The Legal Framework for Freedom of Expression in Ethiopia

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1. Acknowledgments

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2. Introduction

On going to Press the Ethiopian Government made public a draft press law. ARTICLE 19 is releasing this report on the current legal framework for freedom of expression in Ethiopia as we believe it will inform the ongoing dialogue on the new law. We will be releasing a full analysis of the proposed new law in the near future.

The editors-in –chief of nine private newspapers in Ethiopia issued the following joint statement on the draft press law:

> A spectre hovers over the free press - the spectre of the draft press law that could end the life of the free press (…) We live in the age of information, and where information is power. Under the situation press freedom is a key factor. In light of this and with the vision that Ethiopia would attain accelerated development, we had expected that a condition favourable for the development of the free press would be created through the enforcement of a new improved press law. We had wished that: the gap between the government and the free press would be narrowed; that the mistrust and partisanship between the government and free press would be removed and that, there would be closer relations between the two presses. We had hoped that the relations between the government and the free press would be improved and that they would both have the opportunity to work closely together and cooperate in many if not in all areas of endeavour. We had hoped that Ethiopian journalists would, in addition to receiving and disseminating information, be engaged in more in-depth investigative reporting. To our disappointment, however, the draft Press Law that was disseminated by the ministry of Information on January 15/03 had shattered our hopes and aspirations for a better future. The draft press law has in fact filled us all members of the free press with shock and consternation. It has greatly threatened the very existence of the free press. We believe that this draft proclamation:
>
> - highly restricts the activities of the free press, which has been serving as an effective mechanism for the development of democracy in our country ;
> - infringes upon peoples' constitutional rights of access to information.
>
> We call on the government to realize the situation and issue a revised law that would help develop the free press rather that repress it. (…)
>
> A truly draconian draft press law the ministry of Information has recently made public a very intimidating draft press law which jeopardizes the freedom of the press in this country. After the government, particularly Prime minister Meles Zenawi, repeatedly said that a meeting would be convened aimed at identifying and providing solutions to the problems of the press in Ethiopia, many journalists had hoped that things would get better through the introduction of an improved press law, the creation of a forum whereby the private press and the government would nurture trust and work in cooperation with each other. The feeling engendered by the draft press law, however, is not one of hope but of disappointment - disappointment due to the death sentence passed on the freedom of the press in Ethiopia.
>
> The content of the draft press law is … alarming. It is more draconian than the press law in force and sets back the strides made so far in terms of the freedom of the press in Ethiopia. On top of further circumscribing the already limited access of journalists under the present press law it also prohibits journalists from disseminating the meagre information they obtained in a manner beneficial to the public.
>
> What's even more surprising is that the draft press law provides that any press release sent by representatives of foreign governments or international organizations in Ethiopia to the press regarding their activities should be deemed as an advertisement. This undoubtedly puts the sanity of the drafter in question for such a proviso has no logical ground. That's why we strongly demand that the government review the process of how the draft law was prepared. The consideration behind the draft press law is to lay the legal ground to make the private press

> ineffectual and subservient to the government, not to make more information available to the Ethiopian public or to promote freedom of the press. It is a draft borne out of anger and the wish to exact revenge. We are not arguing here that the press has absolute freedom or that it shouldn't be regulated. A press which incites hate, engages in defamation or exhibits other unethical conducts should be held accountable for its acts. But the government shouldn't meddle in what doesn't concern it by allocating to itself the task of preparing a code of conduct for journalists and publishers or setting up a press council which properly are the province of the press itself. The Ministry of Information often raises in its defence the tired and shallow argument that the freedom of the press has limits. But it fails to mention that the limits themselves have limits. The danger of the draft press law is not only to put the very existence of the private press in question or make it a public relations agent of the government. It makes the country and the public as well as the government itself the laughingstock of the world. Therefore, we strongly urge the government to abandon its intention to pass the draft into law for the benefit of everyone concerned.

This Report presents an independent assessment of the current legal framework for freedom of expression in Ethiopia. Although it is not possible for an assessment of this nature to be completely comprehensive, this Report identifies the key areas of concern in relation to freedom of expression. The Report seeks to provide guidance and recommendations for consideration by the government of Ethiopia and other concerned parties with a view to prospective law reform or the enactment of new laws.

The critical element of the assessment is the evaluation of the legal framework for freedom of expression and media freedom against relevant international and comparative human rights standards. The Report begins by setting out relevant international standards and proceeds to examine selected areas of the Ethiopian legal framework against the relevant international and comparative human rights standards.

The Report indicates that a number of provisions in the Ethiopian legal framework are in breach of relevant international standards relating to freedom of expression. The recommendations therefore call upon the government of Ethiopia to take appropriate legislative and other measures to comply with its international and constitutional obligations to give effect to the right to freedom of expression and media freedom.

3. International Standards on the Right to Freedom of Expression

3.1 The Guarantee of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR),[1] guarantees the right to freedom of expression in the following terms:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly resolution, is not directly legally binding on States as such. However, many of its provisions, including Article 19, constitute general principles of law and are widely held as having acquired legal force as customary international law since its adoption in 1948.[2] In addition, the UDHR is very important as an authoritative guide to human rights by the General Assembly and it is regarded by the Assembly and some jurists as a part of the 'law of the United Nations'.[3]

The *International Covenant on Civil and Political Rights* (ICCPR), which Ethiopia ratified on 11 June 1993, imposes formal legal obligations on State parties to respect its provisions, and elaborates on many rights included in the UDHR.[4] Article 19 of the ICCPR guarantees the right to freedom of expression in the following terms:

> (1) Everyone shall have the right to freedom of opinion.
> (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

The *African Charter on Human and Peoples' Rights*,[5] which Ethiopia ratified on 15 June 1998, guarantees the right to freedom of expression in Article 9 as follows:

> (1) Every individual shall have the right to receive information.
> (2) Every individual shall have the right to express and disseminate his opinions within the law.

The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, from 17th to 23rd October 2002, adopted the *Declaration of Principles on Freedom of*

[1] UN General Assembly Resolution 217A (III), 10 December 1948.
[2] M. Akehurst, "Custom as a Source of International Law," 48 *BYBIL*, 1974-1975, pp.1-53.
[3] I. Brownlie and GS Goodwin-Gill, *Basic Documents on Human Rights, 4th Edition* (Oxford: Oxford University Press, 2002).
[4] UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976.
[5] Adopted 17 June 1981, in force 21 October 1986.

Expression in Africa.[6] The preamble reaffirms, "the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms…" and the first Article of the Declaration states, under The Guarantee of Freedom of Expression:

> (1) Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
> (2) Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

The Declaration elaborates a number of principles and standards on freedom of expression issues and provides: "States Parties to the *African Charter on Human and Peoples' Rights* should make every effort to give practical effect to these principles."[7]

Freedom of expression is also protected by other regional human rights instruments; Article 10 of the *European Convention on Human Rights* (ECHR),[8] Article 13 of the *American Convention on Human Rights*[9] and Article 11 of the *Charter of Fundamental Rights of the European Union*[10] all guarantee the right to freedom of expression in terms that are generally similar to the ICCPR.

The human rights instruments noted above, as well as the jurisprudence of international judicial bodies and of courts in many democratic jurisdictions, affirm the fundamental importance of freedom of expression as a key human right underpinning democracy.

The European Court of Human Rights, for example, has repeatedly stated that:

> Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man … it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.[11]

3.2 Freedom and Pluralism of the Media

[6] *Declaration of Principles on Freedom of Expression in Africa*, African Commission on Human and Peoples' Rights, 32nd Session, 17-23 October 2002: Banjul, The Gambia.
[7] *Ibid.*, Article 16.
[8] Adopted 4 November 1950, in force 3 September 1953.
[9] Adopted 22 November 1969, in force 18 July 1978.
[10] Proclaimed on 7 December 2000. Also referred to as *The European Union Charter of Fundamental Rights*.
[11] *Handyside v. United Kingdom*, 7 December 1976, 1 EHRR 737, para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. Indeed, the right to freedom of expression and peoples' right to seek and receive information can not have a meaningful application unless the media plays its key role in a democratic society.

The *Declaration of Principles on Freedom of Expression in Africa*, in its preamble, recognises the key role media and other means of communication play, "in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy."

