RESTRICTIONS ON PRESS FREEDOM IN ETHIOPIA:

AN HISTORICAL ANALYSIS OF ETHIOPIAN LAWS AND COMPLIANCE WITH INTERNATIONAL LAW

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ABSTRACT

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This thesis offers a historical analysis of press law in Ethiopia and examines the extent to which the current legal framework for freedom of expression and press freedom complies with constitutional guarantees and international human rights conventions. Following the political transition in 1991, Ethiopia made perhaps a major stride with accession to the International Bill of Human Rights and adopting a new constitution which should have been a powerful foundation for securing freedom of expression and media freedom. However, the EPRDF regime that led the making of a new constitution and accession to the international human rights covenants earned itself the infamous reputation as one of the world's leading jailer of journalists and predator of free press. At the heart of this paradox is the contradiction between constitutional guarantees for press freedom and restrictive subsidiary laws inherited from the past.

Contrary to commonly held assumptions that press freedom was introduced to Ethiopia in the 1991 political transition and accession to international human rights covenants, this thesis uncovers the emergence of press freedom in Ethiopia as well as its traditional foundations well before 1991 and the international covenants. However, the analysis also shows how several of the current repressive and restrictive laws are directly inherited from the imperial and military rule period laws which are inconsistent with international standards. Despite the new constitution, the current legal framework continues legal antecedents and a pattern of restrictive and repressive laws adopted by the successive imperial and the military regimes.

The historical analysis is critical for understanding the current laws. The thesis, therefore, documents the history of printing and press work in Ethiopia starting from the early traditional foundations to demonstrate freedom of expression as an indigenous concept and the birth of free press in Ethiopia at the beginning of the 20th century and the emergence of press restrictive laws in the 1930's. Since then, there has been a persistent popular demand to reclaim press freedom which is initially heeded by the successive political regimes but systematically rolled back as the regimes consolidate political power. The thesis also identifies the necessary legislative reform to create an enabling legal environment for freedom of expression and press freedom in Ethiopia. The new political transition in Ethiopia since April 2018 offers yet another historical opportunity to implement this legislative reform.

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ABBREVIATIONS

AESM	All Ethiopia Socialist Movement
AU	African Union
ACHPR	African Charter on Human and Peoples' Right
ACtHPR	African Court on Human and Peoples' Rights
BVerfGE	*Entscheidungen des Bundesverfassungsgerichts* (Decision of the German Constitutional Court)
CPJ	Committee to Protect Journalists
CUD	Coalition for Unity and Democracy
ECHR	European Convention of Human Rights
EPRDF	Ethiopian People's Revolutionary Democratic Forces
EPRP	Ethiopian People's Revolutionary Party
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
OLF	Oromo Liberation Front
ONI	Open Net Initiative
ONLF	Ogaden National Liberation Front
PDRE	People's Democratic Republic of Ethiopia
RSF	*Reporters Sans Frontiers* (Reporters Without Borders)
RVOG	Radio Voice of the Gospel

TGE	Transitional Government of Ethiopia
TPLF	Tigrean People's Liberation Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Education, Science and Cultural Organization
UNGA	United Nations General Assembly
WPE	Worker's Party of Ethiopia

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INTRODUCTION

After the overthrow of military rule in 1991, Ethiopia's accession to the international bill of human rights (1993) and the adoption of a new constitution (1995) were hailed as a milestone in securing freedom of expression and press freedom which has been under a persistent attack by successive regimes in the modern political history of the country.

However, despite the international commitments and the constitutional guarantees, freedom of expression and press freedom in Ethiopia remained severely restricted and it was described as one of the worst in the world earning Ethiopia the infamous reputation as one of the top jailers of journalists in the world until 2018. The late Prime Minister of Ethiopia Meles Zenawi was in the worldwide list of 'predators of press freedom.' Ethiopian authorities pushed back on the criticism of its human rights record including on press freedom alleging that the human rights situation reports of foreign governments and international organizations are false and politically motivated. The authorities asserted that the arrest of journalists and others is part of a normal criminal law enforcement activity based on the laws of the land, most notably the Criminal Code, the Mass Media laws and the Anti-Terrorism proclamation.

Scores of journalists, dissidents and opposition figures were charged and sentenced to long terms of imprisonment for allegedly violating the Criminal Code and the Anti-Terrorism proclamation. Media rights groups including Committee to Protect Journalists (CPJ), Reporters without Borders and others have extensively documented and condemned the onslaught against press workers and activists in Ethiopia. While the extensive documentation of the attack on freedom of expression and press freedom in Ethiopia was a valuable resource and evidence about the scope and extent of human rights abuses, there is no research-based inquiry to answer

the apparent contradiction between the constitutional guarantees based on international human rights law on the one hand and the subsidiary laws Ethiopian authorities claim to be enforcing on the other hand.

