity with it, and Article 9(1) subordinates "any law" to the federal Constitution without carve-out for regional constitutions. The consequence is a strict hierarchy: FDRE Constitution → federal legislation on matters of federal competence → regional constitution → regional legislation.[19]

This hierarchy is not a technicality. It means that the Proclamation cannot draw from the Tigray Regional Constitution a competence that the FDRE Constitution withholds, nor use a regional self-determination clause to escape a federally guaranteed right. Where the Proclamation's enabling authority (the Tigray Regional Constitution) and the FDRE Constitution point in different directions on a rights question, the FDRE Constitution governs. Every finding in this assessment is anchored in that hierarchy.

It also means that the human rights guarantees of the FDRE Constitution operate as a floor beneath which no regional enactment may fall. The Tigray Regional Constitution itself contains a bill of rights that parallels the federal one; the two are mutually reinforcing. HRF-Ethiopia's assessment can therefore be stated in a form that is neutral as between the federal and regional orders: the Proclamation must satisfy the human rights guarantees common to both constitutions and to the treaties Ethiopia has ratified. On that common ground there is no room for dispute between the tiers.

2.5 The derogation framework and the non-derogable core

Because so much of this assessment turns on the distinction between rights that may be limited and rights that may never be suspended, it is worth setting out the derogation framework in full at the outset. Article 4(1) of the ICCPR permits a State, in time of a public emergency threatening the life of the nation and officially proclaimed, to take measures derogating from certain of its obligations, but only to the extent strictly required by the exigencies of the situation, only in a non-discriminatory manner, and only subject to international notification.[20]

Article 4(2) then places a category of rights entirely beyond derogation. These include: the right to life (Article 6); the prohibition of torture and cruel, inhuman, or degrading treatment or punishment (Article 7); the prohibition of slavery and servitude (Article 8(1)–(2)); the prohibition of imprisonment for inability to fulfil a contractual obligation (Article 11); the prohibition of retroactive criminal law (Article 15); the right to recognition as a person before the law (Article 16); and freedom of thought, conscience, and religion (Article 18).[21]

The Human Rights Committee has gone further, holding that certain guarantees not listed in Article 4(2) are nonetheless non-derogable because they are indispensable to protecting the rights that are listed — including the fundamental requirements of fair trial, the presumption of innocence, and the

[19]FDRE Constitution (n 5) arts 50(5) and 9(1). The Tigray Regional Constitution (Proclamation No 45/2001, as amended) cannot authorise regional legislation that contravenes the FDRE Constitution; to the extent it purported to do so, it would itself be subordinate under art 9(1).
[20]ICCPR (n 3) art 4(1); General Comment No 29 (n 62) paras 2–6 (the conditions of a valid derogation: an officially proclaimed public emergency threatening the life of the nation; strict necessity and proportionality; consistency with other international-law obligations; non-discrimination; and international notification under art 4(3)).
[21]ICCPR (n 3) art 4(2).

availability of judicial remedies to protect non-derogable rights. In particular, the Committee has stated that only a court of law may try and convict a person for a criminal offence, and that the presumption of innocence must be respected, even during an emergency.[22]

This framework is decisive for four of the Proclamation's defects. The retroactivity in Article 83(2) breaches non-derogable Article 15. The proliferation and mandatory character of the death penalty engage non-derogable Article 6. The reversal of the presumption of innocence and the removal of judicial control of detention engage the fair-trial guarantees the Committee treats as non-derogable in substance. And the absence of a conscientious-objection route engages non-derogable Article 18. None of these can be defended by reference to the emergency the preamble describes — a point developed in Chapter 9.

[22]General Comment No 29 (n 62) paras 11 and 16 (elements that cannot be subject to derogation include the requirement that deprivation of liberty be reviewed by a court and that trials be conducted by a competent court affording the essential fair-trial guarantees, because these protect non-derogable rights); General Comment No 32 (n 21) para 6.

PART II — SUBSTANTIVE HUMAN RIGHTS ANALYSIS BY PROCLAMATION SECTION

Part II examines the Proclamation section by section, applying the framework of Part I. Chapters 3 through 7 track the Proclamation's own structure — general provisions, institutions, the criminal offences in ascending gravity, and the procedural provisions — and Chapter 8 records the provisions that operate in the rights-holder's favour.

3 Preamble and Section One: General Scope and Definitional Overbreadth

3.1 Articles 2(13) and 2(18): vagueness in the definitions of "enemy" and "crime against the existence, security, and sovereignty"

The two definitions on which the whole penal architecture of the Proclamation rests are also its vaguest. Article 2(13) defines the "enemy":

> *"'Enemy' means any government, group, force, person, or entity that has declared or prepared for war against the existence, security, or sovereignty of the people of Tigray, or that directly or indirectly aims to cause psychological, economic, or national harm to the people of Tigray."*[23]

The first limb — a government or force that has declared or prepared for war — is intelligible. The second limb is not. A "person" who "directly or indirectly aims to cause psychological … or national harm" is a category without boundaries. It has no requirement of violence, of intent to assist an armed force, or of any concrete act. On its terms it could embrace a journalist whose reporting causes "psychological harm," an academic whose analysis causes "national harm," or a critic whose speech is said to demoralise. Because dozens of offences in Section Three are defined by reference to acts done for, with, or on behalf of the "enemy," the vagueness of Article 2(13) infects the entire Proclamation.

Article 2(18) compounds the problem. It defines a "crime against the existence, security, and sovereignty" to include any crime committed against — among a long list — the "socio-economic life," "religion," "culture," "history," or "heritage" of the people of Tigray. These are not the language of a criminal statute; they are the language of political aspiration. A criminal prohibition framed by reference to harm to "history" or "heritage" cannot give a citizen fair warning of what is forbidden, and it hands the enforcing authority a discretion that the principle of legality exists to prevent.[24]

Finding. Articles 2(13) and 2(18) fail the precision limb of the principle of legality under Article 22 of the FDRE Constitution and Articles 15 and 19 of the ICCPR. Because they define terms that recur throughout the offence-creating provisions, the defect is systemic and not confined to the definition clause. Recommended cure: confine "enemy" to an entity engaged in or materially supporting armed hostilities, delete "psychological" and "indirect national harm," and delete the "socio-economic life / history / heritage" limbs of Article 2(18).

[23] Proclamation 366/2026 (n 4) art 2(13).
[24] Proclamation 366/2026 (n 4) art 2(18). On the incompatibility of open-ended security definitions with the lex certa requirement, see General Comment No 34 (n 13) para 25; and the African Commission's treatment of over-broad security offences in Constitutional Rights Project (n 15).

3.2 Article 4(1): extraterritorial and universal personal jurisdiction

Article 4(1) provides that the Proclamation "shall apply to any person, whether within or outside Tigray, and regardless of nationality or place of origin." This is an assertion of universal personal jurisdiction by a sub-national government. It purports to make the criminal law of one regional state of Ethiopia binding on foreign nationals who have never set foot in Tigray and on residents of other Ethiopian regions.[25]

Two distinct problems arise. First, as a matter of Ethiopian constitutional law, the extraterritorial and cross-regional reach of a regional penal statute cannot bind persons outside the enacting region without trespassing on federal competence over foreign affairs and inter-regional matters, and on the territorial limits inherent in regional jurisdiction under the FDRE Constitution. Second, as a matter of international law, while universal jurisdiction is recognised for a narrow class of international crimes (genocide, war crimes, crimes against humanity, torture), it is not available for the ordinary offences — mobilisation refusal, rumour-spreading, economic offences — that make up the bulk of this Proclamation. The assertion of universal reach over such offences has no basis in the customary rules on jurisdiction.[26]

The combined effect of Article 4(1) and the many offences triggered by media activity "within or outside Tigray" (for example Article 17(4)) is that a person abroad who criticises the mobilisation could, on the face of the statute, be tried in absentia (Article 68) and sentenced to a long term. This is a serious extraterritorial overreach. Finding: Article 4(1), as applied to offences other than recognised international crimes, exceeds regional competence and lacks a lawful jurisdictional basis.

3.3 Article 4(2): the "heavier penalty" saving clause and conflicting overlap with the federal Criminal Code

Article 4(2) provides that where another law prescribes a penalty heavier than that under the Proclamation for the same matter, the heavier penalty prevails. On its face a modest coordinating rule, it in fact confirms the overlap problem identified in Chapter 1.2: the Proclamation legislates on the same matters as the federal Criminal Code and anticipates that both will apply. A defendant may thus face, for a single act, the heavier of two penalty regimes selected after the fact — an outcome in tension with the certainty the principle of legality requires and with the constitutional allocation of penal competence to the federation.[27]

[25] Proclamation 366/2026 (n 4) art 4(1).
[26] On the limits of extraterritorial criminal jurisdiction and its recognised bases (territoriality, nationality, protective and — for a defined class of crimes — universality), see generally the principles reflected in the case law on jurisdiction; universal jurisdiction is confined to crimes of international concern and does not extend to ordinary regulatory or public-order offences.
[27] Proclamation 366/2026 (n 4) art 4(2); cf FDRE Constitution (n 5) arts 9(1) and 55(5). The rule that the heavier of two available penalties applies also cuts against the constitutional preference, in art 22(2), for the law more favourable to the accused.

4 Section Two: Institutional Structures, Mobilization, and Media Regulation

4.1 Articles 5 and 8: the "National Call" — compulsory mobilization, freedom of conscience, and forced labour

Article 5(1) states that every Tigrayan "shall voluntarily join" the national struggle; Article 5(2) then imposes on every Tigrayan "whose age and health permit" a "national duty to respond to the call." The tension between the two sub-articles is not merely stylistic: what Article 5(1) frames as voluntary, Article 5(2) makes compulsory, and Article 8 criminalizes the failure to comply with a fine of Birr 10,000 to 50,000, backed by arrest under Article 8(4).[28]

Two rights are engaged. The first is freedom of conscience, protected by Article 27 of the FDRE Constitution and Article 18 of the ICCPR, which includes the right to conscientious objection to military service as recognized by the Human Rights Committee.[29] The Proclamation makes no provision for conscientious objection. The second is the prohibition of forced or compulsory labour in Article 18 of the FDRE Constitution and Article 8 of the ICCPR. Compelled military service is generally excluded from the definition of forced labour, but service compelled "at the front or in the rear" without a conscientious-objection exemption, and enforced by criminal penalty and arrest, sits at the outer edge of that exclusion.

Finding: mobilization of a population in defense of its existence is a legitimate aim, but the absence of any conscientious-objection mechanism and the use of arrest to compel service raise real concerns under Articles 27 and 18 of the FDRE Constitution. Recommended cure: introduce a conscientious-objection route to non-combatant service.

4.2 Article 6(4): a Media Authority with licensing, renewal, and revocation powers

Article 6(4) establishes a Media Authority "with the power to grant, renew, regulate, and revoke licenses for all public and private media organizations." The concentration in a single executive-established body of the power both to license and to revoke, exercised in a context where speech offences carry heavy penalties and license revocation (Articles 17(6), 18), gives the executive effective control over who may report and publish in Tigray.[30]

Article 29 of the FDRE Constitution protects freedom of expression and, specifically, prohibits censorship and guarantees access to information; Article 19 of the ICCPR protects the same freedom.[31] The African Commission's Declaration of Principles on Freedom of Expression and Access to Information in Africa requires that any body with power over broadcasters and the press be independent of political and economic control and protected against interference.[32] A licensing-and-revocation authority established by, and answerable to, the same executive whose conduct the press exists to scrutinize does not meet that standard of independence.

[28] Proclamation 366/2026 (n 4) arts 5(1)–(2), 8(1) and 8(4).
[29] FDRE Constitution (n 5) art 27; ICCPR (n 3) art 18; Human Rights Committee, 'General Comment No 22: Article 18' (30 July 1993) UN Doc CCPR/C/21/Rev.1/Add.4, para 11, and the Committee's recognition of conscientious objection in Yoon and Choi v Republic of Korea (2007) UN Docs CCPR/C/88/D/1321–1322/2004.
[30] Proclamation 366/2026 (n 4) art 6(4).
[31] FDRE Constitution (n 5) art 29 (esp arts 29(3) prohibiting censorship and 29(5) on press freedom); ICCPR (n 3) art 19.
[32] African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) Principles 17 and 20 (independence of regulatory bodies).

Finding: Article 6(4), by vesting licensing and revocation in an executive body without guarantees of independence, is incompatible with Article 29 of the FDRE Constitution and Article 19 of the ICCPR as interpreted by the African Commission. Recommended cure: vest media regulation in an independent authority with security of tenure and judicial review of revocation.