An important aspect of States' positive obligations to promote freedom of expression and of the media is the need to promote pluralism within and to ensure equal access of all to the media. Accordingly, the *Declaration of Principles on Freedom of Expression in Africa* also recognises the obligation of the authorities to take positive measures with a view to promoting diversity, which includes, among other things:

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.[12]

This means that States are required not only to refrain from interfering with rights but also take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know. Article 14 of the Declaration also provides that, "States shall promote a general economic environment in which the media can flourish."

The principles on freedom and pluralism of the media are also recognised in the *European Union Charter of Fundamental Rights* and in the jurisprudence of the European Court of Human Rights and the Inter-America Court of Human Rights. The *European Union Charter of Fundamental Rights* specifically provides that, "freedom and pluralism of the media shall be respected."[13]

The Inter-American Court of Human Rights has stated: "It is the mass media that make the exercise of freedom of expression a reality." It further held that freedom of expression requires "the communication media [to be] potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media."[14]

[12] Note 6, Article 3.
[13] Note 9, Article 11(2).
[14] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

The European Court of Human Rights stated that it is incumbent on the media to impart information and ideas in all areas of public interest.[15] The Court has also stated: "[Imparting] information and ideas of general interest … cannot be successfully accomplished unless it is grounded in the principle of pluralism."[16]

Therefore, as the foregoing comparative human rights analysis indicates, the right to respect for freedom and pluralism of the media is fully recognised under international law.

3.3 Independence of Media Regulatory Bodies

Independence of media regulatory bodies is a vital condition for the promotion and protection of the right to freedom of expression. In order to ensure free flow of information and ideas, media regulatory bodies need sufficient protection against governmental interference, particularly of a political or economic nature. It is recognised under international law that media regulatory bodies should enjoy both organisational and operational autonomy. Ensuring organisational and operational independence is possible only where there is a legal requirement that appointment of members of the regulatory bodies be open, democratic and representative of society at large.

The *Declaration of Principles on Freedom of Expression in Africa* unequivocally affirms this principle in the following terms:

> (1) Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
> (2) The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
> (3) Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.[17]

Ensuring the independence of such regulatory bodies is a well-established principle and practice in developed democracies. A recommendation by the Council of Europe's Committee of Ministers, for example, recognises the need for specially appointed independent members for the regulatory authorities with expert knowledge in the field.[18] The recommendation goes on to note that member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities, which clearly affirms and protects their independence.[19]

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[15] See *The Observer and Guardian v. UK*, 26 November 1991, 14 EHRR 153, para. 59 and *The Sunday Times v. UK (II)*, 26 November 1991, 14 EHRR 229, para. 65.
[16] *Informationsverein Lentia and Others v. Austria*, 24 November 1993, 17 EHRR 93, para. 38.
[17] Note 5, Article 7.
[18] Recommendation R (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector, adopted on 20 December 2000.
[19] *Ibid.*, Guideline 1.

3.4 Freedom of Information

Freedom of information is an important component of the internationally guaranteed right to freedom of expression, which includes the right to seek and receive, as well as to impart, information and ideas of all kinds regardless of frontiers. The unequivocal importance of freedom of information was recognised during the first session of the United Nations General Assembly in 1946, which adopted Resolution No. 59(1) stating:

> Freedom of information is a fundamental human right and… the touchstone of all the freedoms to which the UN is consecrated.[20]

Its importance has also been stressed in a number of reports by the UN Special Rapporteur on Freedom of Opinion and Expression, as the following excerpt from his 1999 Report illustrates:

> [T]he Special Rapporteur expresses again his view, and emphasises, that everyone has the right to seek, receive and impart information and that this imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems - including film, microfiche, electronic capacities, video and photographs - subject only to such restrictions as referred to in article 19, paragraph 3, of the International Covenant on Civil and Political Rights.[21]

The *Declaration of Principles on Freedom of Expression in Africa* also affirms the principle that every one has a right to access information held by public bodies, subject only to clearly defined rules established by law. The Declaration also provides the following list of principles on how the right to access information should be guaranteed by law:

- everyone has the right to access information held by public bodies;
- everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
- public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
- no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
- secrecy laws shall be amended as necessary to comply with freedom of information principles.[22]

[20] 14 December 1946.
[21] Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1999/64, 29 January 1999, para. 12.
[22] Note 5, Article 4(2).

In Communication 141/94, *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria*,[23] the African Commission on Human and Peoples' Rights states:

> Freedom of expression is a basic human right, vital to an individual's personal development and political consciousness, and participation in the conduct of public affairs in his country. Under the African Charter, this right comprises the right to receive information and express opinion.[24]

The Commission has reiterated consistently the importance of freedom of information. In its Communications 147/95 and 149/96, *Sir Dawda K Jawara v. The Gambia*, the Commission noted that the, "intimidation and arrest or detention of journalists for articles published and questions asked…. constitute a violation of Article 9 and furthermore deprive not only [the] journalists of [their] rights to freely express and disseminate [their] opinions, but also the public, of the right to information."[25]

In The *State v. The Ivory Trumpet Publishing Co.*, the Nigerian High Court observed: "Freedom of speech is no doubt the very foundation of every democratic society for without free discussion particularly on political issues, no public education or enlightenment, so essential for the proper functioning and execution of the processes of responsible government is possible."[26]

3.5 Restrictions on Freedom of Expression

Although there are advocates who argue against any form of restriction on freedom of expression, under international law, freedom of expression is not absolute and may be subject to restrictions in accordance with law. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions, which any restriction on freedom of expression must meet:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 9(2) of the *African Charter on Human and Peoples' Rights* also foresees the possibility of restriction, providing: "Every individual shall have the right to express and disseminate his opinions within the law." Article 10(2) of the ECHR also recognises that freedom of expression may, in certain prescribed circumstances, be limited.

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[23] See *Compilation of Decisions of the African Commission, 1994-2001*, IHRDA, Banjul, p. 248, www.africaninstitute.org
[24] *Ibid.*, p. 253.
[25] *Ibid.*, p. 118.
[26] [1984] 5 WCLR 736.

In accordance with Article 19(3) of the ICCPR and the jurisprudence of the Human Rights Committee, the African Commission and the European Court of Human Rights, any restriction on freedom of expression must meet a strict three-part test. This test, which has been confirmed by these bodies,[27] requires that any restriction on freedom of expression: a) shall be prescribed by law, b) shall be to serve a legitimate aim and c) shall be necessary in a democratic society to secure the legitimate aim. International jurisprudence makes it clear that this test presents a high standard, which any interference must overcome. The European Court of Human Rights, for example, has stated:

> Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.[28]

The African Commission, interpreting Article 9(2), stated:

> According to Article 9 (2) of the Charter, dissemination of opinions may be restricted by law. This does not however mean that national law can set aside the right to express and disseminate one's opinions guaranteed at the international level; this would make the protection of the right to express one's opinion ineffective. To permit national law to take precedence over international law would defeat the purpose of codifying certain rights in international law and indeed, the whole essence of treaty making.[29]

The principle of the three-part test on any restriction on freedom of expression is also clearly and fully reaffirmed by the *Declaration of Principles on Freedom of Expression in Africa, which* stated:

> Any restriction on freedom of expression shall be provided by law, serve a legitimate interest and [must] be necessary in a democratic society.[30]

4. Background and History of Media Development

4.1 Country Background

Ethiopia has been hit by severe famine and war that have devastated the economy and stability of the country for many years.[31]

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[27] See *Mukong v. Cameroon*, Communication No. 458/1991, views adopted 21 July 1994 (UN Human Rights Committee) and *Goodwin v. United Kingdom*, 27 March 1996, 22 EHRR 123, paras. 28-37 (European Court of Human Rights).
[28] See, for example, *Thorgeirson v. Iceland*, 25 June 1992, EHRR 843, para. 63.
[29] Note 24, pp 253-4
[30] Note 5, Article 2(2).
[31] The literature in Ethiopia is rich. A recent work that covers the history from 1855-1974 is Bahiru Zewide, *A History of Modern Ethiopia, 1855-1974* (Athens: Ohio University Press, 1991). An older but still valuable work is Ullendrof Edward, *The Ethiopians: An Introduction to Country and People, 3rd*

More than 2000 years of imperial rule in Ethiopia ended when the last emperor and his monarchy was overthrown by a military coup d'état in 1974. The military junta, which later on came to be known as *The Dergue*, declared that the country should follow a Marxist-Leninist path and what followed was 17 years of repressive military rule. The revolutionary regime was consumed by a series of crises but most fundamentally by domestic political violence, the Eritrean insurgency, the uprising in *Tigray*, the war with neighbouring Somalia, drought and famine in the 1980's and finally the isolation of the government from its socialist allies following the wave of democratic reform in Eastern Europe and the former Soviet Union.