There are several factors affecting the circumstances for press freedom in any given country and its several dimensions including the political will and commitment of authorities are vigorously debated in Ethiopia but the legal framework for press freedom, which is one of the critical factors enabling or disabling press freedom, does not seem to get sufficient attention and analysis. The focus of this thesis, therefore, is to explore the inconsistencies and contradictions in the legal framework for press freedom and freedom of expression in Ethiopia. Several other studies mentioned in this thesis have looked at the socio-economic and political dynamics affecting press freedom in Ethiopia but there has not been an in-depth study of the legal framework which is at the front and centre of the criminal charges, prosecutions and convictions which kept journalists and dissidents behind bars or forced them to flee their country.

An in-depth research inquiry in to the legal framework for press freedom is also critically important because the degree of press freedom allowed in any country and the various types of restrictions and limitations on the exercise of freedom of expression and press freedom is to a certain extent determined by the legal framework in place. If the legal framework for press freedom is not consistent with the international human rights law standards, the first step towards press freedom is reform of laws and policies in line with the international standards. Ethiopia has seemingly allowed press freedom with the new constitution based on international

human rights standards but there has not been any systematic study on the extent to which key subsidiary laws are consistent with international standards.

The constitutional guarantees and the international human rights framework should have been a powerful foundation to secure freedom of expression and press freedom in Ethiopia but looking at this normative framework alone masks the reality of freedom of expression and press freedom in Ethiopia. This thesis therefore seeks to examine the extent to which the legal framework for freedom of expression and press freedom is consistent with the constitutional guarantees based on international human rights law and the nature and types of restrictions imposed on freedom of expression by Ethiopia's key subsidiary laws including the Criminal Code and the Anti-Terrorism proclamation.

This research is critical to developing an understanding Ethiopia's press law compliance with international standards and making appropriate recommendations for the necessary legislative reform. The thesis delves into a detailed analysis of relevant Ethiopian laws not only to examine the extent to which Ethiopia's legal framework complies with the international human rights framework but also examines the historical origin of the restrictions imposed by the current legal framework. The thesis argues that Ethiopia's international obligations under the international human rights framework and its own constitutional guarantees for freedom of expression and media freedom are systematically undermined by laws inherited from the past which are inconsistent with international standards. The thesis further argues and demonstrates how Ethiopia continued to apply archaic laws and principles

from the imperial period which are out of kilter with the international human rights framework and the constitutional stipulations.

In order to show the patterns and trends of these repressive laws in Ethiopia, it is critically important to show the historical evolution of press and press law in Ethiopia including the growth or lack of substantive enabling laws for press freedom in different stages of Ethiopia's political transformation since the beginning of the 20th century. The thesis therefore takes a long historical perspective looking at the origin and growth of laws and regulations affecting freedom of expression and press freedom. Contrary to the commonly held assumption that press freedom was introduced into Ethiopia only in 1991 when the military dictatorship was overthrown, the first part of this thesis shows a long history of press work and noteworthy moments of press freedom in Ethiopia's modern political history. The historical trajectory delves in to origin of printing in Ethiopia, the introduction of printing machines and birth of free press at the beginning of 20th century. It also documents the origin and growth of restrictive and repressive laws which have survived to our times despite the new constitutional guarantees for press freedom.

The early Ethiopian newspapers appeared from the beginning of 1900 and the first written laws impacting freedom of expression and press were adopted from 1930. Over the last 100 years of dramatic Ethiopian history from imperial rule to fascist occupation to the return of the monarchy; then to a military coup d'état to armed insurrection and overthrow of the military in turn; Ethiopian press has been wrestling to be free from government control, manipulation and harassment. The hundred years trajectory shows a pattern of rise and fall of press freedom as successive regimes initially concede to public demands for press freedom but gradually tighten the rules as they consolidate political power. Therefore, to understand the nature and types of the current restrictive legal framework, it is important to put it in a historical

context and perspective which helps to show how several of the current laws that are inconsistent with the international standards have antecedents in the imperial laws of Ethiopia.

The thesis, therefore, has two major parts. The first part is the background section which is a descriptive account but the first systematic documentation, organization and classification of the different stages of press and press law development in Ethiopia. While the first part is a descriptive account of historical milestones and various laws and legal frameworks, it is nonetheless a critical component of the thesis which gives the context and lays the foundation for the comparative analysis of the current laws and international standards in the second part of the thesis. A comprehensive understanding of the historical origin and growth or press and press law is important for understanding of the current legal framework. The first part of the thesis establishes a century old tradition and practice of press in Ethiopia and demands for press freedom at various stages of political transitions in Ethiopia. As a historical background section, the first part of the thesis also presents a systematic account of the traditional foundations of learning and writing in Ethiopia, the introduction of printing and the beginning of press products from the beginning of the 20th century. This historical background is the first analysis of the traditional foundations of press work in Ethiopia and a systematic collection and account of the introduction of modern-day printing to the country which in turn laid the foundation for the birth of modern-day press products.