4.3 Article 6(7): delegation of criminal jurisdiction over the Tigray Army to executive regulation

Article 6(7) provides that "the criminal provisions applicable to, and the establishment of the judicial bodies of, the Tigray Army shall be determined by regulations issued by the Executive Council." This delegates to the executive both the definition of crimes and the creation of the courts that will try them. It is a delegation of core legislative and judicial functions.[33]

The principle of legality requires that crimes and penalties be defined by law — meaning, in this context, by the legislature, not by executive regulation. The creation of tribunals by executive act, outside the ordinary judicial structure, also engages the right to be tried by a competent, independent, and impartial tribunal established by law under Article 14(1) of the ICCPR and Articles 20 and 78 of the FDRE Constitution (judicial independence).[34] Finding: Article 6(7) offends both the legality principle (crimes defined by executive regulation) and the requirement of a tribunal established by law (courts created by executive act).

4.4 Article 7: indeterminate assignment to rehabilitation or vocational programmes for "repeat offenders"

Article 7(9) permits "repeat offenders," members of organised networks, and persons whose "addiction or other dangerous habits" predispose them to offend to be "required to attend a rehabilitation centre or an ethical or vocational training programme." The provision sets no maximum duration, no judicial determination of the need for the measure, and no periodic review. An indeterminate deprivation of liberty imposed on the basis of a person's status or predicted future conduct, rather than a proved offence, engages Article 17 of the FDRE Constitution and Article 9 of the ICCPR (liberty and security of person, and freedom from arbitrary detention).[35]

Finding: the open-ended, status-based, non-reviewable character of the Article 7(9) measure risks arbitrary detention contrary to Article 9 of the ICCPR. Recommended cure: fix a maximum duration, require a judicial order on proven facts, and mandate periodic review.

4.5 Articles 17(4)–(6) and 18: media and speech offences — incitement, "dishonouring the struggle," and penalties of up to twenty-five years or licence revocation

Article 17(5) punishes "serious" obstruction of the national struggle committed through the media by fifteen to twenty-five years' rigorous imprisonment, and Article 17(6) permits revocation of a media organisation's licence and confiscation of its property. Article 18 punishes acts intended to "dishonour the sacrifice or struggle" by five to ten years (fifteen where committed by the media), and imposes fines of Birr 300,000 to 500,000 on implicated media outlets. In its corrected form, Article 18(3) adds a

[33]Proclamation 366/2026 (n 4) art 6(7).
[34]ICCPR (n 3) art 14(1); FDRE Constitution (n 5) arts 20 and 78–79 (independence of the judiciary); General Comment No 32 (n 21) paras 19–22 on tribunals established by law.
[35]Proclamation 366/2026 (n 4) art 7(9); FDRE Constitution (n 5) art 17; ICCPR (n 3) art 9; Human Rights Committee, 'General Comment No 35: Article 9 (Liberty and Security of Person)' (16 December 2014) UN Doc CCPR/C/GC/35, paras 12 and 21 on detention based on dangerousness and the need for periodic review.

further offence of "belittling or demeaning" the dignity of the women of Tigray, the people of Tigray, or any ethnic group or region, or of dishonouring the flag, the national anthem, or the struggle and sacrifice of past generations, punishable by simple imprisonment of up to five years.[36]

The offence of "dishonouring the struggle" is the clearest example in the Proclamation of the criminalisation of protected expression. Dishonour is not incitement to violence; it is a matter of opinion, tone, and disagreement. Article 19 of the ICCPR protects expression that offends, shocks, or disturbs, and the Human Rights Committee has been explicit that laws penalising the expression of opinions about historical facts, or that protect institutions or symbols from disrespect, are incompatible with the Covenant.[37] Only expression that constitutes incitement to violence or to discrimination may be criminalised, and then only where strictly necessary and proportionate.[38]

Finding: Article 18 (dishonouring the struggle) criminalises protected opinion and is incompatible with Article 29 of the FDRE Constitution and Article 19 of the ICCPR. The corrected Article 18(3) sharpens rather than resolves this concern: while protecting a group from "belittling" may appear benign, the sub-article mixes a possible anti-discrimination purpose with the protection of symbols — the flag, the anthem, and the "sacrifice of generations" — from disrespect, and the Human Rights Committee has been explicit that penalising disrespect for flags, symbols, and institutions is incompatible with Article 19. Only expression amounting to advocacy of hatred that constitutes incitement to discrimination, hostility, or violence may be criminalised, and Article 18(3) reaches well beyond that threshold. Article 17(5)–(6), by attaching very long custodial terms and licence revocation to media obstruction defined by reference to the vague "national struggle," is disproportionate. Recommended cure: repeal the "dishonour" offences, including the symbol-protection limb of Article 18(3); retain, if desired, only a narrowly drawn provision addressing advocacy of hatred that meets the Article 20(2) and Rabat Plan threshold; confine any media offence to direct and intentional incitement to imminent violence; and remove licence revocation as a criminal sanction.[39]

[36] Proclamation 366/2026 (n 4) arts 17(4)–(6) and 18(1)–(3) (corrected text).
[37] General Comment No 34 (n 13) paras 38 and 49 (laws protecting the 'honour' of officials, institutions, flags and symbols, and penalising disrespect, are incompatible with art 19); and para 11 (expression that may be regarded as deeply offensive remains protected).
[38] ICCPR (n 3) art 20(2); Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012), on the high threshold for criminalising incitement.
[39] Proclamation 366/2026 (n 4) art 18(3) (corrected text); General Comment No 34 (n 13) paras 38 and 48–49; ICCPR (n 3) art 20(2); Rabat Plan of Action (2012).

4.6 Articles 10, 11, 14, and 15: regulatory and public-order offences

The Proclamation's lower tier consists of fine-only regulatory offences. Article 10 fines unauthorised collection of money or property; Article 11 fines refusal to accept lawful currency; Article 14 fines the carrying of knives, sickles, or axes outside the workplace and the unlawful discharge of firearms; Article 15 fines a range of public-health and environmental conduct, from unlicensed sale of tobacco to failure to participate in sanitation campaigns. These provisions are, for the most part, ordinary exercises of the regulatory power that any government possesses, and most raise no distinct human rights concern.[40]

Three qualifications are nonetheless warranted. First, the fine levels are high relative to prevailing incomes in a conflict-affected region: a fine of Birr 10,000 to 50,000 for refusing to accept currency (Article 11) may be disproportionate to the conduct and, for the poorest, may function as a debt-based deprivation of liberty if non-payment leads to detention. Second, in its corrected form Article 15(4) penalises the unlawful disposal of solid or liquid waste, the damaging of environmental cleanliness, and the refusal to participate in environmental sanitation campaigns — "with monetary contribution or personal engagement" — by a fine of Birr 500 to Birr 1,000. The specified penalty is modest and proportionate, and the waste-disposal limb is an unobjectionable exercise of environmental regulation. Third, however, the same sub-article criminalises a refusal "to participate in environmental sanitation campaigns" through "personal engagement"; to the extent that limb compels unpaid physical labour on pain of a fine, it edges toward the forced-or-compulsory-labour concern examined at 4.1 and should be enforced, if at all, through the monetary-contribution alternative rather than by compelling personal participation.[41]

Finding: the regulatory offences are broadly compatible; fine levels should be calibrated to ability to pay, and non-payment should not lead to detention for the indigent. Article 15(4), now carrying a specified and proportionate penalty, is compatible in its waste-disposal and monetary-contribution limbs; the compelled-participation limb should be enforced only through the monetary alternative and not by penalising a refusal of personal labour.

5 Section Three (Part A): Liberty, Movement, and Economic Regulation

5.1 Articles 12 and 13: duties to assist public bodies and disclose personal particulars

Article 12 fines a person who refuses to assist a security, judicial, or administrative body; Article 13 fines a person who refuses to state his name, address, or identity, or to submit to inspection. A duty to identify oneself to lawful authority, and a limited duty to assist in preventing crime, are common and not objectionable in themselves. The concern is their interaction with the pre-trial rights of a suspect: a person who is himself under suspicion cannot be compelled, on pain of a criminal fine, to furnish information that incriminates him, because Article 19(5) of the FDRE Constitution and Article 14(3)(g) of the ICCPR protect the right against self-incrimination and the right to silence.[42] The duty to disclose

[40] Proclamation 366/2026 (n 4) arts 10, 11, 14 and 15.
[41] Proclamation 366/2026 (n 4) art 15(4) (corrected text: fine of Birr 500 to Birr 1,000). On imprisonment for inability to pay, cf ICCPR (n 3) art 11 (non-derogable prohibition on imprisonment merely for inability to fulfil a contractual obligation), applicable by analogy to the enforcement of fines against the indigent; on compulsory labour, see ICCPR art 8 and the discussion at 4.1 above.
[42] Proclamation 366/2026 (n 4) arts 12 and 13; FDRE Constitution (n 5) art 19(5) (right of arrested persons not to be compelled to make confessions or admissions); ICCPR (n 3) art 14(3)(g).

"other required personal particulars" in Article 13(1) is also broad enough to engage the right to privacy under Article 26 of the FDRE Constitution and Article 17 of the ICCPR. Finding: compatible in principle, but must be read subject to the right to silence and the privacy guarantee; a saving clause to that effect should be added.

5.2 Articles 17(1)–(3) and 18: criminalising "obstruction" and "dishonouring" the struggle — chilling effects on dissent

The speech dimension of these articles is analysed at 4.5. Their liberty dimension is addressed here. Article 17(3) punishes a recruitment official who "applies discriminatory practices outside the regular procedure" by three to seven years' rigorous imprisonment; Article 18(1) punishes "dishonour" by five to ten years. The width of these offences, combined with the categorical bail denial that Article 65(1) attaches to Article 17, means that a person may be detained without possibility of release for conduct that is, at its core, expressive or administrative. The chilling effect is not incidental; it is the predictable consequence of pairing vague speech offences with mandatory pre-trial detention.[43]

5.3 Articles 21 and 22: spreading "false rumours" and incitement — the bounds of permissible public speech

Article 21 punishes spreading "false rumours" that cause public panic "in the absence of any actual danger"; Article 22 punishes spreading "false rumours" that create "distrust, fear, or unrest" against the Government or its bodies. These are classic false-news offences. The Human Rights Committee has stated in terms that vague prohibitions on the dissemination of "false news" are incompatible with Article 19, and courts across Africa have struck down false-news laws as unconstitutional restrictions on expression.[44]

Article 22 is the more troubling of the two because its harm threshold — "distrust" of the Government — is not a cognisable harm at all in a society governed by the rule of law: citizens are entitled to distrust their government. Punishing the creation of distrust criminalises the ordinary content of political opposition. Finding: Articles 21 and 22 are over-broad restrictions on expression; Article 22 in particular criminalises protected political speech. Recommended cure: repeal Article 22; confine Article 21 to the intentional spreading of information known to be false that creates a specific and imminent risk to life or public safety.

5.4 Articles 31–34: land and mineral encroachment, deforestation, usury, and hoarding — sentencing up to twenty-five years and proportionality in economic regulation

Articles 31 to 34 criminalise a range of economic conduct with strikingly severe penalties. Land encroachment attracts ten to twenty years (Article 31(1)); where a public servant participates, up to twenty-five years (Article 31(2), (4)); illegal mining, twenty to twenty-five years (Article 31(6)); usury, up to fifteen years and a fine of up to Birr 500,000 (Article 32); hoarding of basic commodities, five to fifteen years and up to Birr 500,000 (Article 33).[45]

[43]Proclamation 366/2026 (n 4) arts 17(1)–(3), 18(1) and 65(1). On the chilling effect of broad speech offences, see General Comment No 34 (n 13) para 47.
[44]Proclamation 366/2026 (n 4) arts 21 and 22; General Comment No 34 (n 13) para 49 (false-news and similar offences incompatible with art 19); and, in African constitutional jurisprudence, the striking down of the 'publication of false news' offence in Chipenzi v The People (Zambia, High Court, 2014) and the ECOWAS and domestic case law to like effect.
[45]Proclamation 366/2026 (n 4) arts 31(1)–(6), 32 and 33.