The revolutionary government was overthrown in May 1991 by a coalition of liberation movements and rebel forces under the umbrella of a political front called The Ethiopian People's Revolutionary Democratic Front (EPRDF). In July 1991, a National Conference established the Transitional Government of Ethiopia (TGE) and adopted a Transitional Period Charter to prepare necessary conditions for a democratic election and transition to democratic governance. The Charter recognised respect for individual human rights in accordance with the 1948 United Nation's Universal Declaration of Human Rights.

A new Constitution entered into force on 21 August 1995, replacing the Transitional Period Charter. The new Constitution established a federal State structure, consisting of nine ethnically based States (semi-autonomous administrative regions) and two self-governing administrations for the city of *Addis Ababa* (the capital city) and *Dire Dawa* (the second largest city in the eastern part of the country with a multi-ethnic settlement).

The Parliament is bicameral. The House of Federation consists of members chosen by State's (region's) councils and the House of People's Representatives consists of members elected by direct vote to serve a term of five years. The first election was held in 1995 and the second election was held in May 2000. In what international observers dubbed as a neither fair nor free election, EPRDF controls the majority of the parliament seats in both elections and has remained in power since 1991. Meles Zenawi, who is the Head of EPRDF, has been Prime Minister since 1995, a position that was confirmed once again following the last election in May 2000.

The population is estimated at around 65 million. According to the CIA World Fact Book 2002 report, there were an estimated 15.2 million radio receivers, 682,000 TV sets, 231,900 main telephone lines and 17,800 cellular phones in use at the end of 2000. There is only one TV station, with 24 repeaters, and 8 AM, 1 FM and 1 SW radio stations. The government has the sole Internet Service Provider with an estimated 20,000 users.[32]

Edition (London: Oxford University Press, 1973). Other valuable resources include Mulatu Wubneh and Yohannes Abate, *Ethiopia: Transition and Development in the Horn of Africa* (Colorado: Westview Press, 1988), O. Marina (ed.), *The Political Economy of Ethiopia.* (New York: Praeger, 1990), Richard Pankhrust, *A Social History of Ethiopia* (Addis Ababa: Institute of Ethiopian Studies, 1990) and P. Chris and E. Rosenfeld, *Historical Dictionary of Ethiopia* (New Jersey: Scarecrow Press, 1981).

[32] See: http://www.odci.gov/cia/publications/factbook/geos/et.html.

4.2 Overview of Media Development

The history of the media sector in Ethiopia dates back nearly a century. *Le Semeur d'Ethiopie* (1905–1911) and *Aimero* (1902-1903) are widely considered as the original newspapers in the country although some historical evidence suggests that the handwritten sheet produced by *Blatta Gebre Egziabhere* around 1900 probably preceded both *Le Semeur d'Ethiopie* and *Aimero* and may therefore be considered the first *Amharic* "newspaper" in the country.

Le Semeur d'Ethiopie and *Aimero* (literally translated to mean Intelligence) were followed by *Le Courier d'Ethiopie* (1913-1920) and *Yetwor Ware* (War News), which was issued from the Italian mission from 1916 to 1918. *Berhanena Selam* (Light and Peace) was founded in 1925 but folded in 1936 with the Italian invasion. *Addis Zemen* (New Era) begun circulating in 1941 followed by the English language daily, *Ethiopian Herald* that started in 1945.

Since then, there has been a gradual but progressive increase in the number of newspapers and it was reported that in 1970 there were six dailies and eleven weeklies. There has also been a proliferation of magazines, journals and other irregular interval publications since 1950, but little information on these publications is available.[33]

The first provisional radio station was inaugurated in 1933 in a contract signed with an Italian Company. The Italians handed over the installation in 1935 but retrieved it soon thereafter following the Italian invasion of Ethiopia in 1936. Short-wave broadcasting was resumed in 1953 and by 1970 *Radio Ethiopia* operated from three locations and broadcast in six languages. The World Federation of Lutheran Churches broadcaster, *Radio Voice of the Gospel*, begun in 1963.[34]

Ethiopian Radio, which now has both national and external services, broadcasts its programs in eight local languages and three foreign languages (English, French and Arabic). The Educational Media Agency, owned by Ministry of Education, broadcasts educational programs in 16 local languages and in the English language for secondary and high school students.

Television broadcasting in Ethiopia begun in the early 1960s. An educational TV broadcasting project was initiated in 1965, and by 1971 there were five daily programs covering a range of topics for students up to grade eight. It gradually expanded into adult education and to cover the whole of the country but in 1981, it went off the air for a few years for lack of maintenance, spare parts and adequate personnel. Although there has been a rapid growth of TV since the 1980's, radio remains the principal medium of communication for the government.[35]

Since 1991, *Ethiopian Television* (ETV) broadcasts its programs in three local languages and in English. ETV has recently started an additional channel, *TV Africa*, which currently is being

[33] C Prouty and E Rosenfeld, *Historical Dictionary of Ethiopia and Eritrea, 2nd Edition* (New Jersey: Scarecrow Press, 1994).
[34] Note 31.
[35] Note 31.

transmitted only to Addis Ababa and its environs. Foreign commercial satellite television is accessible through individual subscriptions.

Following the 1974 overthrow of the monarchy by a military junta, mass media institutions were reorganised as instruments of propaganda under the centralised control of the party and Ministry of Information. The media, operating under the then new Marxist-Leninist ideology, primarily served as a mouthpiece of the government and an instrument of propaganda for the new ideology. The military government imposed and implemented a harsh censorship rule, which was only abolished following the overthrow of the military government in May 1991.

With the coming into power of the new government in May 1991, it appeared that promoting respect for freedom of expression would be prioritised. This was manifested, first by the Transitional Period Charter, which provided respect for individual human rights at large and for freedom of expression in particular. The very first Article of the Charter states:

> Based on the Universal Declaration of Human Rights of the United Nations; adopted and proclaimed by the General Assembly by resolution 217 A(III) of Dec. 1948, individual human rights shall be respected fully, and without any limitation whatsoever. Particularly every individual shall have:
> a/ The freedom of conscience, expression, association and peaceful assembly;
> b/ The right to engage in unrestricted political activity and to organize political parties, provided the exercise of such right does not infringe upon the rights of others.[36]

This was soon followed by the Proclamation to Provide for the Determination of the Application of State Owned Mass Media.[37] This proclamation set standards for the use and application of the State-owned media by the government, new organisations (political or otherwise) and the public at large.

In October 1992, a Press Law was promulgated which continues to be in force.[38] The Press Law focuses primarily on the print media, leaving the allocation and utilisation of radio waves to be determined by a law that was promulgated in June 1999.

Since the promulgation of the Press Law, the print media sector of the country comprises of publications that are owned by private organisations, religious organisations, political organisations and the government. According to the most recent data, obtained from the Ministry of Information at the time of writing this report, from July 2001 to July 2002 (one Ethiopian fiscal year), a total of 235 print media outlets were registered at the Federal Ministry of Information, of which 205 were private newspapers, 14 were owned by religious organisations, 7 were owned by political organisations and 9 were owned by the government.

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[36] Part One: Article 1 of the Transitional Period Charter of Ethiopia, adopted on 22 July 1991(Negarit Gazeta 50th Year No. 1).
[37] Proclamation No. 6/1991, published on 3 October 1991 (Negarit Gazeta 51st Year No. 1).
[38] Proclamation No. 34/1992, published on 21 October 1992 (Negarit Gazeta 52nd Year No. 8).