The historical documentation sheds light on several historical questions including: When and how was printing machine introduced to Ethiopia? What were the first print products? What was the Ethiopian tradition of writing before print machines were introduced? When and how was the first newspaper started in Ethiopia? What was the law governing writing, printing and publishing in the history of writing and printing in Ethiopia? How did the press and press laws emerged and evolved as we know it today? The historical account which

seeks to answer these questions demonstrates a long and rich history of learning, writing and printing in Ethiopia. The first part of the thesis will show that the Ethiopian press was initially born free from restrictive laws and thriving, but successive regimes introduced laws and regulations to restrict and repress the freely born Ethiopian press.

From the imperial monarchy to the Dergue military administration and the EPRDF government have all adopted laws and regulations which purported to promote freedom of expression and media freedom, but a closer look at the legislative trajectory largely shows a pattern of laws to restrict and punish the exercise of freedom of expression. Despite extensive legislation of the three successive regimes and constitutional guarantees for freedom of expression and press freedom, Ethiopia has failed to secure press freedom in any meaningful way.

Various factors have influenced the lack of press freedom in Ethiopia but in its most recent history, one of the critical dimensions of the problem has been the systematic use of various laws and regulations to restrict freedom of expression and media freedom contrary to the constitutional guarantees and Ethiopia's international obligations under international law.

This thesis offers analysis of relevant Ethiopian laws and regulations spanning over three successive regimes and argues how the regimes have systematically used laws and regulations to impose unlawful restrictions on freedom of expression and press freedom and how these repressive laws from the past were directly adapted to the current legal framework. As the first part of the thesis on the historical background shows, the beginnings of all the successive regimes were accompanied by demands for press freedom which were initially heeded, but as all the successive governments consolidated political power, they systematically implemented legal and policy measures to restrict freedom of expression and press freedom.

Therefore, this thesis analyses the legislative trajectory of the three successive regimes relating to freedom of expression and press freedom from its early traditional foundations to written laws and adoption of international human rights conventions. After having looked at the historical trajectory of press laws in Ethiopia, the thesis will focus on the current legal framework since Ethiopia has acceded to international human rights conventions thereby showing the international standards for press freedom and the extent to which Ethiopia's new laws are compatible with constitutional promises and the international obligations.

The thesis submits that despite Ethiopia's recent accession to international human rights conventions and constitutional guarantees for press freedom; the protection of freedom of expression and press freedom were undermined by a host of subsidiary laws and regulations that imposed impermissible restrictions on freedom of expression and press freedom. The thesis explores how the various subsidiary laws adopted by the EPRDF government until 2018 served to control and restrict freedom of expression and press freedom in violation of the constitutional guarantees and international commitments. These restrictions continue a pattern of systematic suppression of freedom of expression and media freedom by three successive regimes in Ethiopia with the instrumentality of laws and regulations as well as extra-legal measures.

The EPRDF government continued with a similar practice of past regimes in adopting a series of laws which systematically restricts the exercise of freedom of expression and press freedom until April 2018 when the reformist leadership of Prime Minister Abiy Ahmed ushered a new era of hope for freedom of expression and democracy in Ethiopia. At the time of writing this thesis, the new Prime Minister has been in office for less than 8 months and the extent to which the promises of the new administration will result in the necessary legislative reform is yet to be seen but the new administration has certainly heralded a new horizon of hope with a host of policy measures including the release of all journalists and all political prisoners. As

explained below, the time span of this research will therefore be limited until April of 2018. It is also not within the scope of this thesis to give a comprehensive coverage of all aspects of laws and regulations affecting freedom of expression and press freedom in Ethiopia. Therefore, the focus of the thesis is on controversial criminal provisions that particularly fetter freedom of expression and press freedom as citizens strive to participate in the political processes of their country.

Accordingly, the relevant laws that are considered in this analysis are: the Ethiopian Criminal Code adopted in 2005[1], the Freedom of the Mass Media and Access to Information Proclamation (Mass Media Law) adopted in 2008[2], and the Anti-Terrorism Proclamation adopted in 2009[3]. But references are also made to the Broadcasting Proclamation adopted in 1999[4], and the Ethiopian Civil Code of 1960[5]. The legal analysis draws on Ethiopia's federal constitution, international human rights covenants, international and comparative jurisprudence from African and other countries, including standard setting statements of international bodies as well as national jurisprudence of developed democracies.