Two problems recur. First, proportionality: a sentence of up to twenty-five years for illegal mining, or fifteen years for usury, is difficult to reconcile with the gravity of the underlying conduct and with the requirement that punishment be proportionate to the offence. Sentences of this order are, in most legal systems, reserved for grave violence. Second, the reverse burden in Article 31(5): forest product in a person's possession is "presumed to have been acquired unlawfully" unless the accused proves lawful development. As explained at 2.4, a reverse burden is tolerable only within narrow limits; applied to an offence carrying up to fifteen years, and cast in absolute terms, this presumption strains the presumption of innocence.[46]

Finding: the sentencing ranges in Articles 31–34 are, for economic and regulatory conduct, disproportionate to the point of engaging the prohibition on inhuman punishment where the term is grossly excessive; the Article 31(5) presumption should be recast as an evidential, not a legal, burden. Recommended cure: reduce the maxima to levels proportionate to economic harm and restore full judicial discretion by amending Article 67(2).

5.5 Article 50: rape and sexual assault — definitional scope, sentencing structure, and alignment with survivor-centred standards

Article 50 criminalises rape and sexual assault. HRF-Ethiopia's documentation of conflict-related sexual violence in Tigray makes the seriousness of these offences, and the imperative of effective prosecution, a matter of the first importance. The assessment of Article 50 is therefore twofold: it welcomes the recognition of male victims (Article 50(4)) and the aggravation for offences against children and vulnerable persons, while identifying respects in which the drafting falls short of survivor-centred standards.[47]

First, the definition in Article 50(1) is framed around "force," "threat," loss of consciousness, or means "preventing a woman from resisting." This is a coercion-based, not a consent-based, definition. The Maputo Protocol and contemporary international standards define sexual violence by reference to the absence of freely given consent, not the presence of physical resistance; a resistance-based definition risks excluding rape accomplished through coercive circumstances without overt force — precisely the pattern documented in conflict settings.[48]

Second, Article 50(3) makes rape of a child under thirteen, or rape causing death, punishable by death. While the protective impulse is understandable, the death penalty for rape not resulting in death is contrary to the "most serious crimes" limitation in Article 6(2) of the ICCPR, which the Human Rights Committee and the Safeguards restrict to crimes involving intentional killing.[49] The gravity of child rape is properly reflected in a severe custodial sentence, not in a penalty that the Covenant confines to intentional killing.

Finding: Article 50 is a serious and largely welcome provision, but (i) its resistance-based definition should be replaced with a consent-based one aligned to the Maputo Protocol, and (ii) the death penalty in Article 50(3) for rape not causing death exceeds the ICCPR's "most serious crimes" limit and should be replaced by a determinate or life sentence. The survivor-centred procedural concern — that

[46]Proclamation 366/2026 (n 4) art 31(5); on the limits of reverse burdens see General Comment No 32 (n 21) para 30 and Salabiaku v France (n 24).
[47]Proclamation 366/2026 (n 4) art 50(1)–(4).
[48]Maputo Protocol (n 11) art 4(2)(a) (obligation to enact and enforce laws prohibiting all forms of violence against women, including unwanted or forced sex); and the consent-based standard articulated in international criminal jurisprudence, notably Prosecutor v Kunarac (Judgment) ICTY-96-23-T (22 February 2001) paras 457–460, treating consent given voluntarily and the coercive circumstances of armed conflict as central.
[49]ICCPR (n 3) art 6(2); Human Rights Committee, 'General Comment No 36: Article 6 (Right to Life)' (3 September 2019) UN Doc CCPR/C/GC/36, para 35 (the term 'most serious crimes' must be read restrictively and appertains only to crimes of extreme gravity involving intentional killing); ECOSOC, Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty (1984) safeguard 1.

anonymous-witness and closed-hearing provisions (Article 70) protect survivors — is noted at 7.3, where it is balanced against fair-trial rights.

6 Section Three (Part B): High Crimes, State Security, and Capital Punishment

6.1 Articles 36–45: high treason, treason, economic treason, collaboration, and espionage — breadth of political and security offences

Articles 36 to 45 create a dense cluster of security offences: crimes against the constitutional order (Article 36), obstruction of constitutional powers (Article 37), waging war (Article 38), crimes against sovereignty and territorial integrity (Articles 39–40), high treason (Article 41), treason (Article 42), economic treason (Article 43), collaboration with the enemy (Article 44), and espionage (Article 45). Many carry ten to twenty-five years, life, or death.[50]

Security offences of this kind are not per se objectionable; every state protects its constitutional order. Three features, however, are troubling. First, several offences are defined so broadly that they capture non-violent political conduct: Article 39(1) punishes disrupting "the unity of the people" by up to twenty-five years or death; Article 44(4) punishes "propaganda or media activity that advances the objectives of the enemy," collapsing the distinction between armed collaboration and disfavoured speech. Second, the offences incorporate the vague definition of "enemy" (2.13), so that their reach is as uncertain as that definition. Third, the retroactive clause (Article 83(2)) applies Articles 35–48 — this entire cluster — to conduct going back to November 2020, the defect analysed in Chapter 9.[51]

Finding: the security cluster requires narrowing so that each offence turns on a concrete act connected to violence or material support for armed hostilities, not on speech, association, or opinion; Article 44(4) (enemy propaganda) should be repealed or confined to direct incitement to armed action.

6.2 Articles 46 and 47: genocide and war crimes — regional enforcement of core international crimes and the question of jurisdiction

Articles 46 and 47 define genocide and war crimes and provide for their punishment by up to twenty-five years, life, or death. HRF-Ethiopia strongly supports the accountability of those responsible for atrocity crimes against the people of Tigray; impunity for such crimes is itself a human rights violation. The concern here is one of competence and effectiveness, not of principle.[52]

Genocide and war crimes are already criminalised under the federal Criminal Code and under international law binding on Ethiopia; indeed Article 28 of the FDRE Constitution singles out crimes against humanity for special treatment, removing any statute of limitation and any amnesty.[53] A regional statute defining these crimes differently from the federal and international definitions creates two risks: divergence (the Article 46 definition, keyed to "an ethnic group of Tigray … on the basis of race, colour, religion, or political opinion," departs from the protected-group definition in the Genocide Convention, which does not include political opinion), and jurisdictional confusion over whether regional or federal courts try such cases. For crimes of this gravity, definitional fidelity to the

[50] Proclamation 366/2026 (n 4) arts 36–45.
[51] Proclamation 366/2026 (n 4) arts 39(1), 44(4) and 83(2). On the criminalisation of 'enemy propaganda' as a restriction on expression, see General Comment No 34 (n 13) paras 30 and 46–47.
[52] Proclamation 366/2026 (n 4) arts 46–47.
[53] FDRE Constitution (n 5) art 28; Criminal Code 2004 (n 8) arts 269 (genocide) and 270 (war crimes); Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 6–8, reflecting definitions binding as customary international law.

Genocide Convention and the Rome Statute, and clarity that jurisdiction lies with courts competent to meet international fair-trial standards, are essential.[54]

Article 46(4) — treating the use of starvation as a weapon, including by preventing food and medicine from entering Tigray, as punishable by life or death — reflects a real and documented harm and aligns with the recognition of starvation of civilians as a war crime. Finding: the substance is supported; the definitions should be brought into exact conformity with the Genocide Convention and Rome Statute (removing "political opinion" from the genocide definition), and jurisdiction should be clarified as concurrent with or deferred to federal courts equipped to meet international standards.[55]

6.3 Proliferation of the death penalty: review of capital provisions against the international trend toward restriction

The Proclamation authorises capital punishment in at least seventeen articles: Articles 29, 30, 36, 38, 39, 40, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, and 60. This is an extraordinary proliferation. It is the single feature of the Proclamation most out of step with international human rights law and with the global trend toward the restriction and abolition of the death penalty.[56]

Article 6(2) of the ICCPR permits the death penalty in retentionist states only "for the most serious crimes." The Human Rights Committee has held that this phrase must be read restrictively and is confined to crimes of extreme gravity involving intentional killing.[57] Measured against that standard, a large number of the Proclamation's capital offences are plainly non-compliant, because they authorise death for conduct involving no intentional killing at all:

- Article 29 (infrastructure): damage to electricity, telecommunications, water, or roads, where the consequences are "grave," is punishable by death — but infrastructure damage need involve no death.
- Article 30 (property of institutions): theft, destruction, or burning of institutional property in specified circumstances is punishable by death — a property offence.
- Article 39 (sovereignty/territorial integrity): disrupting "the unity of the people" may be punished by death — a political offence with no necessary violence.
- Article 49 (trafficking): where the offence "results in death," death is mandated (Article 49(8)); elsewhere trafficking not causing death is death-eligible through the aggravations.
- Article 50 (rape): rape of a child under thirteen, or causing death, is punishable by death (see 5.5).
- Article 51 (explosives) and Article 54 (poisoning): death is available where danger "spreads" or serious injury results, not only where death is caused intentionally.

Beyond the "most serious crimes" problem, four further defects compound the concern. First, mandatory death sentences — such as Article 49(8) ("shall be punishable by the death penalty" where death results) — are prohibited because they preclude individualised consideration of the offence and the offender.[58] Second, the retroactive application of several capital offences under Article 83(2) is separately unlawful (Chapter 9). Third, the very wide sentencing ranges leave the choice between a

[54]Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art II (protected groups: national, ethnical, racial or religious — not political). The inclusion of 'political opinion' in Article 46 of the Proclamation is a departure from the Convention definition.
[55]Rome Statute (n 46) art 8(2)(b)(xxv) (intentionally using starvation of civilians as a method of warfare).
[56]Proclamation 366/2026 (n 4) arts 29, 30, 36, 38, 39, 40, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54 and 60.
[57]General Comment No 36 (n 41) para 35.
[58]General Comment No 36 (n 41) para 37 (mandatory death sentences that leave no discretion to the court are arbitrary and incompatible with art 6); and the leading comparative authority, Kigula and ors v Attorney General (Uganda, Constitutional Court and Supreme Court, 2005–2009).

term of years and death to be made without the safeguards that a capital regime demands. Fourth, the procedural deficiencies analysed in Chapter 7 — trial in absentia, anonymous witnesses, warrantless arrest, reversed burdens — mean that death may be imposed after a process that does not meet the heightened fair-trial guarantees the Committee requires in capital cases, so that any resulting execution would amount to an arbitrary deprivation of life under Article 6(1).[59]

Finding: the death-penalty provisions are, taken as a whole, incompatible with Article 6 of the ICCPR. Recommended cure: (i) confine any capital provision to crimes involving intentional killing; (ii) abolish all mandatory death sentences; (iii) remove death from Articles 29, 30, 36(2) where no killing is involved, 39, 40, 44, 45(3), 49, 50(3), 51(2), 54(3), and 60(3); and (iv) as HRF-Ethiopia's standing position, adopt a moratorium pending consideration of accession to the Second Optional Protocol to the ICCPR.[60]

6.4 Article 52(8): executive dominated council designation of terrorist organizations without prior judicial oversight

Article 52(8) empowers the Council of the Tigray Regional State to "designate, and … withdraw the designation of, an organization or group as a terrorist organization." Designation carries grave consequences: membership, support, and financing (Article 53) become serious crimes. Placing the power to designate in a political body, with no requirement of prior judicial authorisation and no stated right of the designated entity to be heard or to seek review, risks the arbitrary proscription of political opponents and the organizations associated with them.[61]

Finding: Article 52(8) should require prior or prompt judicial confirmation of any designation, notice to the affected entity, and a right of appeal, so that the criminal consequences of designation do not flow from an unreviewable executive act. Recommended cure as stated.

[59]General Comment No 36 (n 41) para 41 (a death sentence imposed after a trial that did not meet the requirements of art 14 violates art 6); General Comment No 32 (n 21) para 59 (imposition of the death penalty after an unfair trial violates both arts 14 and 6).

[60]Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414.

[61]Proclamation 366/2026 (n 4) arts 52(8) and 53. On the requirement that terrorist designation and its consequences be subject to judicial control and effective remedy, see General Comment No 34 (n 13) para 46 (offences such as 'encouragement of terrorism' must be clearly defined to ensure they do not lead to unnecessary or disproportionate interference with expression); and the fair-trial and remedy requirements of ICCPR (n 3) arts 14 and 2(3).

6.3A Capital Punishment: The 'Most Serious Crimes' Threshold and the Prohibition of Mandatory Death

The proliferation of capital provisions across the Proclamation warrants treatment beyond the enumeration set out above. Ethiopia retains the death penalty in law and has not ratified the Second Optional Protocol to the ICCPR. It is therefore not, at present, under an absolute treaty obligation to abolish. But retention does not confer an unrestricted power to extend. Article 6(2) of the ICCPR confines the death penalty, in retentionist states, to the 'most serious crimes', and the Human Rights Committee has consistently construed that phrase to mean crimes involving intentional killing.[62]

Measured against that threshold, several capital provisions of the Proclamation are difficult to sustain. Where the death penalty is attached to offences against infrastructure or property (articles 29 and 30), to economic or security offences not resulting in death, or to conduct falling short of intentional killing, the sentence exceeds the 'most serious crimes' limitation. The concern is sharpest where a capital sentence may be imposed for conduct that caused no loss of life at all.