The focus of these print media outlets varies from political, economic and social issues to sports, culture and art, trade and advertisement, children's recreation and religion. However, more than half of them focus on political, economic and social issues. Newspapers are available in three local languages and two foreign languages (English and Arabic). The majority are published in *Amharic*, the official language.

The Broadcasting Proclamation was promulgated in June 1999 and provided for the establishment of a Broadcasting Agency, vested with the power, among other things, to issue broadcasting licenses.[39] As at publication of this report, the Agency had still not issued any truly private broadcasting licenses. As a result, radio and television broadcasting remains a government monopoly.

A radio station, *Radio Fanna*, and a news agency, *Walta Information Centre*, both owned by the ruling party through a business corporation, Mega Net Company, are the only nominally private radio and news agency in the country. Many are sceptical about accepting *Radio Fanna* and *Walta Information Centre* as truly private agencies as both are directly or indirectly owned by the ruling party.

5. Key Issues

The assessment and recommendations focus on some of the key issues for prospective law reform or enactment of new legislation and they are not intended to be comprehensive. As indicated in the introduction, this is not a complete analysis of all the media laws and hence does not address all issues relating to the legal framework for freedom of expression and media freedom in Ethiopia. Rather, these are issues that ARTICLE 19 believes are priority areas of concern.

5.1 The Constitution

Article 29 of the Federal Constitution guarantees right of thought, opinion, freedom of expression and the press in the following terms:

> 1. Everyone has the right to hold opinions without interference.
> 2. Everyone has the right to freedom of expression without interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.
> 3. Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:
> a) Prohibition of any form of censorship
> b) Access to information of public interest.
> 4. In the interest of free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution,

[39] Proclamation No. 178/1999, published on 29 June 1999 (Federal Negarit Gazeta 5th Year No. 62).

> enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.
> 5. Any media financed by or under the control of the state shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinions.
> 6. These rights can be limited only through laws which are guided by the principle that freedom of expression and information can not be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well being of the youth, and honour and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.
> 7. Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.[40]

The Constitution further provides: "All international agreements ratified by Ethiopia are an integral part of the law of the land" and that: "The fundamental rights and freedoms specified in this chapter [chapter 3 of the constitution on fundamental rights and freedoms] 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."[41]

While the constitutional guarantee of freedom of expression and freedom of the press is welcome, ARTICLE 19 has concerns on a number of points in the above stated provision of the Constitution.

Article 29 (3) (b) guarantees "access to information of public interest." It does not define what "public interest" means and this term is, therefore, susceptible to wide interpretation. This creates a window for potential abuse and denial of access to information. Presumably, it will be for the authorities to decide on what information is of public interest and what is not. This subjects the exercise of a fundamental right to a discretionary power of the authorities.

It is recognised under international law that access to information should be fully guaranteed subject only to clearly defined exceptions established by law. Access to information is a fundamental component of the right to freedom of expression guaranteed both by international instruments and by national provisions. Any limitation on this right can only be imposed in accordance with Article 19(3) of ICCPR. Such limitations are required to meet the three-part test of a) being prescribed by law, b) pursuing a legitimate aim and c) being necessary in a democratic society. The limitations allowed by the Ethiopian Constitution on the right of access to information fail to meet international standard and should be amended.

Article 29(5) requires "media financed by or under the control of the government" to be operated in a manner that ensures diversity of views. It is implicit in this constitutional provision that the government will continue to own and control media outlets. While the provision may appear to be about promoting diversity of views, the indirect constitutional

[40] Article 29 of the Federal Constitution of Ethiopia, adopted 8 December 1994, in force 21 August 1995 (Federal Negarit Gazeta, 1st Year No. 1).
[41] Note 38, Articles 9(4) and 13(2).

legitimisation of the State's control over the media is contrary to the principle that State broadcasters must be transformed into public service broadcasters. This principle is clearly affirmed by Principle 6 of the African Commission *Declaration of Principles on Freedom of Expression in Africa,* which states:

> State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government…

The same Principle further provides a set of principles on the transformation of State broadcasters to public service broadcasters, including the following:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed and
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets.

ARTICLE 19 recommends that Article 29(5) of the Constitution be amended. It should be replaced by a provision that affirms the transformation of State broadcasters into public service broadcasters and which guarantees the organisational and operational independence of these bodies.

Article 29(6) provides that "any propaganda for war as well as the public expression of opinion intended to injure human dignity" shall be prohibited by law. While the former is consistent with Article 20(1) of the ICCPR, it is not clear what the latter prohibition seeks to achieve. Article 20(1) of the ICCPR provides for the prohibition by law only of war propaganda. Article 19(3) of the ICCPR sets out the conditions under which freedom of expression may be limited in accordance with the law. Any limitation must meet the three-part test of a) being prescribed by law, b) pursuing a legitimate aim and c) being necessary in a democratic society. Any restriction out side of this clearly defined parameter will be in violation of the covenant. It is also not clear what is meant by "public expression of opinion intended to injure human dignity." This is an excessively vague provision. Furthermore, defamation law, with which it deals, is an extremely complex area of law. ARTICLE 19, for example, has developed a whole set of principles exclusively on this issue.[42] There is a great risk that a simple, vague constitutional provision of this sort will be abused.

Article 29(6) also provides that limitations can be laid down in law in order to protect the well being of the youth and the honour and reputation of individuals. Once again, these provisions fail to meet the third part of the test for restrictions on freedom of expression, namely that they be necessary in a democratic society. In this regard, the Constitution once again fails to conform to international standards.

[42] See *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation* (London: ARTICLE 19, 2000).

Amendment of these constitutional provisions is imperative. Not only are they not consistent with international standards, but they can potentially be used to justify a future law which unduly restricts the right to freedom of expression.

Recommendations:

- In Article 29(3) (b) of the Constitution, either the phrase "public interest" should be deleted or its scope should be clarified.
- Article 29(5) should be replaced by a provision affirming the need to transform the government broadcasters into an independent public service broadcaster and guaranteeing the organisational and operational independence of public service broadcasters.
- The phrase "public expression of opinion intended to injure human dignity" should be deleted from Article 29(6) of the Constitution and this provision should be amended to require any restriction on freedom of expression to be justified as necessary in a democratic society.

5.2 The Press Law

5.2.1 Registration

Articles 6 and 7 of the Press law set out the registration requirement and procedures for obtaining a print media licence. The Minister of Information or the regional Information Bureaus are vested with the power to issue licences within 30 days from the submission of an application.

It is now generally recognised that *licensing* requirements for the print media are not legitimate. Substantive restrictions on operating a print media outlet significantly fetter the free flow of information and do not pursue any legitimate aim recognised under international law; there is no practical rationale for licensing the print media unlike broadcasters where limited frequency availability justifies licensing.

On the other hand, technical registration requirements do not breach the guarantee of freedom of expression per se, as long as they meet the following conditions:

- there is no discretion to refuse registration, once the requisite information has been provided;
- the system does not impose substantive conditions upon the print media;
- the system is not excessively onerous; and
- the system is administered by a body that is independent of government.

However, registration of the print media is unnecessary and opens the door to potential abuse and unfair restriction on freedom of expression. As a result, it is not required in most

established democracies.[43] ARTICLE 19 therefore recommends that the print media not be required to register. As the UN Human Rights Committee has noted: "Effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression."[44]

The registration requirement under Ethiopian law is onerous because it subjects *any press activity*[45] to a registration requirement. This means that even a small-scale publication with a small print run must register. The UN Human Rights Committee has held that such a requirement on small print runs is disproportionately onerous. The committee considered provisions in a Belarusian law which required publishers to register with the authorities and held that the legal requirement that an author register his leaflet, which had a circulation of just 200 copies, was disproportionately onerous, exerted a chilling effect on freedom of expression, and could not be justified in a democratic society.[46] In particular, the Committee stated:

> [P]ublishers of periodicals…are required to include certain publication data, including index and registration numbers, which, according to the author, can only be obtained from the administrative authorities. In the view of the Committee, by imposing these requirements on a leaflet with a print run as low as 200, the State party has established such obstacles as to restrict the author's freedom to impart information.[47]

The Ethiopian press law provisions are even more onerous than those found in the Belarusian law because even a pamphlet with a print run of less than 50 copies is subject to the same registration requirements as large mass media and failure to do so entails imprisonment of up to two years or a fine up to 10,000 Ethiopian Birr [US$ 1250].[48] This clearly exerts a chilling effect on freedom of expression that cannot be justified in a democratic society.