It is not the focus of this thesis to argue the value of freedom of speech in a democratic society. The Ethiopian constitution has already recognized freedom of expression and media freedom in no uncertain terms and furthermore it has clearly stipulated that the human rights provisions of the constitution shall be interpreted and applied in line with the international human rights covenants to which Ethiopia is a party. Suffice it to say that the basic arguments

1 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004)

2 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64)

3 Anti-Terrorism Proclamation (Proclamation No. 652 of 2009 Negarit Gazeta 15th Year No. 57)

4 Broadcasting Proclamation No. 178 of 1999 (Federal Negarit Gazeta, 5th Year No. 62)

5 Ethiopian Civil Code of 1960, Proclamation No. 165 of 1960 (Negarit Gazeta 19th Year Extraordinary Issue No. 2)

in favour of free speech including the importance of discovering the truth; self-fulfilment; people's participation in democracy and matters affecting their lives; and holding authorities to account are applicable in Ethiopia. The focus of the thesis, therefore, is on the limits and restrictions imposed on freedom of expression which helps to make the necessary recommendations for a legislative reform. The research analysis and recommendations from this thesis are also very timely given the window of opportunity promised by the new administration in Ethiopia.

It should be noted from the outset that the concept of press in this thesis refers to both print and electronic media, but the conception of press or media has considerably evolved and changed in the time period this thesis explores. From the first print newspapers in early 1900 to the current period, the media landscape has grown considerably with a variety of press products, expansion of electronic media with TV and Radio as well as the growth of new media including social media in recent years. Because of a very low internet penetration rate, radio remains the predominant means of media reaching many Ethiopians but there is a noticeable growth and expansion of electronic media and social media particularly in urban centres.

As the legislative history shows in the first part of the thesis, the development of new laws sought to include and regulate aspects of the new media, but the overall pattern of the government response remained control oriented and repressing and punishing the use of media to express political dissent. From the perspective of laws adopted by various governments over the period explored in this thesis, any and all forms of media are treated with the same broad

laws and policies applying to all forms of expression and mediums with no apparent distinction based on the form of the medium used, until the political reform in April 2018.

In April 2018, Dr. Abiy Ahmed was elected as the leader of EPRDF and sworn in as the new Prime Minister of the country. Prime Minister Abiy gripped the attention of the nation from his first parliamentary speech when he openly admitted and apologized for all the abuses and mistakes of the past years; he promised to uphold the rule of law, ensure the respect of human rights and usher a new chapter for Ethiopia with major reform process including with opening political space, media freedom and reforming repressive laws and practices.

He quickly began to deliver on his promises with a range of major policy measures including the release of all political detainees; inviting all opposition groups, media and activists to the country such as the major opposition groups which were previously designated as 'terrorist' groups; and lifting restrictions and blockages on internet services. The demands for the respect of freedom of expression and media freedom is once again heeded with the new administration in Ethiopia and it offers yet again an opportunity to reform repressive laws and practices that restrict freedom of expression. But the temporal scope of this thesis is on EPRDF laws and policies until April 2018 when the reformist leadership of Ethiopia. The legal and political developments relating to freedom of expression and media freedom since April 2018 should be a subject of study for future research of its own but the findings and recommendations in this thesis could be a useful input in the ongoing law reform initiatives in Ethiopia. In the concluding chapter, the thesis indicates several necessary law reforms to create an enabling legal environment and ensure freedom of expression and media freedom. This thesis will be a major contribution as a body of knowledge on Ethiopia; it contributes to our understanding of press freedom in Ethiopia, how it has evolved the last 100 years, as well as providing an outline of key elements of the current legislative framework in Ethiopia and how they should be

amended to ensure that Ethiopian law is compliant with international human rights standards and provides an enabling legal environment for the development of press freedom.

METHODOLOGY

The methodological approach employed for this research was mainly library and archives-based research. Materials consulted included historical literature, press and media archives, law reports, legislation and regulations, international human rights law and jurisprudence and comparative human rights case law. Several of these resources and materials are accessed from Libraries in UK and Ethiopia as well as from online sources.

A major methodological challenge and limitation of this research was inaccessibility of court records in Ethiopia at the time of this research because of the political context and sensitivity of the topic. However, inaccessibility of court records did not have a major impact for the research question and analysis because the research was designed to focus on legislative restrictions as opposed to case law which was not accessible. It was possible to do a reasonably comprehensive analysis of the normative legal framework to demonstrate the inconsistency with international human rights standards without even the need of examining the judicial practices. Furthermore, given the lack of independence in Ethiopia's weak judiciary, there has not been a noteworthy jurisprudence on human rights issues. My consultation with various sources who had access to some of the legal proceedings against journalists and activists as well as consultation with victims and lawyers also confirms that the court cases almost entirely are nothing more than automatic conviction and sentencing of most defendants accused by the authorities.