The mandatory death sentence

Article 49(8) prescribes a mandatory death sentence where death results from the proscribed conduct. A sentence that is fixed by statute and removes from the court all discretion to consider the circumstances of the offence and the individual characteristics of the offender has been held, across a broad body of comparative and international jurisprudence, to be incompatible with the right to life and the prohibition of arbitrary deprivation of life, because it forecloses any individualized assessment of proportionality.[63]

The African and Commonwealth courts have repeatedly struck down mandatory capital sentencing on precisely this ground, holding that the mandatory character of the penalty — not the availability of the penalty as such — is the source of the incompatibility. The Proclamation's adoption of a mandatory formulation therefore places it at odds with the clear weight of comparable authority, including from jurisdictions within the region.

Procedural safeguards and the risk of irreversibility

The capital provisions do not operate in isolation. They sit within the enforcement architecture examined above — trial in absentia, anonymous evidence, reversed burdens, and sentencing floors. The conjunction of an irreversible penalty with procedures that diminish the reliability of the underlying conviction is of particular concern, because the safeguards surrounding a capital trial must, under international standards, be more rather than less rigorous than those applying generally. The retention of executive commutation under article 72(2) is a mitigating feature, but commutation is a discretionary act of grace exercised after conviction and does not repair defects in the process by which guilt is determined.[64]

[62]ICCPR, art 6(2); UN Human Rights Committee, 'General Comment No 36: Article 6, Right to Life' (2019) UN Doc CCPR/C/GC/36, para 35 ('most serious crimes' limited to crimes of extreme gravity involving intentional killing).
[63]UN Human Rights Committee, General Comment No 36 (n above) para 37 (mandatory death sentences arbitrary); Attorney General v Susan Kigula (Constitutional Court of Uganda, 2009); Kafantayeni v Attorney General (High Court of Malawi, 2007); Francis Karioko Muruatetu v Republic (Supreme Court of Kenya, 2017).
[64]ICCPR, art 6(4) (right to seek commutation); UN Human Rights Committee, General Comment No 36 (n above) paras 40–44 (heightened fair-trial requirements in capital cases).

6.2A Regional Definition of Core International Crimes: Departures from the Governing Instruments

The Proclamation's incorporation of genocide (article 46) and war crimes (article 47) raises two distinct questions: whether a sub-national legislature may define and prosecute core international crimes at all, and whether the definitions it has adopted conform to the governing instruments. Both warrant closer treatment than the enumeration above allowed.

The definitional departure in the crime of genocide

Article 46 defines genocide to include acts committed with intent to destroy a group identified by, among other characteristics, its 'political opinion'. This departs from the settled definition in the Genocide Convention and the Rome Statute, both of which confine the protected groups to national, ethnical, racial and religious groups and deliberately exclude political groups. The exclusion was a considered choice by the drafters of the Convention, and the definition has since attained the status of customary international law and jus cogens.[65]

The addition of 'political opinion' as a protected characteristic, while superficially protective, has two problematic consequences. First, it creates a divergence between the regional offence and the international crime, so that conduct charged as 'genocide' under the Proclamation may not correspond to genocide as recognised in international law, undermining both legal certainty and the coherence of Ethiopia's obligations. Second, because the term is undefined, it risks the label of the gravest of crimes being attached to conduct connected with ordinary political contestation.

War crimes and the starvation provision

Article 47 criminalises war crimes, including — at article 46(4) as cross-referenced — the use of starvation of the civilian population as a method of warfare. The substantive prohibition is well founded: the starvation of civilians as a method of warfare is prohibited under international humanitarian law and is a war crime under the Rome Statute. The concern here is therefore not the substance of the prohibition, which this assessment endorses, but the framework within which it is enforced.[66]

Concurrent jurisdiction and complementarity

The prosecution of core international crimes engages questions of concurrent jurisdiction with the federal courts and with international mechanisms. Under the FDRE Constitution, the prosecution of crimes against humanity and related offences is a matter engaging federal competence, and Ethiopia's obligations under the Genocide Convention and general international law attach to the state as a whole. A regional enforcement regime that adopts divergent definitions risks both duplicative prosecution and the entrenchment of a definition inconsistent with the state's international obligations. This assessment recommends that the definitions of core international crimes track the governing instruments precisely and that jurisdictional arrangements be clarified so as to avoid conflict with federal and international competence.[67]

[65]Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art II; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 6 (protected groups limited to national, ethnical, racial or religious groups).

[66]Rome Statute, art 8(2)(b)(xxv) (starvation of civilians as a method of warfare); Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I, 1977), art 54.

[67]FDRE Constitution, arts 28 and 55(5); on complementarity generally, Rome Statute, art 17.

5.6 Articles 19, 20, 23–28: resources, threats, reporting duties, and secrecy offences

A further cluster of offences protects public resources, the integrity of the struggle, and official secrecy. Article 19 punishes misuse and waste of public resources (up to fifteen years); Article 20 punishes threats and intimidation of persons on national-struggle missions; Article 23 punishes failure to report a danger; Article 25 punishes failure to surrender military weapons; Article 26 punishes destruction of government documents (up to ten years); Article 27 punishes breach of confidentiality; and Article 28 punishes concealment of the enemy (five to fifteen years).[68]

Two provisions warrant particular comment. Article 23(1) criminalizes a mere failure to notify the authorities of a danger, or to "take necessary precautions," by three to five years' imprisonment or a heavy fine. A criminal duty to report, enforced by a custodial penalty, must be defined with precision as to what must be reported and to whom; a vaguely framed duty risks punishing ordinary citizens for failing to act as informants, and interacts uncomfortably with the informant-incentive system in Article 78. Article 27 punishes the disclosure of a "confidential communication" by five to ten years without defining what is confidential or requiring proof that disclosure caused harm; framed this way, it could capture whistle-blowing and the disclosure of official wrongdoing, which international standards protect.[69]

Finding: the resource- and secrecy-protection offences are legitimate in aim, but Articles 23 and 27 are drawn too widely; each should be confined to intentional conduct causing, or creating a real risk of, concrete harm, and Article 27 should include a public-interest defense for disclosures of wrongdoing.

6.5 Articles 51, 53–63: explosives, financing, cyber, currency, petroleum, corruption, and offences against justice

The remaining serious offences round out the security and economic architecture. Article 51 punishes unlawful use of explosives (up to life or death where danger spreads); Article 53 punishes financing of terrorism; Article 54 punishes poisoning of water or food (up to life or death); Article 55 punishes cybercrime (ten to twenty-five years); Articles 56–57 punish counterfeiting and circulating currency; Article 58 punishes offences relating to petroleum (rigorous imprisonment of ten to twenty years, rising to fifteen to twenty-five years in aggravated circumstances); Article 59 punishes transfer of weapons; Article 60 punishes armed insurrection (up to life or death); Article 61 punishes bribery; and Articles 62–63 punish perjury and witness intimidation.[70]

Several of these address genuinely grave conduct where severe punishment is defensible — poisoning a water supply (Article 54) or detonating a bomb in a public place (Article 51) can cause mass casualties, and their treatment as among the gravest offences is not, in itself, objectionable. The recurring problems are the familiar ones. First, Article 55 (cybercrime) sets a floor of ten and a ceiling of twenty-five years for conduct that ranges from serious infrastructure attacks to unauthorised access to an email account; a single ten-to-twenty-five-year band for so wide a range of conduct cannot deliver proportionate sentencing, and the offence's breadth risks capturing security research and journalism. Second, the death penalty attaches to Articles 51, 54, and 60 in circumstances (spreading danger,

[68] Proclamation 366/2026 (n 4) arts 19, 20, 23, 25, 26, 27 and 28.
[69] Proclamation 366/2026 (n 4) arts 23 and 27. On the protection of public-interest disclosures and the requirement that official-secrecy offences be narrowly defined and subject to a public-interest consideration, see General Comment No 34 (n 13) para 30 (offences such as espionage or disclosing official secrets must be crafted so as not to hinder the disclosure of information of legitimate public concern).
[70] Proclamation 366/2026 (n 4) arts 51, 53–63; on Article 58, see art 58(1)–(5) (corrected text), the maximum penalty being fifteen to twenty-five years' rigorous imprisonment.

endangering "livelihood") that do not require intentional killing, engaging the "most serious crimes" problem analysed at 6.3. By contrast, the corrected Article 58 (petroleum offences) does not carry the death penalty; its graded custodial scheme, capped at twenty-five years for aggravated cases, is a proportionate response to the diversion and adulteration of fuel and raises no distinct capital-punishment concern, though the upper reaches of its sentencing band should still be reserved for the gravest instances.[71]

Articles 62 and 63 (offences against the administration of justice) deserve a specific note. Punishing perjury and witness intimidation is legitimate and indeed protective of fair trials. But Article 62(2) escalates perjury to twenty to twenty-five years where it concerns an offence "against the sovereignty, existence, or security of the people of Tigray," tying the penalty to the political character of the underlying case rather than to the gravity of the false testimony. A sentence of up to twenty-five years for perjury is difficult to justify on proportionality grounds and risks deterring witnesses from testifying at all for fear of the consequences of an honest error.[72]

Finding: these offences are largely legitimate in aim; the priorities for amendment are to narrow and grade Article 55 (cyber), to remove the death penalty from Articles 51, 54, and 60 where no intentional killing is involved, and to reduce the disproportionate perjury penalty in Article 62(2). The corrected Article 58 (petroleum), which carries no capital penalty, requires no amendment on the grounds examined here.

[71]Proclamation 366/2026 (n 4) arts 51(2), 54(3), 55, 58(1)–(5) and 60(3); on the 'most serious crimes' limit see General Comment No 36 (n 41) para 35; on the over-breadth of computer-misuse offences and their expression implications see General Comment No 34 (n 13) para 30.
[72]Proclamation 366/2026 (n 4) arts 62(1)–(2) and 63.

7 Section Four: Procedural Guarantees and Enforcement Powers

The severity of a criminal code is tolerable only where it is administered through a fair process. The procedural provisions of the Proclamation, examined here, are where several of its gravest defects lie, because they remove — categorically and in advance — protections that the Constitution and the ICCPR guarantee to every accused person. Their cumulative effect is assessed in Chapter 9.

7.1 Article 65: categorical bail denial

Article 65 denies bail in three tiers. Article 65(2) denies bail for any offence punishable by more than fifteen years. Article 65(3) denies bail to anyone suspected under Article 49 (trafficking) or Article 50 (rape). Most strikingly, Article 65(1) denies bail for offences under Articles 8, 9, 16, and 17 — which include fine-only offences such as failure to answer the mobilization call (Article 8) and fraudulent evasion (Article 9).[73]

The denial of bail for fine-only offences is difficult to characterize as anything other than arbitrary: a person who cannot, on conviction, be imprisoned at all may nonetheless be held in pre-trial detention without possibility of release. This inverts the relationship between the seriousness of the offence and the deprivation of liberty. Article 19(6) of the FDRE Constitution guarantees a right to release on bail, and Article 9(3) of the ICCPR provides that it "shall not be the general rule" that persons awaiting trial be detained, requiring that detention be the exception, justified individually, and subject to judicial control.[74]

A statutory rule that removes bail categorically, by reference to the label of the offence and without any individualised assessment of flight risk or danger, is incompatible with Article 9(3) as the Human Rights Committee has consistently interpreted it. The defect is at its most acute in Article 65(1). Finding: categorical bail denial, and especially its extension to fine-only offences, violates Article 19(6) of the FDRE Constitution and Article 9(3) of the ICCPR. Recommended cure: replace categorical denial with a rebuttable presumption reviewable by a court on the individual facts; remove Article 65(1) entirely.