Recommendations:

- The registration requirement for the print media should be abolished.
- If the government of Ethiopia wishes to retain the registration system, the following should apply:
    - the power to register print media outlets should be vested in an independent body, not the government; and
    - The requirement of registration should apply only to publications that are legally incorporated, regularly published and have large print runs.

[43] For example, in Australia, Canada, Germany, the Netherlands, Norway and the United States.
[44] General Comment 10(1), in Report of the Human Rights Committee (1983) 38 GAOR, Supp. No. 40, UN Doc. A/38/40.
[45] Note 36, Article 6(1).
[46] *Laptsevitch v. Belarus*, 20 March 2000, Communication No. 780/1997, paras. 8.1-8.5.
[47] *Ibid.,* para. 8.1
[48] Note 36, Article 20(2).

5.2.2 Restrictions on Media Content

Article 10 of the Press law provides for the responsibility of the press in the following terms:

> 1. Every press has the duty to ensure that any press product it circulates is free from any content that can give rise to criminal and civil liability.
> 2. Without prejudice to the generality of sub-article 1 of this Article, any press shall have the duty to ensure that any press product it issues or circulates is free from:
>
> a. Any criminal offence against the safety of the State or of the administration established in accordance with the Charter or of the national defence force
> b. Any defamation or false accusation against any individual, nation/nationality, people or organization
> c. Any criminal instigation of one nationality against another or incitement of conflict between peoples and
> d. Any agitation of war.

There are a number of problems with these provisions. In the first place, several of these prohibitions merely repeat prohibitions that are already established by existing laws. The Civil Code and the Penal Code have provisions, for example, on defamation, offences against national interest, offences against law and order, breaches of the peace, etc. Where existing laws already cover a given offence, its repetition in media specific law serves no legal purpose. It is illegitimate to give journalists a "double warning" of this sort as it suggests that journalists will be watched more closely than others in society, which is bound to have a chilling effect on media freedom.

Journalists, like other professionals, have professional responsibilities but these are matters for self-regulation. Experience shows that legal regulation of journalists' behaviour by the State often leads to harassment of journalists who are critical of the government.

Second, the prohibitions are worded too broadly and are excessively vague so that they are wide open for abuse. Our experience shows that vague provisions are subject to manipulation as they can be interpreted to ensure that almost anything is covered. All of the sub-sections in Article 10(2) of the Press Law are excessively vague.

Any restriction on freedom of expression must meet the three-part test discussed above. A restriction does not satisfy the requirement that it be "prescribed by law" simply by virtue of the fact that there is a law establishing the prohibition. The law must be sufficiently clear so that a reasonable person can predict what is being prohibited. Instead of relying on vague and broad terms, any restrictions should provide a clear, detailed definition of what, precisely, is prohibited.

5.2.3 Penalties under the Press law

The Press law has a section on penalties for contravention of the law or failure to comply with duties set out in the law. For a breach relating to content, the penalty shall be imprisonment for up to three years but not less than one year or a fine of between 50,000

and 10,000 Ethiopian Birr or both imprisonment and fine. This penalty is without prejudice to the liabilities and penalties under the Penal Code.[49]

Where the breach is a violation relating to registration, the penalty shall be imprisonment for up to two years or a fine of up to 10,000 Ethiopian Birr [US$ 1250].[50]

The Press law also imposes a penalty of imprisonment for up to one year, or a fine of 5,000 Ethiopian Birr [US$ 625], or both, for failure to comply with a host of duties set out in the Press law. This includes even minor incidents such as forgetting to publish commercial advertisements in a classified section, forgetting to publish the name of the editor or proprietor, failing to submit a copy of the publication to the Ministry of Information or the Regional Information Bureau within 24 hours of dissemination, not indicating the use of a pen name in a prominent place, forgetting to acknowledge a news agency source for reproduced news and so on.[51]

There is no justification for criminalising several of the breaches listed above. The criminalisation of a particular activity implies a clear State interest in controlling the activity and imparts a certain social stigma to it. In recognition of this, international bodies have stressed the need for governments to exercise restraint in applying criminal remedies when restricting fundamental rights. Several of the breaches listed above are matters to be treated either as administrative matters or through self-regulation.

Furthermore, the penalty regime is excessively harsh in as much as it fails to provide for a graduated range of sanctions and even the minimum penalties are often a large fine or imprisonment. These penalties are disproportionate to the breaches to which they relate and they hence fail to conform to international standards.

There can be little doubt that the penalty regime in the Ethiopian Press law is excessively harsh and that it exerts a serious chilling effect on media freedom. Indeed, it is often described as one of the harshest press laws in the world.

Recommendation:

- The system of criminal penalties for press offences should be abolished and should be replaced by a range of graduated sanctions for legitimate restrictions, which include a warning, a reprimand, and administrative sanctions with proportionate fines. These penalties should preferably be administered an independent self-regulatory body.

5.3 Freedom of Information

[49] Note 36, Article 20(1).
[50] Note 36, Article 20(2).
[51] Note 36, Article 20(3).

There is no law guaranteeing access to information in Ethiopia other than the general principle laid down in the Constitution and a brief article in the Press Law. The importance of freedom of information as a component of freedom of expression and the relevant international standards relating to this right have already been introduced in the International Standards section of this Report.

It is worth reiterating here the fundamental importance of the need for comprehensive legislation guaranteeing everyone the right to access information held by public authorities. The lack of a legal guarantee for this right undermines all human rights, as well as meaningful participation of citizens in public affairs. As noted above, State Parties to the ICCPR are under an international obligation to take all the necessary steps to give effect to the rights recognised therein.

The concept of freedom of information is based on the principle that public bodies hold information not for themselves but as custodians of the public good and hence everyone should have the right to access this information, subject only to clearly defined exceptions to be determined by law.

ARTICLE 19 has adopted a set of principles on the right to information, *The Public's Right to Know: Principles on Freedom of Information Legislation*, which set out standards in this area based on international and comparative law.[52] The UN Special Rapporteur on Freedom of Opinion and Expression has also elaborated in detail on the specific content of the right to information.[53]

The following recommendations are drawn from ARTICLE 19's sets of principles and the recommendations of the UN Special Rapporteur on Freedom of Opinion and Expression.

Recommendation:

- The government of Ethiopia should adopt comprehensive legislation guaranteeing the right to freedom of information, and create a supportive policy environment to support this right, based on the following principles:
    - everyone has a right to access information held by public bodies in accordance with the principle of maximum disclosure;
    - public bodies have an obligation to disclose, publish and widely disseminate information of significant public interest;
    - the law should include provisions designed to overcome the culture of secrecy, and to promote a culture of openness within the government;
    - a complete list of legitimate aims that may justify non-disclosure should be provided in the law and non-disclosure should be justified only where the authorities establish that disclosure threatens a substantial harm to the legitimate aim and the harm to the aim is greater than the public interest in having the information;

[52] ARTICLE 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (London: June, 1999).
[53] Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 44.

- strict time limits should be set for processing requests for information;
- an independent body should be established with the power to review refusals to disclose information;
- the cost of accessing information should not be so high as to deter potential applicants and thereby defeat the whole purpose of access to information legislation;
- meetings of public governing bodies should generally be open to the public; and
- adequate legal protection should be provided to individuals who release information on official wrongdoing (known as "whistleblowers").

5.4 Broadcasting

5.4.1 The Broadcasting Proclamation

The Ethiopian Broadcasting Proclamation was issued in June 1999.[54] The Proclamation provides for the establishment of the Ethiopian Broadcasting Agency as an autonomous Federal Administrative Agency with various powers and duties, including to issue, suspend and revoke broadcasting licenses.

In February 2000, ARTICLE 19 submitted a Memorandum to the Ethiopian government on the Broadcasting proclamation. That Memorandum details ARTICLE 19's concerns about certain provisions of the Proclamation, which impose extensive restrictions and conditions on the freedom of broadcasters.[55]

The following summary of our key concerns is drawn mainly from that Memorandum. The Memorandum reflects the set of principles on broadcast regulation developed by ARTICLE 19, published in April 2002, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*. These principles set out standards in this area based on international and comparative law.[56] Readers may refer the Memorandum for further details on our key concerns, discussed in light of relevant international and comparative human rights standards. The principles and international standards on freedom of expression and freedom of the media noted above are also applicable to the broadcasting sector.