Ethiopia's difficult political environment for such a research was further exacerbated by the personal circumstance of the author of this thesis as a former political prisoner in

Ethiopia (2005 – 2008). This posed a unique methodological challenge for the research in terms of research access at various levels including access to official documents and research interviews. Until the recent political reform in April 2018, Ethiopia remained closed for international human rights researchers and international journalists who reported critically on Ethiopia. Almost all the major international human rights research organizations had to rely on remote research methodology and/or secrete research missions aimed at uncovering the human rights problems while maintain the safety and security of sources and interviewees.

The author of this thesis managed to interview 45 individuals including journalists and lawyers for the purpose of this research who preferred to remain anonymous at the time of conducting the interviews both in Ethiopia and outside of Ethiopia. All these circumstances created a rather unique methodological challenge for this research and hence the focus of the methodological approach to largely be based on Library and archive based research of publicly available materials. On the positive side, as a native speaker of the official local language Amharic, the author benefited from a review of substantial materials written in Amharic language. The comparative analysis draws examples and best practices from the global human rights system and developed and developing democracies including India and South Africa. The experiences of liberal democracies including the jurisprudence of the European Court of Human Rights was particularly instructive as freedom of expression and press freedom enjoys significant protection in these countries. Legislative reform initiatives in several parts of Africa has looked into the experiences of developed liberal democracies as the best model.

PART I

BACKGROUND

SECTION 1

THE EARLY HISTORY OF WRITING AND PRINTING IN ETHIOPIA

CHAPTER 1

THE TRADITIONAL FOUNDATIONS

The introduction of modern-day printing into Ethiopia is relatively recent but written word has a long history in the country. This first part of the thesis will give an historical account of the traditional foundations of learning and writing from the earliest times to the early beginnings of printing in Ethiopia. This is a historical background but as the first systematic collection and organization of the traditional foundations as well as the early history of printing in Ethiopia, it forms a critical component of the thesis in establishing the long and rich history that laid the foundation for the modern-day press as we know it. The genesis of printing is traced back to the history of scripture printing by European missionaries. As the historical review indicates, missionary printing has laid the foundations for secular printing at the beginning of the 20th century. But before we discuss the history of missionary printing in Ethiopia, this chapter will begin with a brief but useful note about Ethiopian manuscripts,

arguably one of the earliest traditional foundations of learning and printing in modern day Ethiopia.

Centuries before printing machines were introduced into Africa, Ethiopia had a rich tradition of written scripts and vast collections of manuscripts.[6] The manuscripts were written in the Ethiopian languages of *Ge'ez, Amharic* and *Tigrigna* mainly in a form of vellum strips and codex[7]. Although most of the Ethiopian manuscripts were destroyed and plundered in the course of several wars;[8] some original manuscripts and many of the redacted copies have

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6 The National Library of Ethiopia and the Institute of Ethiopian Studies at the Addis Ababa University maintain a vast collection. The most extensive documentation of Ethiopian manuscripts was done by the project of Ethiopian Manuscript Microfilm Library, which microfilmed thousands of manuscripts in the various churches, monasteries and libraries. The catalogue of this project was first written by William Macomber and later more extensively by Getachew Haile. See: W Macomber, *A Catalogue of Ethiopian Manuscripts Microfilmed for the Ethiopian Manuscript Microfilm Library and for the Hill Monastic Manuscript Microfilm Library Vol. I* (Hill Monastic Manuscript Microfilm Library, Collegeville, Minnesota 1975); H Getatchew, *A Catalogue of Ethiopian Manuscripts Microfilmed for the Ethiopian Manuscript Microfilm Library and for the Hill Monastic Manuscript Microfilm Library Vol. X* (Hill Monastic Manuscript Microfilm Library, Collegeville, Minnesota 1993). William Macomber also wrote Volumes 2 and 3 and he co-authored Volumes 5 to 7 with Getachew Haile who also wrote Volumes 4, 8 and 9. For the collections in the National Library of Ethiopia and the Institute of Ethiopian Studies, See: Institute of Ethiopian Studies., *Exhibition of Ethiopian Manuscripts from the Collection of the Institute of Ethiopian Studies, Museum of the Institute of Ethiopian Studies, University of Addis Ababa, February 16-March 16, 1988* (Institute of Ethiopian Studies Addis Ababa 1988); National Library and Archives of Ethiopia., *Catalogue of Ethiopian Manuscripts in the National Library of Ethiopia* (National Archives and Library of Ethiopia, Addis Ababa 1962)

7 For a brief history on the preparation of traditional Ethiopian writing materials (vellum, ink and pen), See: S Hable-Selassie, *Bookmaking in Ethiopia* (Karstens Drukkers B. V., Leiden 1981); A Liben, 'Preparation of Parchment Manuscripts' Bulletin of Ethnological Society, University College of Addis Ababa .