7.2 Article 68: trial in absentia — notice by single-newspaper publication, waiver by non-appearance, and the right to defend

Article 68 permits trial in absentia of any person charged with an offence punishable by more than five years, on notice "through publication in the appropriate Mekaleh Tigray newspaper on fifteen consecutive days." An accused not located after such publication is "deemed to have refused to appear," and the trial proceeds. Given the universal jurisdiction asserted in Article 4(1), this means a person abroad, or in an area without access to that newspaper, may be tried and sentenced — including to death — without knowledge of the proceedings.[75]

Trials in absentia are not per se prohibited, but the Human Rights Committee requires that the accused be summoned in a timely manner and informed in advance of the proceedings against him, so that trial in absentia is permissible only where the accused, having been effectively notified, declines to

[73]Proclamation 366/2026 (n 4) art 65(1)–(3), read with arts 8, 9, 16 and 17.
[74]FDRE Constitution (n 5) art 19(6); ICCPR (n 3) art 9(3); General Comment No 35 (n 39) para 38 (detention pending trial must be based on an individualised determination that it is reasonable and necessary; blanket pre-trial detention for a category of offences is arbitrary).
[75]Proclamation 366/2026 (n 4) art 68(1)–(3), read with art 4(1).

appear.[76] Constructive notice by publication in a single regional newspaper does not meet that standard, particularly for accused persons outside the region. The Human Rights Committee's decision in Mbenge v Zaire is directly on point: publication was held an insufficient basis for trial in absentia where the accused could have been located.

Finding: Article 68's reliance on single-newspaper publication as the sole notice, coupled with deemed waiver, does not satisfy the effective-notification requirement of Article 14 of the ICCPR, and is especially dangerous where the resulting sentence is capital. Recommended cure: require genuine efforts at personal service, permit in absentia trial only after such efforts fail, and guarantee an unconditional right to retrial on the merits if the convicted person later appears (broadening the narrow reopening right in Article 68(5)).

7.3 Article 70: anonymous witnesses and closed hearings — witness protection against public trial and confrontation

Article 70(1) permits the names and identities of witnesses to be kept confidential and hearings to be closed, for offences punishable by ten years or more. Article 70(2) makes admissible, before any court, statements taken during investigation and the testimony of witnesses given during investigation. HRF-Ethiopia recognises a genuine and weighty interest here: in conflict-related cases, and above all in sexual-violence cases, witness protection is indispensable and is itself a human rights obligation.[77]

The difficulty is one of balance. Article 14(1) of the ICCPR permits the press and public to be excluded from a trial for reasons of, among other things, the protection of witnesses, so closed hearings are not per se objectionable. But full anonymity of witnesses, combined with the admission of untested investigative statements as evidence, engages the accused's right under Article 14(3)(e) to examine the witnesses against him. The European and international jurisprudence permits anonymous evidence only where the handicap to the defence is sufficiently counterbalanced and a conviction is not based solely or decisively on anonymous testimony.[78]

The corrected Article 70(3) adds a distinct concern of a different character. It provides that any evidence offered to prove non-participation in, or exemption from, the national struggle is admissible only if issued and submitted directly by a public health institution, the Armed Forces of Tigray, or another legally authorised government body. This is a restriction not on prosecution evidence but on the accused's ability to prove a defence: it forecloses all other means of establishing non-participation — documentary, testimonial, or circumstantial — and makes the admissibility of exculpatory evidence turn on its certification by an organ of the very authority conducting the prosecution. Coupled with the reversed burdens elsewhere in the Proclamation, it places the means of exculpation within the gift of the executive and is difficult to reconcile with the equality-of-arms principle and the right to present a defence under Article 14(1) and 14(3) of the ICCPR.[79]

Finding: closed hearings for witness protection are legitimate, especially in sexual-violence cases; but wholesale anonymity plus admission of untested investigative statements, without counterbalancing

[76]General Comment No 32 (n 21) para 36 (proceedings in the absence of the accused are permissible only where the State has taken effective steps to notify the accused sufficiently in advance to enable a defence); Mbenge v Zaire (1983) UN Doc CCPR/C/18/D/16/1977 (constructive notice by publication insufficient where the authorities knew or could have ascertained the accused's whereabouts).
[77]Proclamation 366/2026 (n 4) art 70(1)–(2). On the State's protective duty toward victims and witnesses of sexual violence, see Maputo Protocol (n 11) art 4; and the survivor-protection rationale for closed proceedings.
[78]ICCPR (n 3) arts 14(1) and 14(3)(e); General Comment No 32 (n 21) para 29 (limits on in-camera proceedings) and para 39 (right to examine witnesses); and the 'sole or decisive' safeguard articulated in Doorson v Netherlands (1996) 22 EHRR 330 and Al-Khawaja and Tahery v United Kingdom (2012) 54 EHRR 23.
[79]Proclamation 366/2026 (n 4) art 70(3) (corrected text). On equality of arms and the right to adduce and challenge evidence on equal terms, see General Comment No 32 (n 21) paras 13 and 39.

safeguards and without a rule that conviction may not rest solely or decisively on anonymous evidence, is incompatible with Article 14(3)(e). Article 70(3) compounds the difficulty by restricting the accused's proof of a defence to executive-certified sources. Recommended cure: permit anonymity and closed sessions where necessary and proportionate, but require counterbalancing measures (judicial knowledge of identity, defence questioning through the court), prohibit conviction based solely or decisively on anonymous or untested evidence, and amend Article 70(3) so that the accused may prove non-participation by any relevant and reliable means, with the enumerated official sources treated as sufficient but not exclusive.

7.4 Articles 76 and 77: warrantless arrest and search by police executive command

Article 76(1) empowers the Commissioner of the Tigray Police to "direct or order a special operation to arrest and investigate a suspect without a court order, at any place and time," whenever he believes there is a situation that threatens or may threaten peace and security. Article 76(4) extends warrantless arrest and investigation to any investigating officer or prosecutor for security offences. Article 77 permits warrantless arrest and search "at any place" on "reasonable suspicion," and "at any time and place" for security or serious corruption offences.[80]

These provisions displace judicial control of arrest and search. Article 17 of the FDRE Constitution prohibits arbitrary arrest and requires that no one be deprived of liberty except on grounds and in accordance with procedures established by law; Article 19 requires arrested persons to be brought before a court within forty-eight hours; and Article 26 protects privacy against unlawful search, requiring — subject to narrow exceptions — judicial authorisation.[81] A standing executive power to arrest and search without a warrant, triggered by a police commander's belief that a situation "may threaten" security, is the antithesis of the judicial control these articles require. It is the kind of power that a valid state of emergency might temporarily authorise — but only within the limits, and under the oversight, that Article 93 prescribes (Chapter 9).

Finding: Articles 76 and 77 authorise warrantless arrest and search on executive command in terms incompatible with Articles 17, 19, and 26 of the FDRE Constitution and Articles 9 and 17 of the ICCPR. Recommended cure: restore the requirement of prior judicial warrant save in genuine cases of hot pursuit or imminent risk, and in all cases require production before a court within forty-eight hours and prompt judicial review of any search.

7.5 Article 78: the informant "incentive system" and risks of incentivised denunciation

Article 78 provides that a person who supplies information, evidence, or testimony leading to the establishment of an offence punishable by ten years or more "shall be granted an incentive commensurate with the results obtained." A financial reward keyed to securing a conviction creates a direct incentive to fabricate or exaggerate evidence, and to denounce personal or political rivals. Combined with anonymous testimony (Article 70) and reversed burdens (Articles 31(5), 49(9)), it

[80] Proclamation 366/2026 (n 4) arts 76(1), 76(4) and 77(1)–(2).
[81] FDRE Constitution (n 5) arts 17, 19(3) (48-hour rule) and 26; ICCPR (n 3) arts 9 and 17; General Comment No 35 (n 39) paras 23–33 on the requirement of prompt judicial control of arrest.

materially increases the risk of wrongful conviction — a risk that becomes irreversible where the resulting sentence is death.[82]

Finding: a conviction-contingent reward for informants, without safeguards, endangers the fairness and reliability of trials and should be removed or, at least, replaced by a protected-witness scheme in which any benefit is disclosed to the defence and is not contingent on conviction. Recommended cure as stated.

7.6 Article 67(2): statutory floors on sentencing guidelines — constraints on judicial discretion

Article 67(2) forbids any sentencing guideline, and the ordinary prosecution guidelines, from prescribing a penalty "lower than the minimum penalty set out in the relevant provision of this Proclamation." Coupled with the high statutory minima throughout Section Three, this abolishes the court's power to go below the floor even where the justice of the individual case demands it. Individualised sentencing — the assessment of the offence and the offender, and the availability of mitigation — is a component of the right to a fair trial and, in capital cases, a strict requirement.[83]

Finding: rigid statutory minima that preclude judicial mitigation are in tension with the requirement of individualised sentencing and, where they operate in capital or life cases, are incompatible with the prohibition on mandatory or non-individualised severe sentences. Recommended cure: permit the court to sentence below the statutory minimum for cogent reasons stated on the record.

[82]Proclamation 366/2026 (n 4) art 78. On the reliability concerns raised by incentivised witnesses and their fair-trial implications, see General Comment No 32 (n 21) paras 29–30 on the evaluation of evidence and equality of arms.
[83]Proclamation 366/2026 (n 4) art 67(2); General Comment No 36 (n 41) para 37 (individualised sentencing indispensable in capital cases); General Comment No 32 (n 21) para 15 on the role of the court.

8 Complementary and Mitigating Provisions (for balance)

Objectivity requires that the provisions operating in favour of the accused be recorded as fully as those operating against. The Proclamation contains several. They are genuine and creditable. They do not, however, cure the structural defects identified elsewhere, because a safeguard in one provision cannot repair a non-derogable breach in another.

8.1 Article 69(4): right to legal assistance during preliminary investigation

Article 69(4) requires that the preliminary investigation "be conducted with the assistance of the accused's lawyer or defense counsel." Access to counsel at the investigative stage is an important fair-trial guarantee, protected by Article 20(5) of the FDRE Constitution and Article 14(3)(b) and (d) of the ICCPR, and its express inclusion here is welcome.[84] The guarantee would be strengthened by an express provision for legal aid at public expense where the accused cannot afford counsel, particularly given the gravity of the penalties.

8.2 Article 66(2): mandatory suspension of serious convictions pending prosecutorial appeal

Article 66(2) suspends the decision or judgment, pending appeal, where the prosecutor appeals a conviction for collaboration, espionage, aggravated treason, genocide, war crimes, rape, or trafficking. In the capital and life-sentence context this operates as a safeguard against irreversible execution before appellate review, and is to be commended. Its protective value would be greater still if the suspension were expressed to apply to any death or life sentence however it arises, and to defence as well as prosecution appeals.[85]

8.3 Article 72(2): presidential commutation of death sentences

Article 72(1) makes any death sentence enforceable only upon the President's approval, and Article 72(2) empowers the President to commute a death sentence to life imprisonment. The availability of commutation reflects Article 6(4) of the ICCPR, which guarantees every person sentenced to death the right to seek pardon or commutation.[86] This is a necessary safeguard and is present. It cannot, however, substitute for the anterior requirement that the death penalty be confined to the most serious crimes and imposed only after a fully fair trial; commutation at the end of the process does not repair defects at its start. Finding: the mitigating provisions are welcome and should be retained and strengthened, but they do not cure the retroactivity, over-breadth, disproportionality, and procedural defects identified above.

[84] Proclamation 366/2026 (n 4) art 69(4); FDRE Constitution (n 5) art 20(5); ICCPR (n 3) art 14(3)(b) and (d); General Comment No 32 (n 21) para 34.
[85] Proclamation 366/2026 (n 4) art 66(2); cf General Comment No 36 (n 41) para 45 (mandatory and effective appellate review in capital cases).
[86] Proclamation 366/2026 (n 4) art 72(1)–(2); ICCPR (n 3) art 6(4); FDRE Constitution (n 5) art 28(2) (commutation of death sentences for the gravest crimes).

8A Comparative and Regional Perspective

The defects identified in this assessment are not peculiar to Tigray; they recur in security legislation across the region, and the responses of African courts and the African Commission supply directly relevant guidance. This short comparative chapter gathers that guidance, both to show that HRF-Ethiopia's standards are the standards of the African human rights system and to offer concrete models for reform.

8A.1 Vague security and false-news offences before African courts

Courts across the continent have repeatedly struck down the very kinds of offence that recur in this Proclamation. False-news offences of the type in Articles 21 and 22 have been declared unconstitutional as disproportionate restrictions on expression; sedition and "insult" offences of the type in Article 18 have been read down or invalidated; and the African Court on Human and Peoples' Rights has held that custodial penalties for defamation and related speech offences are, save in exceptional circumstances, a disproportionate interference with freedom of expression.[87]

The lesson for Proclamation No. 366/2026 is that its speech offences are not merely arguably non-compliant; they run against a settled current of African and international authority. Reform along the lines recommended at 10.2 would bring the instrument into line with the regional consensus rather than isolating it.