Independence of the Regulatory Body

Article 4 of the Proclamation establishes an "autonomous Federal Administrative Agency" with responsibility over broadcasting. However, Article 4(2) provides that the Agency shall be accountable to the Prime Minister. Furthermore, Articles 9 and 12 provide, respectively,

[54] Proclamation No. 178/1999, published on 29 June 1999 (Federal Negarit Gazeta Year 5 No. 62).
[55] Memorandum on the Ethiopian Broadcasting Proclamation No. 178/1999 submitted to the government of Ethiopia by ARTICLE 19 (London: February, 2000).
[56] ARTICLE 19, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (London: March, 2002).

that members of the governing board (the number of board members is not specified) and the general manager shall both be appointed by the government, although the latter is accountable to the Board. The Proclamation fails to provide any structural guarantees for the autonomy, independence or professionalism of the Agency.

It is well established under international and comparative law that bodies with regulatory powers over the media should be fully independent of government. Principle 10 of *Access to the Airwaves* states, in part:

> All public bodies which exercise powers in the areas of broadcast and/or telecommunications regulation, including bodies which receive complaints from the public, should be protected against interference, particularly of a political or commercial nature.[57]

The structural autonomy of such regulatory bodies should be guaranteed by establishing an independent governing board.

One of the ways to ensure that governing boards are independent and yet effectively accountable to the public is a mechanism for an appointment of the board members through an all-party committee of Parliament. This should be supplemented by a mechanism ensuring broad societal and relevant professional representation, open public input into the process, guaranteed tenure for members and rules against conflict of interest. The Agency should also report to Parliament, rather than the Prime Minister and government. In order to ensure that the Agency can carry out its tasks without risk of interference from government, the law should establish that the government should provide it with adequate funding. These principles are reaffirmed by the *Declaration of Principles on Freedom of Expression in Africa.*[58]

Recommendation:

- The Broadcasting Proclamation should be amended to guarantee the organisational and operational independence of both the Agency and its governing board in accordance with the standards set out above.

Investigation of Complaints

Article 10(8) of the Broadcasting proclamation provides that the board be vested with the power to investigate and decide on complaints by broadcasting service licensees and the public. However, it provides for neither standards against which such complaints should be measured nor a procedure for the investigation and disposition of cases.

Recommendations:

- The Agency should be required to develop a Code of Conduct in close consultation with broadcasters and other interested parties and the Code should set out clearly exactly what is prohibited.

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[57] *Ibid.*
[58] Note 5, Article 6.

- The Proclamation should include procedural guarantees regarding the processing of complaints.
- The normal sanction for breach of the Code should be a requirement to publish a statement as mandated by the Agency and sanctions that are more serious should only be available in case of repeated and gross breaches.

Licensing

In deciding between competing applications, Article 22 provides that full programmes shall take preference over special programmes and that priority shall be accorded to proposals for transmissions of greater duration and geographic scope. There is no mention of the contribution of the proposed service to enhancing programming diversity or pluralism in the target area. An important goal of broadcast regulation is to promote diversity and the public's right to receive a wide range of information and ideas. The contribution of competing applications to diversity should be an important factor in deciding between them, particularly where they are otherwise comparable. In addition, the implications of a proposed service in terms of media monopolisation and cross ownership should be another factor to be taken into account in deciding between competing applications.

International guarantees of freedom of expression apply "to everyone" and "regardless of frontiers." Blanket prohibitions on certain groups, such as religious bodies and foreigners, receiving licenses contravene these rules. In the interests of diversity, and the promotion of local culture and voices, it may well be that regulatory bodies tend to prioritise national license applications and avoid allocating key frequencies to factional interests. This should be done on a case-by-case basis, with a view to promoting diversity and the public's right to receive information from a variety of sources, rather than as a blanket prohibition in the Proclamation.

The only sanctions envisaged for breach of license conditions are suspension, pursuant to Article 24, and revocation, pursuant to Article 25. These are very harsh sanctions which should be applied, if at all, only in the most extreme cases. Power to issue warnings, to order broadcasters to take certain actions and to levy fines should be sufficient to deal with most breaches of license conditions or other provisions in the Proclamation.

The Proclamation fails to provide for community broadcasting and the special needs of community broadcasters. Indeed, it does not set out the three-tier system of broadcasting which includes public service, commercial and community broadcasting. The broadcasting law appears to focus exclusively on commercial broadcasting and it does not seem to foresee community broadcasting.

The *African Charter on Broadcasting*[59] stipulates that broadcast regulation should clearly recognise a three-tier system for broadcasting including public service, commercial and community broadcasting. Community broadcasting is defined as "broadcasting which is for,

[59] The African Charter on Broadcasting was adopted by representatives from a wide range of media practitioners and human rights activists at a UNESCO Conference held in Windhoek, Namibia in May 2001.

by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit."[60]

The *Declaration of Principles on Freedom of Expression in Africa* also recognises and promotes community broadcasting, given its potential to broaden access by poor and rural communities to the airwaves.[61]

Recommendations:

- Promoting pluralism and diversity, and preventing undue concentration of media ownership, should be a key consideration in deciding between competing applications and, to further this objective, license applications should require information to be provided about the types of programmes proposed to be broadcast.
- The Proclamation should set out clearly the process for deciding between competing licence applications.
- The Proclamation should not include blanket prohibitions on certain groups receiving licenses but rather leave this up to the Agency to decide on a case-by-case basis, taking into account the need to promote pluralism.
- The Agency should be given the power to impose a range of sanctions, including warnings, orders to take certain actions and fines, in addition to license suspension and revocation, and all these powers should be subject to judicial review.
- The Proclamation should be amended to recognise the importance of community broadcasting, in accordance with the three-tier system of broadcasting.

Content Restrictions

Article 27 of the Proclamation sets out a number of very wide-ranging restrictions on the content of what may be broadcast. The harsh effect of these prohibitions is exacerbated by the fact that they apply to every programme broadcast, rather than to the overall programming of a particular broadcaster. These include restrictions prohibiting programmes which:

- do not reflect varying viewpoints;
- fail to verify the accuracy of their sources;
- violate the dignity and liberty of mankind or the rules of good behaviour, or undermine the beliefs of others;
- commit a criminal offence relating to State security or defence, or the constitutionally established government;
- defame individuals, the nation, nationalities, people or organisations;
- instigate dissension among nationalities or promote dissention among peoples; and
- incite war.

[60] Note 57, Part Three.
[61] Note 5, Article 5(2).

Pursuant to Article 25(1) (f), breach of Article 27 can lead to license revocation. In addition, Article 28 broadly prohibits programmes shown before 11pm which corrupt the outlook of children, while Article 31 absolutely restricts a number of types of advertisements, including those relating to cigarettes and alcoholic drinks.

Many of the prohibitions in Article 27 are matters that are already dealt with in laws of general application, in particular the criminal law. Such provisions include the prohibition on defamation of individuals and on committing a criminal offence. It is unnecessary to repeat these prohibitions in a media-specific law; indeed to do so creates confusion and uncertainty, undermining freedom of the media.

Some of the other provisions are also excessively vague, and fail to give broadcasters sufficient notice of what exactly is prohibited – for example, those regarding children's programming. It is well established that restrictions on freedom of expression are illegitimate if they are not set out clearly, due to the potentially "chilling effect" which vague restrictions have on publication in the public interest.[62] This is particularly true in this case, given the very harsh potential sanction in case of breach. Examples of this include the prohibitions on instigating dissension among nationalities, undermining the beliefs of others and violating the rules of good behaviour. The vague prohibition on material that might corrupt children suffers from the same flaw.

Still other provisions place excessive obligations on broadcasters, taking into account freedom of expression and the need to promote the free flow of information and ideas. While it may be legitimate to require a broadcaster to reflect various viewpoints in its overall programming, it is unreasonable to apply this obligation to each individual programme. This might, for example, lead to the prohibition of a programme focusing on a certain religion or theme, which is perfectly legitimate. Similarly, it is excessive to require programmes to verify the accuracy of each source. A requirement of due care in relation to accuracy would be sufficient.