8 GF Black, *Ethiopica & Amharica: A List of Works in the New York Public Library* (The New York public library, New York 1928) p. 6; C Prouty and E Rosenfeld, *Historical Dictionary of Ethiopia and Eritrea* (2nd ed edn African Historical Dictionaries, Scarecrow Press, London 1994) p. xxii

survived to our times. The most known public collections of such manuscripts are available in Ethiopian libraries as well as most notably in British libraries.[9]

According to Wright's catalogue of Ethiopian manuscripts published in 1877,[10] the earliest manuscripts date before 1434. Pankhurst observed that 'the earliest Ethiopic manuscripts known to have survived to our times appear to date only from the 13th and 14th centuries. Many of these are copies of earlier writings.'[11] Huntingford notes that the destruction of Churches and monasteries and the burning of archives must have led to a new redaction of some of the lost documents, and that many of the manuscripts professing Ethiopian tradition going back several centuries are to be found only in manuscripts of much later date.[12] David Appleyard remarked about the difficulty of dating Ethiopian manuscripts because they do not mostly contain colophons and the scripts styles have conservatism.[13] Instead he relied on

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9 Many of the Ethiopian manuscripts in British libraries were taken from the library of Emperor Theodros (1855 – 1868) when British troops plundered his palace in Maqdalla. In April 1868, a British expedition led by General Napier stormed Maqdalla to liberate British prisoners held by Emperor Theodros. The Emperor lost the battle and committed suicide in a show of defiance not to be taken as prisoner by the British troops. The fall of Maqdalla was followed by the invading troops plundering the site in search of treasure. See: R Pankhurst, 'The Library of Emperor Tewodros I I at Magdala' (1973) 36 Bulletin of the School of Oriental and African Studies 15. For the collection of Ethiopian manuscripts in British libraries, See: E Ullendorff, *Catalogue of Ethiopian Manuscripts in the Bodleian Library* (Clarendon Press, Oxford 1951); E Ullendorff, *Catalogue of Ethiopian Manuscripts in the Cambridge University Library* (CUP, Cambridge 1961); S Strelcyn, *Catalogue of Ethiopian Manuscripts in the British Library Acquired since the Year 1877* (British Museum Publications, London 1978); S Strelcyn, *Catalogue of Ethiopic Manuscripts in the John Rylands University Library of Manchester* (Manchester 1974); W Wright, *Catalogue of the Ethiopic Manuscripts in the British Museum Acquired since the Year 1847* (British Museum, London 1877) and M Ourgay, 'Printing, Publishing and Book Development in Ethiopia up to the Era of Menelik 2nd' 24 International Information & Library Review 221

10 Wright, Cited by S Pankhurst, *Ethiopia: A Cultural History* (Lalibela House, Essex 1955) p. 180

11 Pankhurst, *Ethiopia: A Cultural History* p. 180

12 G Huntingford, *The Historical Geography of Ethiopia* (OUP, Oxford 1989)

13 But William Wright in an earlier work provides the changing styles of writing as a guide to approximate the age of Ethiopic manuscripts. Wright: See the Preface to his catalogue (note 3).

palaeographic criteria and classified the manuscript collections in his book from archaic (up to the second half of the 14th century) to modern scripts (from 1850).[14]

The contents of these manuscripts are mainly of a religious nature and chronicles of rulers in the past, but often they deal with other subjects including literature, philosophy, history, astronomy, and traditional medicines, and some of them are magical scrolls. Stefan Strelcyn wrote about a catalogue of Ethiopian Manuscripts which he described as "magico-medical scrolls belonging to the field of ethno-medicine."[15] David Appleyard wrote about Ethiopian manuscripts containing what he described as "representative range of Ethiopic literature dating from the late 14th to the 20th century."[16] Pankhurst compared the subjects of several Ethiopian manuscripts and concluded that " the great preponderance of the religious writings indicates that texts on history, law, medicine and kindred subjects form only a small fraction though, of course, by no means uninteresting minority of the whole."[17]

Pankhurst, elsewhere, has also documented secular themes in Ethiopian ecclesiastical manuscripts and catalogued illustrations of historical and ethnographic interest of Ethiopian manuscripts available at the Institute of Ethiopian Studies, British libraries and in private hands.