8A.2 The death penalty and mandatory sentencing in African constitutional courts

The mandatory death sentence — present in Article 49(8) of the Proclamation — has been invalidated by apex courts across the common-law African jurisdictions, on the ground that it precludes individualised consideration of the offence and the offender and thereby renders the sentence arbitrary and inhuman. Malawi, Uganda, Kenya, and others have all struck down mandatory capital sentencing, requiring instead that the sentencer weigh the circumstances of each case.[88]

This body of authority is significant for two reasons. First, it confirms that the removal of the mandatory death sentence in Article 49(8) is not an aspirational reform but a requirement that African apex courts have found inherent in the right to life and the prohibition of inhuman punishment. Second, it models the alternative: a discretionary regime in which the gravest cases may attract the gravest penalty, but only after the individualised assessment that Article 67(2)'s statutory floors presently forbid.

8A.3 Displacement, sexual violence, and the specialised AU instruments

The Kampala Convention obliges States to protect against arbitrary displacement and to criminalise acts of arbitrary displacement amounting to genocide, war crimes, or crimes against humanity — an obligation the Proclamation's Articles 40, 46, and 47 partly reflect. The Maputo Protocol requires consent-based definitions of sexual violence and survivor-centred procedures. The Proclamation's

[87] Lohé Issa Konaté v Burkina Faso (Judgment) African Court on Human and Peoples' Rights App No 004/2013 (5 December 2014) paras 155–166 (imprisonment for defamation is a disproportionate interference with freedom of expression save in exceptional circumstances such as incitement to violence). On false-news offences, see the domestic jurisprudence collected in the Media Legal Defence Initiative's continental surveys.

[88] See Kafantayeni v Attorney General (Malawi, 2007); Kigula and ors v Attorney General (Uganda, Supreme Court, 2009); and Muruatetu v Republic (Kenya, Supreme Court, 2017), each holding mandatory death sentences unconstitutional for precluding individualised mitigation. These decisions reflect the standard in General Comment No 36 (n 41) para 37.

recognition of these harms is to be commended; the recommended amendments (consent-based rape definition; displacement defined in conformity with the Kampala Convention and Rome Statute) would complete the alignment.[89]

The comparative picture, in sum, is one in which the Proclamation's legitimate protective aims are shared across the region, but its methods diverge sharply from the regional and international consensus on how those aims may lawfully be pursued. The reforms recommended here would move the instrument from the outlier position it currently occupies toward that consensus.

[89]Kampala Convention (n 12) arts 4 and 7; Maputo Protocol (n 11) arts 4 and 11 (protection of women in armed conflict). The Proclamation's treatment of forced displacement (arts 40, 46(3), 47(3)) and sexual violence (art 50; art 47(6)) should be conformed to these instruments and to the Rome Statute.

PART III — CRITICAL OVERRIDING VIOLATIONS AND INSTITUTIONAL RISKS

Part III addresses two matters that stand apart from the provision-by-provision analysis because they go to the legality of the Proclamation as a whole. The first is the retroactive application of its criminal provisions — the gravest single defect in the instrument, and one that no security rationale and no emergency can justify. The second is the cumulative character of the enforcement powers, which together amount to an undeclared state of emergency.

9 The Absolute Bar: Retroactive Criminal Law and Undeclared Emergency Measures

9.1 Article 83(2): retroactive application of Articles 31(6) and 35–48 to 3 November 2020

Article 83(2) is the provision of greatest concern in the entire Proclamation. It provides:

> *"Notwithstanding sub-article (1) of this Article, sub-article (6) of Article 31, and the offences provided for in Articles 35 to 48 of this Proclamation, shall apply retroactively from 3 November 2020."*[90]

The effect is that conduct occurring from 3 November 2020 onward may be prosecuted and punished under offences first defined in a statute enacted in 2026. The offences swept into this retroactive window include the gravest in the Proclamation: causing weapons to fall into enemy hands (Article 35), crimes against the constitutional order (Article 36), waging war (Article 38), crimes against sovereignty (Articles 39–40), high treason and treason (Articles 41–42), economic treason (Article 43), collaboration (Article 44), espionage (Article 45), genocide (Article 46), war crimes (Article 47), and injury to the army (Article 48) — many carrying life imprisonment or death — together with illegal mining under Article 31(6).

This violates the principle nullum crimen, nulla poena sine lege praevia — no crime and no punishment without a pre-existing law. That principle is guaranteed twice over in the law binding Tigray. Article 22(1) of the FDRE Constitution provides:

> *"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier penalty be imposed … than the one that was applicable at the time when the criminal offence was committed."*[91]

Article 15 of the ICCPR guarantees the same principle in materially identical terms.[92] The decisive point — and the reason this defect cannot be defended by any appeal to the security situation — is that Article 15 of the ICCPR is expressly non-derogable. Article 4(2) of the Covenant lists Article 15 among the provisions from which no derogation is permitted even "in time of public emergency which threatens the life of the nation."[93]

[90] Proclamation 366/2026 (n 4) art 83(2). Sub-article (1) provides that the Proclamation enters into force on 1 June 2026.
[91] FDRE Constitution (n 5) art 22(1). Article 22(2) provides the sole exception, in favour of the accused, where a subsequent law is more lenient.
[92] ICCPR (n 3) art 15(1): 'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed …'
[93] ICCPR (n 3) art 4(2), listing arts 6, 7, 8(1)–(2), 11, 15, 16 and 18 as non-derogable; Human Rights Committee, 'General Comment No 29: Article 4 (Derogations during a State of Emergency)' (31 August 2001) UN Doc CCPR/C/21/Rev.1/Add.11, para 7 (the prohibition on retroactive criminal law is non-derogable).

It follows that even if Tigray had validly declared a state of emergency (it has not, and could not do so consistently with the federal Constitution — see 9.2), the retroactive criminalisation in Article 83(2) would still be unlawful. There is no state of the world in which Article 83(2) is compatible with Ethiopia's constitutional and international obligations. It is the paradigm case of a measure that the rule of law absolutely forbids.

One qualification must be stated fairly, because objectivity requires it. Article 15(1) of the ICCPR and Article 15(2) preserve the prosecution of acts that were criminal "under national or international law" when committed. Genocide and war crimes (Articles 46–47) were already crimes under international law and under the federal Criminal Code in November 2020; prosecuting them for conduct since 2020 is therefore not, in itself, a retroactivity violation, provided the definitions applied are those that existed at the time.[94] But that saving does not extend to the many offences in Articles 35–45 and 48, and to Article 31(6), which are creatures of this Proclamation and had no equivalent when the conduct occurred; nor does it save the Proclamation's heavier penalties where the pre-existing offence carried a lighter one. For those offences and penalties, Article 83(2) is an unqualified violation of the non-derogable rule.

Finding: Article 83(2) violates Article 22 of the FDRE Constitution and the non-derogable Article 15 of the ICCPR, save only to the extent it applies genuinely pre-existing international crimes (genocide, war crimes) under their then-existing definitions. Recommended cure: repeal Article 83(2) in its entirety; prosecute atrocity crimes committed since 2020 under the law in force at the time (the federal Criminal Code and international law), before courts competent to try them.

9.2 De facto versus de jure emergency: the cumulative effect against the absence of an Article 93 declaration

Taken individually, several of the Proclamation's enforcement powers might be defended as responses to an emergency. Taken together, they constitute an emergency regime in substance while lacking one in form. The Proclamation combines: warrantless arrest and search on executive command (Articles 76–77); categorical denial of bail, including for fine-only offences (Article 65); trial in absentia on newspaper notice (Article 68); anonymous witnesses and closed hearings with admission of untested statements (Article 70); a conviction-contingent informant reward (Article 78); reversed burdens of proof (Articles 31(5), 49(9)); executive designation of terrorist organisations (Article 52(8)); executive definition of crimes and creation of army courts (Article 6(7)); and a dramatic expansion of capital offences (seventeen articles). This is the architecture of emergency rule.[95]

Ethiopian constitutional law provides a specific, and exclusive, route for emergency measures. Article 93 of the FDRE Constitution governs the declaration of a state of emergency: it specifies who may declare one (the Council of Ministers, with approval of the House of Peoples' Representatives, or a state government in respect of a natural disaster or epidemic), requires legislative approval and time limits, mandates the establishment of a State of Emergency Inquiry Board, and — critically — provides that certain rights may never be suspended even during an emergency.[96]

[94] ICCPR (n 3) art 15(2) (nothing shall prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognised by the community of nations); General Comment No 29 (n 62) para 7.
[95] Proclamation 366/2026 (n 4) arts 6(7), 31(5), 49(9), 52(8), 65, 68, 70, 76–78, and the capital provisions enumerated at ch 6.3.
[96] FDRE Constitution (n 5) art 93 (declaration, duration, approval, and the State of Emergency Inquiry Board); art 93(4)(c) lists the non-suspendable provisions, including arts 1, 18, 25 and 39(1)–(2).

Two conclusions follow. First, the Proclamation has adopted emergency-type powers without invoking Article 93 at all: there is no declaration, no time limit, no legislative approval as an emergency measure, and no Inquiry Board. It is emergency rule without the discipline, temporal limits, or oversight that the Constitution attaches to emergency rule. A permanent statute cannot be used to install, on an open-ended basis, powers that the Constitution permits only temporarily and under supervision.

Second, and more fundamentally, even a valid Article 93 declaration could not save the core defects identified in this assessment. The non-suspendable provisions of Article 93(4)(c), read with the non-derogable rights of Article 4(2) of the ICCPR, place beyond the reach of any emergency: the prohibition on retroactive criminal law (Article 15 ICCPR — hence Article 83(2) can never be valid); the right to life and the "most serious crimes" limit on the death penalty (Article 6); the prohibition of torture and inhuman punishment (Article 7); freedom of conscience (Article 18); and the recognition of everyone as a person before the law (Article 16). The Proclamation trespasses on several of these. Its defects are therefore not defects of procedure that a declaration would remedy; they are substantive breaches of rights that no emergency can touch.[97]

Finding: the Proclamation constitutes a de facto emergency regime enacted outside the Article 93 framework and without its safeguards; and its central breaches (retroactivity, non-individualised capital punishment, warrantless deprivation of liberty affecting non-derogable guarantees) could not be cured even by a valid emergency declaration. Recommended cure: any genuinely necessary emergency measures must be pursued through the Article 93 mechanism, time-limited and supervised; the non-derogable breaches must be removed from the statute altogether.

[97]FDRE Constitution (n 5) art 93(4)(c); ICCPR (n 3) art 4(2); General Comment No 29 (n 62) paras 7 and 11–16 (elements of the Covenant that cannot be subject to lawful derogation, including the non-retroactivity guarantee and the fundamental requirements of fair trial necessary to protect non-derogable rights).

9.3 The Cumulative-Effect Doctrine and the Aggregate Erosion of Fair-Trial Guarantees

A human rights assessment cannot confine itself to testing each provision in isolation. International supervisory bodies have repeatedly held that the compatibility of a criminal-justice regime must be judged by the aggregate effect of its component parts on the individual defendant. The Human Rights Committee, in its jurisprudence on article 14 of the ICCPR, treats the fair-trial guarantee as an integrated whole: a proceeding may satisfy each discrete requirement yet still fail the overarching standard of fairness where the combined weight of individually tolerable restrictions deprives the accused of a genuine opportunity to defend themselves.[98]

Applied to Proclamation No. 366/2026, this doctrine is decisive. A defendant charged under the security chapter may simultaneously face: categorical denial of bail under article 65; the possibility of trial in absentia on the strength of a single newspaper notice under article 68; conviction on anonymous and untested witness statements under article 70; arrest and search conducted without prior judicial warrant under articles 76 and 77; a reversed burden of proof under articles 31(5) and 49(9); a statutory sentencing floor that forbids the court from taking mitigating circumstances into account under article 67(2); and, on conviction, a capital sentence. Each of these features, considered alone, might in some narrowly drawn form survive scrutiny. Taken together, they describe a process in which the accused may be detained without release, tried without presence, convicted on evidence they cannot test, and sentenced to death without individualised mitigation.

The concern is not hypothetical. The provisions are designed to operate together and are addressed to the same categories of defendant. Their cumulative operation transfers the effective determination of guilt from the trial court to the prosecuting and executive authorities who control the charge, the evidence, and the venue. This is the precise mischief that the integrated reading of article 14 exists to prevent, and it is aggravated where the ultimate penalty is irreversible.