It is increasingly being recognised that public authorities should not be able to use defamation to stifle criticism and that such bodies should be open to public scrutiny, which is necessary for democratic debate. For example, the Zimbabwean Supreme Court has held that the Posts and Telecommunications Company, because it is a public body, has no right to sue in defamation.[63] Similar decisions have been adopted in other countries, including South Africa and the United Kingdom.[64]

The excessive nature of Article 27 is accentuated by the very harsh sanction for breach, namely revocation of one's license. This effectively terminates a broadcasting organisation and is thus the most extreme sanction possible. In other jurisdictions, a range of sanctions

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[62] See, for example, *Sunday Times v. United Kingdom*, 26 April 1979, 2 EHRR 245, para. 49 (European Court of Human Rights) and, *R. v. Zundel* [1992] 2 SCR 731, p. 768-9 (Supreme Court of Canada).
[63] *Posts and Telecommunications Co. v. Modus Publications (Private) Ltd.*, 25 November 1997, No. SC 199/97.
[64] See *Die Spoorbond v. South African Railways* [1946] SA 999 (AD) and *Derbyshire County Council v. Times Newspapers Ltd* [1992] 3 All ER 65 (CA), affirmed [1993] 1 All ER 1011 (HL).

are available for content breaches, including the mandatory broadcast of a statement pursuant to a finding of a breach of a Code of Conduct and fines. These allow for a more proportionate response to breach of license conditions.

Recommendations:

- The provisions restricting the content of what may be broadcast should be reviewed and amended to bring them in line with international and constitutional standards on freedom of expression as described above.
- In particular, these provisions:
    - should not duplicate rules already provided for in laws of general application, such as the criminal and civil codes;
    - should be clear and unambiguous; and
    - should not impose excessive restrictions on broadcasters, including in relation to the presentation of viewpoints, verification of accuracy and defamation of the nation, nationalities or people.

Sanctions

The key provision on sanctions for breach of the Proclamation, Article 42, is extremely harsh. Minimum terms of imprisonment of between 6 months and 3 years, and maximum terms of 2 to 5 years, along with fines, are imposed for a number of offences including:

- broadcasting without a license;
- failure to allow the Agency to investigate a station;
- not providing a right of reply;
- carrying prohibited advertisements or sponsored programmes;
- carrying programmes that corrupt children before 11pm;
- failing to notify the Agency of the person responsible for a programme or to broadcast the name of the station and producer at mandated times;
- failing to keep the required programme archives; or
- breaching the rules on political party advertising.

Broadcasters risk imprisonment and fines for even relatively minor or subjective errors, such as forgetting to notify the Agency about a person responsible for a programme. It is well established under international law that sanctions associated with even legitimate restrictions on freedom of expression must be proportionate to the injury suffered.

A number of international bodies have expressed concern about the threat of custodial sanctions in relation to restrictions on freedom of expression. The two original UN Special Rapporteurs on Freedom of Opinion and Expression called into serious question the imposition of custodial sanctions for expression-related matters.[65] Since 1994, the UN Human Rights Committee has often expressed concern about the possibility of custodial

[65] *The Right to Freedom of Opinion and Expression: Update of the preliminary report prepared by Mr. Danilo Turk and Mr. Louis Joinet, Special Rapporteurs*, Submitted to the Sub-Commission for the Prevention of Discrimination and Protection of Minorities, UN Document E/CN.4/Sub/2/1991/9, para. 100.

sanctions, for example for defamation.[66] In its annual resolution on freedom of expression, the UN Commission on Human Rights regularly expresses concern about the use of detention against persons who exercise the right to freedom of expression.[67] The UNESCO sponsored *Windhoek Declaration* declared: "African Governments that have jailed journalists for their professional activities should free them immediately."[68]

ARTICLE 19 believes that fines and, for repeated and gross breach, the possibility of license suspension, is sufficient to ensure compliance with the provisions of the Proclamation and that imprisonment is, therefore, never justified.

Recommendation:

- The Proclamation should replace the regime of imprisonment with one involving warnings, mandatory broadcast statements, fines and the threat of possible license suspension for very serious breaches.

5.4.2 Transformation of State Broadcasters

Under international standards, State-owned broadcasters should be transformed into independent public service broadcasters with a mandate to serve the public interest. The African Commission *Declaration of Principles on Freedom of Expression in Africa,* provides:

> State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:
>
> - public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
> - the editorial independence of public service broadcasters should be guaranteed;
> - public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
> - public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
> - the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.[69]

The foregoing principles are also reflected in the *African Charter on Broadcasting*, which provides:

> - All State and government controlled broadcasters should be transformed into public service broadcasters, that are accountable to all strata of the people as represented b an independent board, and that serve the overall public interest,

[66] *Annual General Assembly Report of the Human Rights Committee*, 21 September 1994, Volume I, No.A/49/40, paras. 78, 91 and 236, *Annual Report*, 3 October 1995, No. A/50/40, paras. 89 and 113, *Annual Report*, 16 September 1996, No. A/51/40, para. 154.
[67] See Resolution 1999/36, para. 3.
[68] *Windhoek Declaration*, adopted at a representative UNESCO Conference in Windhoek on 3 May 1991.
[69] Note 5, Article 6.

avoiding one-sided reporting and programming in regard to religion, political belief, culture, race and gender.
- Public service broadcasters should, like broadcasting and telecommunications regulators, be governed by bodies which are protected against interference.
- The public service mandate of public service broadcasters should be clearly defined.[70]

ARTICLE 19 has also called for State broadcasters to be transformed into public service broadcasters in accordance with a set of detailed rules to ensure their organisational and operational autonomy.[71]

In a bid to institutionalise the organisational and operational autonomy of government-owned mass media, the Ethiopian Press Agency, Ethiopian News Agency and Ethiopian Radio and Television Agency were legally established as autonomous public agencies having their own juridical personality and governing boards appointed by the legislature.[72] The Proclamations for all three Agencies provided that the general managers shall be appointed by the government and that the members of the governing boards shall be appointed by the legislature, upon government nomination.

The institutional and operational autonomy of the public media agencies should be ensured in the same way as for regulatory bodies, in accordance with the principles set out in previous sections. The appointment of board members should be through an all-party committee of Parliament, the general managers should be appointed by their respective boards rather than the government, and the Agencies should be accountable to the Parliament.

Simply passing a good law is not enough unless it is accompanied by a genuine political commitment to implement it in accordance with the spirit in which they were written. A recent sequence of events in Ethiopia in relation to the appointment of board members for the three "public" media Agencies clearly demonstrates this.

In December 2001, the Media and Cultural Affairs Committee of the Parliament presented a proposal regarding the appointment of board members for the three "autonomous public" media agencies for endorsement by Parliament, which provided for the appointment of the newly appointed Information Minister and State Minister of Information, respectively as Chair and Vice-Chair for each of the three bodies.

This ignited what the media described as the first heated debate in the history of the Parliament. Many MPs argued that the proposals, and in particular those relating to the Information Ministers, would defeat the principal objective of institutionalising the autonomy and independence of these agencies. The Parliament ultimately rejected the proposal and instructed the Committee to prepare and submit a new proposal.

[70] Note 57, Part Two.
[71] Note 56, Principles 34-37.
[72] Proclamation No. 113/1995, published on 1 March 1995 (Negarit Gazeta Year 54 No.11), Proclamation No. 114/1995, published on 1 March 1995 (Negarit Gazeta Year 54 No.12) and Proclamation No. 115/1995, published on 1 March 1995 (Negarit Gazeta Year 54 No.13).

The case was widely reported by the media as the first time Parliament had ever rejected a proposal refereed to it for endorsement and commentators wondered whether the Parliament would maintain its position. A few days later, the Parliament was convened to consider an "amended proposal", which provided for the Information Minister to be the Chair of two of the boards, namely for the Radio and TV Agencies, and for the State Minister of Information to be the Chair of the other one, the board of the Ethiopian News Agency. This "amended proposal" was approved by Parliament with only five opposing votes and three abstentions. There can be little doubt that the goal of ensuring the organisational and operational autonomy of public broadcasting has been squarely defeated. Unfortunately, such paradoxes are not uncommon in Africa.