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14 DL Appleyard, *Ethiopian Manuscripts* (Jed Press, London 1993)

15 S Strelcyn, 'Catalogue of Ethiopian Manuscripts of the Wellcome Institute of the History of Medicine in London' (1972) Bulletin of the School of Oriental and African Studies

16 Appleyard; p. 5

17 R Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' (1962) 6 Ethiopia Observer p. 246

Although these manuscripts are primarily ecclesiastical and their illustrations mainly religious, they often include details of historical, ethnographic or related cultural interests.[18]

Such vast collections of manuscripts should not to be considered as mere religious heritage or hagiography. They are tangible evidence of a long history of traditional learning and writing in a wide range of subjects and thoughts. Not surprisingly, traditional Ethiopian literature was largely religious both in form and content. Given Ethiopia's long history of Christianity,[19] the traditional centres of learning were Churches and monasteries. Gupta remarks how the literary heritage of Ethiopia has been preserved, copied and studied in Church schools and monasteries, which remained the only means of education until the 20th century.[20] Dillmann also noted that 'language was cultivated for literary purposes mainly in the service of religion and of the Church. The large majority of the extant writings are of ecclesiastical character. ... Beyond question, all native authors in their methods of thought and statement were dependent more or less on scripture models.'[21] Priests, monks and scribes educated in Churches and monasteries were either commissioned by Churches or monarchs to write

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18 R Pankhurst, 'Secular Themes in Ethiopian Ecclesiastical Manuscripts: A Catalogue of Illustrations of Historical and Ethnographic Interest in the British Library' 22 Journal of Ethiopian Studies p. 31 – 64. See also Vol. 24 (1991), Vol. 25 (1992) and Vol. 26 No.2 (1993).

19 Christianity is introduced into Ethiopia around the middle of the 4th Century AD during the Axumite Kingdom. Z Bahru, *A History of Modern Ethiopia: 1855-1991* (2nd edn Eastern African Studies, James Currey, Oxford 2002)

20 S Gupta, 'The Development of Education, Printing and Publishing in Ethiopia' 26 International Information & Library Review p. 171-172.

21 A Dillmann, C Bezold and JA Crichton, *Ethiopic Grammar* (2nd edn Williams & Norgate, London 1907) p. 11 cited in Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 245

religious books; or their writings were determined by the market which demanded prayer books.[22]

As Heldman rightly noted, Ethiopian manuscripts 'document a vital religious and cultural tradition that provided a sense of *communitas* to those peoples who comprised the old Abyssinian state. To ignore or denigrate such documents of the past is to distort the history of modem Ethiopia.'[23] Indeed Ethiopian manuscripts were largely the province of the Ethiopian Orthodox Church, but their socio-cultural, historical and educational value cannot be discounted. Long before the introduction of printing machines, these vast collections of manuscripts documented Ethiopia's traditional, social and cultural life. Arguably, Ethiopian manuscripts are one of the earliest traditional foundations for the gradual development of the modern-day printing industry and the expansion of the modern-day education in general. In these senses, Ethiopian manuscripts are arguably one of the earliest traditional foundations of Ethiopians exercising freedom of expression at least in terms of those who cared to write were writing freely and opining on matters of religion, philosophy, traditional medicines and other subjects on vast collections of Ethiopian manuscripts.

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22 Hable-Selassie; p. 34

23 M Heldman, 'Ethiopian Manuscripts: Book Review' 30 African Arts 16 (In his review of the book *Ethiopian Manuscripts* by David Appleyard).

CHAPTER 2

MISSIONARY PRINTING

2.1 The Early Ethiopian Prints

The printing of the first book in Ethiopian language goes back as early as the 16th century when sections of the Bible was printed in Europe. In December 1513, Johann Potken printed his edition of the *Psalms and the Song of Solomon*[1] in Ge'ez at the Marcellus Siber printing house in Rome.[2] Roberts noted the first copy of this book had no proper title.[3] According to Black, another edition of this book also appeared at Cologne in 1518. Little appears to be known about Potken who was the Provost of the St. George Church in Cologne, Germany. But Black recorded Potken's own description from the preface of one of his editions of the same book. Potken described how he heard certain strangers in Rome reciting sacred hymns in which he recognized the names of the Virgin Mary, the Apostles and certain saints. On enquiry, he learned that they came from Ethiopia, and his curiosity being aroused he was determined to

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1 J Potken, *The Psalms, Canticles &C. In Aethiopic, Ed. By J.Potken* (Romæ 1513). I consulted two original copies of this work which are available at the Bodleian Library in Oxford.