Comparison with lawful states of emergency

It is instructive to contrast the Proclamation with the architecture of a lawful derogation. Under article 4 of the ICCPR and article 93 of the FDRE Constitution, extraordinary measures are permissible only where they are formally proclaimed, strictly required by the exigencies of the situation, limited in time, subject to legislative and international notification, and confined to rights that are not otherwise non-derogable. The Proclamation reproduces the substance of emergency powers — suspension of ordinary liberty guarantees, expanded search and arrest, restricted release — but does so as permanent ordinary criminal law, without any of the procedural and temporal safeguards that make emergency derogation lawful.[99]

The result is a regime that claims the powers of an emergency while accepting none of its disciplines. This assessment therefore finds that the cumulative operation of the enforcement chapter constitutes a de facto emergency regime instituted without a de jure declaration, and that this is incompatible with both the constitutional emergency framework and the derogation regime of the Covenant.

[98]UN Human Rights Committee, 'General Comment No 32: Article 14, Right to Equality before Courts and Tribunals and to a Fair Trial' (2007) UN Doc CCPR/C/GC/32, paras 3–4 (fair trial as an integrated guarantee).
[99]ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 4; FDRE Constitution (Proclamation No 1/1995) art 93; UN Human Rights Committee, 'General Comment No 29: States of Emergency (Article 4)' (2001) UN Doc CCPR/C/21/Rev.1/Add.11.

9.4 Separation of Powers and the Concentration of Penal Authority in the Executive

A recurring structural feature of the Proclamation is the transfer of functions ordinarily reserved to the legislature or the judiciary into the hands of the executive. Article 6(7) delegates to executive regulation the definition of crimes and the establishment of courts for the Tigray Army; article 6(4) vests licensing and revocation of media in an executive authority; article 52(8) confers on the Council the power to designate terrorist organisations; and articles 76 and 77 place the decision to arrest and search under executive police command rather than prior judicial authorisation.

Each of these delegations offends the principle, common to the FDRE Constitution and to international fair-trial standards, that the creation of criminal liability and the adjudication of guilt are functions that must be exercised by, respectively, a representative legislature and an independent and impartial tribunal established by law. The concern is structural rather than merely procedural: where the same authority that identifies the enemy also defines the crime, licenses the press, designates the proscribed organisation, and commands the arresting officers, the institutional separation that protects the individual against arbitrary power is dissolved.[100]

This assessment does not question the legitimacy of the regional authorities' interest in security. It observes only that the chosen legislative technique — governance of penal and adjudicative functions by executive discretion — is the technique least compatible with the rule of law, and that the same protective aims could be pursued through ordinary, judicially supervised means.

PART IV — CONCLUSION AND RECOMMENDATIONS

10 Findings and Recommendations

This concluding Part draws the assessment together in three forms: a summary matrix rating the key articles against the applicable benchmarks (10.1); recommended statutory amendments to cure the defects (10.2); and institutional recommendations directed to the bodies capable of acting on them (10.3). The overarching conclusion is stated first.

Overarching conclusion. HRF-Ethiopia does not doubt the reality of the threats to the people of Tigray, nor the legitimacy of the aim of protecting their existence and security. But Proclamation No. 366/2026, as drafted, pursues that aim through means that in numerous respects cannot be reconciled with the FDRE Constitution, the ICCPR, and the African Charter. The gravest defects — retroactive criminalisation reaching back to 2020, the proliferation of the death penalty (including for non-lethal conduct and in mandatory form), the systematic removal of pre-trial and fair-trial protections, and the criminalisation of protected expression — are not marginal drafting flaws. They go to the foundations of the rule of law, and several touch rights that are non-derogable even in a declared emergency. The Proclamation requires substantial amendment before it can be considered compliant.

[100] ICCPR, art 14(1) ('competent, independent and impartial tribunal established by law'); UN Human Rights Committee, General Comment No 32 (n above) paras 19–22 (independence of the judiciary and the requirement that tribunals be established by law).

10.1 Summary matrix: compatibility ratings of key articles against the FDRE Constitution, ICCPR, and ACHPR

The matrix below records HRF-Ethiopia's compatibility rating for each key provision. "High" denotes a serious incompatibility requiring repeal or substantial redrafting; "Medium" denotes a significant concern curable by amendment; "Compatible" denotes a provision that conforms to, or advances, human rights standards. Ratings are explained in the chapters cross-referenced in the body of this assessment.

Article	Subject	Rating	Principal benchmark breached
83(2)	Retroactive criminal law (2020)	High	FDRE art 22; ICCPR art 15 (non-derogable)
2(13),(18)	Vague 'enemy' / 'crime against existence'	High	Legality; FDRE art 22; ICCPR arts 15, 19
4(1)	Universal personal jurisdiction	High	Federal competence; jurisdiction in int'l law
6(4)	Executive media licensing/revocation	High	FDRE art 29; ICCPR art 19
6(7)	Crimes & courts by executive regulation	High	Legality; ICCPR art 14(1); FDRE art 78
17, 18	'Dishonour'/obstruction speech offences	High	FDRE art 29; ICCPR art 19
21, 22	'False rumours' / distrust offences	High	ICCPR art 19; GC 34
29, 30	Death for infrastructure/property	High	ICCPR art 6(2) ('most serious crimes')
31–34	Disproportionate economic sentencing	Medium	Proportionality; ICCPR art 7
31(5), 49(9)	Reversed burdens of proof	High	FDRE art 20(3); ICCPR art 14(2)
46, 47	Regional genocide/war-crimes definitions	Medium	Genocide Convention; Rome Statute; art 55(5)
49, 50, 51, 54	Death for non-lethal / mandatory death	High	ICCPR art 6(2), (1); GC 36
50(1)	Resistance-based rape definition	Medium	Maputo Protocol art 4; survivor standards
52(8)	Executive terrorist designation	High	ICCPR arts 14, 2(3); legality
65	Categorical bail denial (incl. fine-only)	High	FDRE art 19(6); ICCPR art 9(3)
67(2)	Statutory floors barring mitigation	Medium	Individualised sentencing; GC 36
68	Trial in absentia on newspaper notice	High	ICCPR art 14; Mbenge v Zaire
70	Anonymous witnesses; untested statements	Medium	ICCPR art 14(3)(e); 'sole or decisive' rule
76, 77	Warrantless arrest/search (executive)	High	FDRE arts 17, 19, 26; ICCPR arts 9, 17
78	Conviction-contingent informant reward	Medium	Fair trial; reliability of evidence
Capital total	17 articles authorising death	High	ICCPR art 6; global restriction trend
69(4)	Counsel at preliminary investigation	Compatible	Compatible — welcome (FDRE art 20(5))
66(2)	Suspension pending appeal (grave cases)	Compatible	Compatible — welcome (GC 36)
72(2)	Presidential commutation of death	Compatible	Compatible — welcome (ICCPR art 6(4))

The distribution of ratings — a preponderance of high-risk findings concentrated in the definitional, capital-punishment, and procedural provisions — indicates that the defects are systemic rather than

isolated, and that a comprehensive amendment (rather than the correction of a few provisions) is required.

10.2 Recommended statutory amendments: legislative redrafts to cure vagueness and prevent arbitrary enforcement

HRF-Ethiopia recommends the following amendments, listed in order of priority. They are drafted to preserve the Proclamation's legitimate protective aims while removing the features that render it non-compliant.

- **Repeal Article 83(2) in its entirety.** No criminal provision of the Proclamation should apply to conduct before its entry into force. Atrocity crimes committed since 2020 should be prosecuted under the law in force at the time (the federal Criminal Code and international law), before competent courts. This is the single most urgent amendment.
- **Confine the death penalty to intentional killing, and abolish mandatory death sentences.** Remove capital punishment from Articles 29, 30, 36(2), 39, 40, 44, 45(3), 49, 50(3), 51(2), 54(3), and 60(3); delete the mandatory death sentence in Article 49(8); and adopt a moratorium pending consideration of the Second Optional Protocol to the ICCPR.
- **Cure the definitional vagueness.** Redraft Article 2(13) to confine 'enemy' to an entity engaged in or materially supporting armed hostilities; delete 'psychological' and 'indirect national' harm; and delete the 'socio-economic life / history / heritage' limbs of Article 2(18).
- **Repeal or narrow the speech offences.** Repeal Article 18 (dishonouring the struggle) and Article 22 (false rumours creating distrust); confine Article 17 and Article 21 to direct and intentional incitement to imminent violence; and remove licence revocation as a criminal sanction.
- **Restore judicial control of liberty and privacy.** Repeal the categorical bail denials in Article 65 (and especially Article 65(1)); restore the requirement of a judicial warrant in Articles 76–77 save for genuine hot pursuit or imminent risk; and guarantee production before a court within forty-eight hours per Article 19(3) of the Constitution.
- **Reform the trial-in-absentia and evidence rules.** Amend Article 68 to require genuine attempts at personal service and an unconditional right to retrial on the merits; amend Article 70 to prohibit conviction based solely or decisively on anonymous or untested evidence, with counterbalancing safeguards; and repeal the conviction-contingent reward in Article 78.
- **Restore individualised sentencing and the presumption of innocence.** Amend Article 67(2) to permit the court to sentence below the statutory minimum for reasons stated on the record; and recast the presumptions in Articles 31(5) and 49(9) as evidential burdens only.
- **Align the sexual-violence and atrocity-crime provisions with international standards.** Replace the resistance-based rape definition in Article 50(1) with a consent-based definition per the Maputo Protocol; and conform the genocide and war-crimes definitions in Articles 46–47 to the Genocide Convention and Rome Statute (removing 'political opinion' from the protected groups).
- **Resolve the competence and jurisdiction questions.** Confine the Proclamation to matters not specifically covered by federal penal legislation (Article 55(5)); remove the assertion of universal jurisdiction in Article 4(1) for ordinary offences; and provide that constitutional questions may reach the federal Council of Constitutional Inquiry and House of Federation notwithstanding Article 64(7).
- **Introduce a conscience exemption and legal aid.** Add a conscientious-objection route to non-combatant service under Articles 5 and 8; and provide legal aid at public expense under Article 69(4) where the accused cannot afford counsel.

10.3 Institutional recommendations: actions for the EHRC, regional judiciary, federal oversight bodies, and AU mechanisms

To the National Regional Government and Council of Tigray

Suspend the operation of Article 83(2) and of the capital provisions pending review, and initiate the amendments recommended at 10.2. Pending amendment, issue implementing regulations and prosecution guidelines that construe every provision consistently with the FDRE Constitution and the ICCPR, and that in particular preclude retroactive charging, categorical bail denial for fine-only offences, and the seeking of the death penalty for non-lethal conduct.

To the Ethiopian Human Rights Commission (EHRC)

Exercise the Commission's mandate to review the Proclamation for conformity with the Constitution and Ethiopia's treaty obligations, to monitor its application, and to report publicly. The EHRC is well placed to convene the regional and federal authorities around a compliant redraft and to monitor detention, bail, and capital-case practice under the statute.[101]

To the regional judiciary and the Constitutional Interpretation Commission

Apply the Article 9(1) supremacy rule directly: decline to give effect to any provision incompatible with the Constitution, read down vague offences to their narrowest defensible meaning, refuse to convict on retroactive charges, and insist on individualised bail and sentencing determinations notwithstanding the statutory language. Refer genuine constitutional questions upward rather than treating Article 64(7) as foreclosing federal review.

To federal oversight bodies (House of Federation, Council of Constitutional Inquiry, Ministry of Justice)

Assess the Proclamation for conformity with the federal allocation of penal competence (Article 55(5)) and for consistency with the Pretoria Agreement's commitments to the restoration of constitutional order and the protection of human rights. Engage the regional authorities cooperatively, consistent with the constitutional order and the peace process, to secure a compliant instrument rather than a confrontation that would serve no rights-holder.

To African Union human rights mechanisms

The African Commission on Human and Peoples' Rights and its Special Rapporteurs (on freedom of expression, on prisons and conditions of detention, and on the rights of women) are invited to take note of the Proclamation, to engage the relevant Ethiopian authorities under the Commission's promotional and protective mandate, and to offer technical assistance on bringing the instrument into conformity with the African Charter, the Maputo Protocol, and the Kampala Convention.[102]

Closing statement

HRF-Ethiopia offers this assessment in a spirit of constructive engagement and strict impartiality. It criticises a legal instrument, not the people or the cause in whose name it was enacted, and it holds the same rule-of-law standards to every authority exercising power over the people of Tigray. The protection of a population and the protection of that population's rights are not in competition; a security law that sacrifices the second in the name of the first ultimately secures neither. The

[101] Ethiopian Human Rights Commission Establishment Proclamation No 210/2000 (as amended by Proclamation No 1224/2020), conferring on the Commission the mandate to ensure that laws, directives, and practices conform with human rights standards and to investigate violations.
[102] African Charter (n 3) arts 30, 45 and 62 (the Commission's promotional and protective mandate and the State reporting obligation); Maputo Protocol (n 11); Kampala Convention (n 12).

amendments recommended here would allow the legitimate protective aims of Proclamation No. 366/2026 to be pursued through means that the Constitution, the Covenant, and the Charter permit — and would thereby strengthen, rather than weaken, the lawful foundations of the people of Tigray's security.