Recommendations:

- The Proclamations of the three "autonomous public" media agencies should be amended to ensure that they are genuinely transformed into public service bodies and to guarantee their independence according to principles set out in the previous sections.
- The Information Minister and State Minister of Information should be recalled by the Parliament from the positions they hold as Chairs of the governing boards of these public media bodies and any individuals who hold an elected or appointed position in the government should be excluded from membership of governing boards of both public media bodies and media regulatory bodies.

5.5 Government – Private Media Relations and Attacks on Media Workers

This section focuses on government-media relations and attacks on the private media. The negative attitude of the government and officials towards the private media is an important factor undermining media development and preventing the establishment of an enabling environment for the media in Ethiopia.

Political forces within the government of Ethiopia and the ruling party do not accept the private media as a legitimate player in socio-economic and political development processes in the country. One indication of these attitudes is a series of reports of attacks on journalists from the private sector, along with repeated statements by officials, including the Prime Minister, portraying the private press as irresponsible, politically motivated, incompetent, illegitimate and lacking in credibility.

The Prime Minister has repeatedly and publicly labelled the private press as "gutter press" and, in an official report to the Parliament in November 2001; he accused "some of the private press as being organs of illegal political parties." Following his suit, many high-ranking government and party officials frequently accuse the private press of being irresponsible, sensational, incompetent and serving the opposition forces. The newly appointed Information Minister, in an interview with the government owned daily, the *Ethiopian Herald*, accused the private press of being "preachers of hate politics."

None of the Prime Minister's press conferences are open to private press journalists, although the private press is frequently attacked at these press conferences. Foreign journalists have better access to government offices than local journalists from the private media. Indeed, there is a general embargo on journalists from the private sector from attending official press conferences and many government officials operate a closed-door policy towards them.

These measures seriously hinder journalists from the private sector from accessing information held by governmental agencies presenting daunting challenge to them in providing accurate information to the public. In the absence of access to government-held information, many journalists understandably rely on secondary and indirect sources, which often results in poor quality reporting. A member of the Executive Committee of the Committee to Protection of Journalists (CPJ), Professor Josh Friedman, noted in an interview with a local weekly in Addis Ababa in July 2002, that the government is not justified in accusing journalists from the private sector of lacking credibility when it refuses to give them the information in the first place. He stated: "The first thing to have accurate journalism is to make more information available. The government should have regular face-to-face press conferences with all journalists in the country. It would be surprising, otherwise, to find accurate articles while withholding valuable information."[73]

There is no form of collaborative relationship between the State media agencies and the government, on the one hand, and the private press, on the other. Indeed, in recent years, the government has failed to build a more collaborative relationship with a view to addressing the concerns of the sector and to securing a meaningful operational space for it. The government has also failed to make any effort to build the operational and institutional capacity of the private media.

Government officials remain apprehensive about the motivations of the private press and occasionally manifest resentment towards it. It is easier for officials to portray the private press as sensational, irresponsible and politically motivated than to appreciate the gains the sector has made in emerging from a very difficult period.

Journalists in the private press have often been subjected to arbitrary arrest, intimidation, harassment, criminal prosecution and subsequent conviction. Many journalists have been forced to flee the country and seek refugee status in neighbouring countries. Repression of the private press and attacks on journalists from the private sector escalated to a level at one point the where government of Ethiopia was listed as one of the world's ten worst enemies of the press. At the beginning of 2001, the Committee to Protect Journalists (CPJ) declared the Ethiopian government to be Africa's leading jailer of journalists.[74] Reporters Without Borders reported that the Ethiopian Prime Minister Meles Zenawi is on the worldwide list of 38 predators of press freedom.[75]

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[73] See Addis Tribune: http://www.addistribune.com/Archives/2002/07/26-07-02/Committee.htm.
[74] www.cpj.org/news/2002/Ethiopia05march02na.html.
[75] www.rsf.org/article.php3?id_article=1065.

In March 2002, CPJ reported Ethiopian prisons to be free from journalists, but less than a month later, in April 2002, two journalists were jailed and more than 30 faced criminal charges.

Attacks on Ethiopian private press journalists are widely reported by both indigenous human rights organisations and international organisations concerned with these issues. Space constraints do not permit us to list the numerous individual cases of serious human rights violations, nor is there a need for us to reiterate what has already been repeatedly reported.[76] The government has shown its open hostility to the private press by unlawfully arresting editors, denying their right to bail and detaining them for prolonged periods in police prisons while they investigate the matter. Sadly, even the courts have condoned this repression by failing to vindicate the rights of journalists who were arbitrarily detained and denied the right to bail.

While the government continues to accuse the private press of being pro-opposition, politically motivated and lacking in professional responsibility, the private press, political opposition parties and critics in civil society accuse the government of maliciously attacking journalists from the private media sector and accuse the State media of being a mouthpiece of government rather than serving the public interest. There is no doubt, in fact, that the government-controlled media agencies continue to act primarily on behalf of government whereas the private press serves as a forum for critics from a range of sectors, including civil society, opposition political parties, academia and the public at large. These problems have aggravated the antagonistic relationship between the government and the private press.

Widespread student unrest in March and April 2001 brought these problems between the authorities and the private media into sharp focus. After the university and high school students riots, security forces rounded up newspaper vendors, who were only released after having been illegally detained for between two and four days. In the very tense environment that followed the student riots, private papers were not published for nearly five days, only resuming on 25 April 2001. A statement by the Ethiopian Free press Journalists' Association (EFJA) described the harassment of newspaper vendors as a new form of attack against freedom of expression.

The Federal Ministry of Information has recently announced publicly that a study has been completed on amendments to the Press Law and on the introduction of a comprehensive policy and regulatory framework for the media, although details of the proposed legislation have still not been made public. The law making process in Ethiopia is traditionally regrettably secretive.

The Information Minister told a CPJ delegation that the new law would address a range of issues and promote "constructive and responsible journalism."[77] The proposed amendments reportedly include, among other things, requiring editors to have a higher level of education and requiring a higher level of capital investment before one may publish a newspaper. Critics remain sceptical and fear that the ulterior motive behind the proposed amendment is

[76] For a comprehensive analysis of the attacks on the media, see: www.cpj.org. or www.rsf.org.
[77] www.cpj.org/news/2002/Ethiopia25july02na.html.

a desire to further regulate the media sector, and particularly the private media, through additional controls to be exercised by the Federal Ministry of Information. The private press described this as "another plot to muzzle freedom of expression."

Almost everyone working in the private press sector is concerned about the proposed amendments to the Press Law. Statements by EFJA are indicative of this general trepidation. Journalists from the private sector assert that the new proposals are intended to drive them out of business and to imprison them. A meeting called by the EFJA repudiated the proposals to amend the Press Law and for the government to adopt a code of ethics for journalists on the ground that the whole process lacks any public input and that they have not been able to participate. The weekly *Addis Tribune* quoted the EFJA President as saying the proposed new press law, if approved, would "restrict press freedom, more severely than the former press law." Participants at a meeting called by EFJA issued a twelve-point position statement urging relevant government bodies, international organisations and concerned stakeholders to consider the damage the proposed new press law would cause to freedom of the press.[78]

Recommendations:

- The government of Ethiopia should demonstrate its commitment to respect freedom of expression by, *inter alia*, taking positive measures to improve relations with the private media and to promote the development of a responsible, independent and effective media sector.
- The government should refrain from manifesting open hostility towards the private media and it should take positive measures to stop the arrest and other forms of harassment of journalists.
- The Press Law of 1992 should be amended in consultation with private media workers and civil society at large, through an open and transparency process.
- All criminal defamation laws be abolished and replaced, where necessary, with appropriate civil defamation laws.
- ARTICLE 19 also urges private media workers to contribute to the development of a responsible, independent and effective media sector by promoting higher standards of professionalism and ethics, and by addressing the current state of polarised relations by engaging in constructive dialogue with the government.

[78] For more details on this, see the Weekly Addis Tribune: http://www.addistribune.com/Archives/2002/08/23-08-02/EFJA.htm, www.ifex.org.