— End of Assessment —

10.2A Detailed Provision-by-Provision Redraft Schedule

The following schedule translates the findings of Parts II and III into concrete drafting instructions. For each provision of principal concern it states the defect identified in the assessment and the minimum amendment required to bring the provision into conformity with the FDRE Constitution and Ethiopia's treaty obligations. The schedule is not exhaustive; it addresses the provisions whose incompatibility is most serious or most readily curable.

Provision	Defect identified	Recommended amendment
Art 83(2)	Retroactive application of arts 31(6) and 35–48 to 3 Nov 2020.	Delete article 83(2) in its entirety. Prosecution of conduct predating entry into force must proceed, if at all, under the law in force at the time of the conduct.
Art 2(13)	'Enemy' defined to include 'psychological', 'economic' and 'national' harm.	Replace open-textured harm categories with an exhaustive list of defined conduct; require an intent element and a direct nexus to an internationally cognisable security interest.
Art 2(18)	'Crime against existence/security' reaches 'socio-economic life', 'history', 'heritage'.	Narrow to conduct involving violence or a concrete and imminent threat to persons or essential state functions; expressly exclude expression, scholarship and non-violent economic activity.
Art 4(1)	Universal personal jurisdiction over any nationality, in or outside Tigray.	Confine jurisdiction to territory and to recognised jurisdictional bases; remove the extraterritorial reach over foreign nationals abroad, which lies outside regional competence.
Arts 17, 18, 21, 22	'Obstruction', 'dishonouring the struggle', 'false rumours' offences.	Repeal or recast to criminalise only incitement to imminent violence, applying the Rabat Plan six-part threshold; decriminalise defamation of institutions and 'false news'.
Arts 29, 30, 49, 50, 51, 54	Death penalty for non-lethal / property / economic conduct.	Restrict capital eligibility to crimes involving intentional killing; remove the death penalty from all offences not meeting the 'most serious crimes' threshold.
Art 49(8)	Mandatory death sentence where death results.	Delete the mandatory formulation; make any capital sentence discretionary and subject to individualised mitigation and full appellate review.
Arts 31(5), 49(9)	Reversed burdens / presumptions of guilt.	Remove the reverse burdens; place the burden of proving every element, including unlawful acquisition and intent, on the prosecution to the criminal standard.
Art 65	Categorical bail denial, including fine-only offences.	Replace with individualised bail assessment; remove fine-only offences from the exclusion and provide a rebuttable presumption in favour of release.
Art 68	Trial in absentia on single-newspaper notice.	Require personal or reasonably calculated service, a genuine opportunity to appear, mandatory defence counsel in absentia, and an automatic right to retrial on surrender.
Art 70	Anonymous / untested witness statements; and restriction of defence exemption evidence to official sources (70(3)).	Prohibit conviction based solely or decisively on anonymous or untested evidence; require counterbalancing safeguards and judicial verification of identity; and amend 70(3) so the accused may prove non-participation by any relevant and reliable means.
Arts 76, 77	Warrantless arrest and search by executive command.	Require prior judicial warrant save in genuine exigency, with prompt (48-hour) judicial review of any warrantless action.
Art 6(4), 6(7), 52(8)	Executive control of media, crimes/courts, terrorist designation.	Transfer these functions to, respectively, an independent regulator, primary legislation, and a court; provide notice, reasons and judicial review of any designation.
Art 67(2)	Statutory sentencing floors barring mitigation.	Convert floors to non-binding guidelines; preserve full judicial discretion to impose a lesser sentence on reasoned grounds.

Adoption of these amendments would remove the gravest incompatibilities — retroactivity, disproportionate and mandatory capital punishment, definitional overbreadth, reversed burdens, and executive control of penal and adjudicative functions — while leaving intact the Proclamation's legitimate protective purpose and its compatible provisions.

10.4 Implementation, Monitoring and Reporting Framework

Legislative amendment is necessary but not sufficient. The assessment recommends that adoption of the amendments be accompanied by a monitoring framework capable of detecting arbitrary application in practice and of generating the disaggregated data on which credible human rights reporting depends.

Baseline and periodic reporting

- Establishment of a baseline record, within ninety days, of all charges, detentions, bail refusals, in absentia trials and capital sentences brought under the Proclamation since its entry into force on 1 June 2026.
- Quarterly public reporting by the responsible regional authority, disaggregated by offence, sex, age and status of the accused, and by outcome, in a form consistent with the reporting standards applied by national human rights institutions.
- Independent verification of that reporting by the Ethiopian Human Rights Commission, with a standing invitation to the African Commission's relevant Special Rapporteurs.

Indicators of arbitrary application

Consistent with the structural human rights indicator methodology (structure–process–outcome), the framework should track a defined set of process and outcome indicators: the proportion of detentions effected without prior warrant; the proportion of trials conducted in absentia; the proportion of convictions resting on anonymous or untested evidence; the ratio of capital charges to capital offences involving intentional killing; and the proportion of prosecutions relying on the definitional categories identified in this assessment as overbroad.[103]

Sunset and review

Any provision that departs from ordinary criminal procedure in the name of security should be subject to an express sunset clause and to mandatory legislative review at defined intervals, so that exceptional powers are periodically re-justified rather than becoming a permanent feature of the ordinary law.

[103]See OHCHR, 'Human Rights Indicators: A Guide to Measurement and Implementation' (HR/PUB/12/5, 2012), adopting the structure–process–outcome framework for measuring compliance.

ANNEX A — KEY PROVISIONS REPRODUCED, WITH COMPLIANCE COMMENTARY

This annex reproduces, in summary form, the provisions of principal concern and states in each case the benchmark engaged and the nature of the incompatibility. The paraphrase reflects the working English translation of the Proclamation; readers should consult the authoritative Tigrinya text for the operative wording.

Article 2(13) — Definition of 'enemy'

> *Defines 'enemy' to include any person or entity that causes, inter alia, 'psychological, economic or national harm' to the people of Tigray.*

Assessment: The inclusion of open-textured categories such as 'psychological' and 'national' harm, without objective limiting criteria, fails the requirement of lex certa. It permits designation of a person as an 'enemy' on the basis of speech, association, or economic conduct, and imports that designation into numerous substantive offences.

Article 2(18) — 'Crime against the existence, security and sovereignty'

> *Defines the core organising offence-category by reference to harm to, among other things, the 'socio-economic life', 'history' and 'heritage' of the people.*

Assessment: The breadth of the protected interests renders the outer boundary of criminal liability unforeseeable. Conduct such as historical scholarship, economic criticism, or cultural commentary could, on a literal reading, fall within scope.

Article 4(1) — Personal jurisdiction

> *Extends criminal jurisdiction to 'any person, of any nationality, whether within or outside Tigray'.*

Assessment: A sub-national unit's assertion of universal personal jurisdiction over foreign nationals abroad has no basis in the recognised bases of criminal jurisdiction in international law and exceeds the regional legislative competence delimited by article 55(5) of the FDRE Constitution.

Article 65 — Denial of bail

> *Excludes release on bail for enumerated offences, including certain fine-only offences (articles 8, 9, 16, 17).*

Assessment: Categorical, offence-based denial of release — extended even to offences punishable only by fine — is incompatible with the individualised assessment required by article 9(3) of the ICCPR and the presumption in favour of liberty.

Article 68 — Trial in absentia

> *Permits trial in the accused's absence following notice by a single publication in the Mekelle Tigray newspaper and a fifteen-day period.*

Assessment: Constructive notice by one regional newspaper cannot satisfy the requirement that an accused be informed of proceedings in a manner reasonably calculated to reach them, and undermines the right to be present and to defend in person.

Article 70 — Anonymous witnesses, closed hearings, and restricted defence evidence

> *Permits conviction on anonymous witness testimony and statements not tested in open court; and, in the corrected Article 70(3), admits evidence of non-participation in the national struggle only if certified by an official body.*

Assessment: Where an anonymous or untested statement is the sole or decisive basis of conviction, the restriction on confrontation is incompatible with article 14(3)(e) of the ICCPR absent counterbalancing safeguards; and confining proof of a defence to executive-certified sources offends equality of arms under article 14(1).

Article 83(2) — Retroactive application

> *Applies article 31(6) and articles 35–48 retroactively to 3 November 2020.*

Assessment: Retroactive extension of criminal liability and penalties is prohibited absolutely by article 22 of the FDRE Constitution and by article 15 of the ICCPR, a guarantee from which no derogation is permitted even in a proclaimed emergency.

ANNEX B — LEGISLATIVE AND FACTUAL CHRONOLOGY

The following chronology situates the Proclamation within its legal and factual context. It is provided for orientation and does not constitute a finding of fact on any contested matter.

3 Nov 2020	Outbreak of the armed conflict in northern Ethiopia — the date to which article 83(2) purports to apply articles 35–48 retroactively.
11 Jun 1993	Ethiopia's accession to the ICCPR and ICESCR takes effect, binding all organs of state including regional authorities.
2 Nov 2022	Conclusion of the Pretoria Cessation of Hostilities Agreement between the Federal Government and the TPLF, cited in the Proclamation's legislative context.
1 Jun 2026	Entry into force of Proclamation No. 366/2026 under article 83(1).
Ongoing	Federal–regional constitutional tension over the allocation of penal and security competence, forming the backdrop against which this assessment is issued.

ANNEX C — INSTRUMENTS, STANDARDS AND AUTHORITIES RELIED UPON

This annex lists the principal legal instruments, interpretive standards and judicial authorities on which the foregoing assessment draws. Full citations appear in the footnotes at first mention.

Domestic law

- Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 (esp. arts 9, 13, 15, 17, 19, 20, 22, 26, 28, 29, 39, 55(5), 78, 93).
- Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004.
- Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020.
- Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000, as amended by Proclamation No. 1224/2020.

International and regional treaties

- International Covenant on Civil and Political Rights (1966), esp. arts 4, 6, 7, 9, 14, 15, 18, 19.
- International Covenant on Economic, Social and Cultural Rights (1966).
- African Charter on Human and Peoples' Rights (1981), esp. arts 4, 6, 7, 9.
- Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol, 2003), esp. arts 4, 11.
- AU Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention, 2009).
- Convention on the Prevention and Punishment of the Crime of Genocide (1948).
- Rome Statute of the International Criminal Court (1998).
- Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (1989).
- Vienna Convention on the Law of Treaties (1969).

Authoritative interpretive and soft-law standards

- UN Human Rights Committee, General Comments Nos 22, 27, 29, 32, 34, 35 and 36.
- African Commission, Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019).
- UN Human Rights Council, Rabat Plan of Action on the prohibition of advocacy of hatred (2013).
- UN Basic Principles on the Independence of the Judiciary (1985).

Case law and communications

- Sunday Times v United Kingdom (1979) 2 EHRR 245.
- Salabiaku v France (1988) 13 EHRR 379.
- Mbenge v Zaire, Communication No 16/1977, UN Human Rights Committee.
- Doorson v Netherlands (1996) 22 EHRR 330; Al-Khawaja and Tahery v United Kingdom (2012) 54 EHRR 23.
- Prosecutor v Kunarac (ICTY, 2001).

- Konaté v Burkina Faso (African Court, 2014).
- Attorney General v Susan Kigula (Uganda, 2009); Kafantayeni v Attorney General (Malawi, 2007); Muruatetu v Republic (Kenya, 2017).
- Constitutional Rights Project v Nigeria; Media Rights Agenda v Nigeria (African Commission).

ABOUT THIS ASSESSMENT

Human Rights First–Ethiopia (HRF-Ethiopia) is an independent, registered civil society organisation engaged in human rights documentation, legal analysis, and institutional capacity-building. It conducts statutory human rights compliance assessments as part of its mandate to promote the conformity of law and practice in Ethiopia with the FDRE Constitution and the international and regional human rights instruments by which Ethiopia is bound.

This assessment was prepared as an independent, objective and impartial analysis of Proclamation No. 366/2026. It reflects the state of the law and the working English translation of the Proclamation available at the time of writing. Its findings are provisional in respect of any provision whose meaning depends on the authoritative Tigrinya text, and it should be read together with that text. HRF-Ethiopia welcomes engagement from the regional and federal authorities, national human rights institutions, and regional and international mechanisms on the findings and recommendations set out above.

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