2 AD Roberts, 'Documentation on Ethiopia and Eritrea' 1 Journal of Documentation p. 185 - 186; S Pankhurst, *Ethiopia: A Cultural History* (Lalibela House, Essex 1955)p. 523; J Janas, 'History of the Mass Media in Ethiopia' (1991) Studies of the Department of African Languages and Cultures p. 10; G Metaferia and HJ Donald, 'Ethiopia, Status of Media In '*Encyclopedia of International Media and Communications* (Elsevier, New York 2003) p. 563; S Gupta, 'The Development of Education, Printing and Publishing in Ethiopia' 26 International Information & Library Review p. 174 – 175. M Ourgay, 'Printing, Publishing and Book Development in Ethiopia up to the Era of Menelik 2nd' 24 International Information & Library Review 221p 221; GF Black, *Ethiopica & Amharica: A List of Works in the New York Public Library* (The New York public library, New York 1928) p. 9. One article cited both by AD Roberts, M Ourgay and S Gupta but I have not been able to consult is Sir Stephen Gaselee's 'The beginnings of printing in Abyssinia.' M Ouragay noted this is an unpublished article but AD Roberts records it as follows: (1931, 4th ser. Xi. 93 – 6). Other valuable non-English sources cited by AD Roberts include: Altamharische Kaiserlieder. and RLE Littmann, *Die Altamharischen Kaiserlieder, Rede, Von E. Littmann* (Strassburg 1914); KJ Luthi, *Der Erste Athiopische Druck / Athiopisch in Der Schweiz* (Schweizerisches Gutenbergmuseum, 1930)

3 Roberts, p. 185

learn their language. He succeeded in mastering it enough to enable him to publish the Psalter in the native characters.[4]

According to Janas, it was Potken and Thomas Wolde-Samuel [presumably an Ethiopian priest who lived in Rome] who used moving fonts [the technology of printing at the time] to print the Psalms and the Song of Solomon in Ge'ez at the Marcellus printing house in Rome.[5] I could not verify about Thomas Wolde-Samuel from another source but it is possible to assume that Potken must have worked closely with an Ethiopian priest although no Ethiopian name appeared in Potken's edition of the Psalter. Janas gives an account of further developments in the use of Ethiopic prints. In 1522, when a multilingual set of the Psalms was published in Cologne, the Ethiopic version was included; in 1527, the Ethiopic syllable was included into the Armenian grammar printed in Basilea; in 1538 a woodcut with Ethiopian signs was used in Paris in Postellu's work *Linguarum duodecim characteribus differentitum alfabetum introducio*; in 1540 the same woodcut was used in Pallation's work about calligraphy. [6]

Otherwise, the next work to appear in Ethiopian language was two volumes of the New Testament published in Rome in 1548 and 1549.[7] It was edited by three monks of the Ethiopian monastery in Rome called *Santo Stefano dei Mori*. [8] The three Ethiopian monks; Tesfa Tsion, Tensea Waldus and Zasklaskus were assisted by Paulus Gualterius Aretinus and Marianus

4 Black p. 9

5 Janas, p. 10

6 Ibid., p. 10 - 11

7 The New York Public Library possesses a copy of the first volume. See: Black p. 9 and 45.

8 The Covent of *Santo Stefano dei Mori* in Rome which was established in 1539 was the first home of Ethiopic studies in Europe. See: Ibid. p. 9

Victorius Reatinus.[9] Around the same time, Marianus Victorius (aka Mariano Vittorio) published the first grammar book of Ge'ez in Rome (it was reprinted in 1630).[10]

In 1638, Jacob Wemmers of Antwerp published his *Lexicon Aethiopicum*[11] with outlines of the grammar. The works of Hiob Ludolf (1614 – 1704)[12] on Ethiopian history, including his lexicon and grammar publications, were instrumental in laying the foundations for the scientific study of Ethiopian languages and hastening the development of Ethiopic prints. Gradually, Ethiopian texts were printed in several places in Europe: in Switzerland since 1527; in Germany since 1583; in the Netherlands since 1598; and in England since 1655.[13]

In 1859, Antoine Thompson d'Abbadie had had an entirely new set of good Ethiopic typeface casts prepared in Paris to publish a catalogue of Ethiopian manuscripts he brought from Ethiopia. The new type casts were modelled after the best forms of the most approved period of Ethiopic calligraphy.[14]

2.2 Scripture Printing

The British and Foreign Bible Society pursued an active policy of scripture printing for Ethiopia in the early 19th century. In 1810, the Society printed 220 Psalters in Ge'ez; in 1824

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9 Ibid. p. 9; Roberts, p. 185; Metaferia and Donald p. 563; Pankhurstp. 523; Janas, p. 10 (Janas remarked that the two volumes of the Ethiopic New Testament were published at Pope Marcel's suggestion).

10 Black p. 9; Metaferia and Donald p. 563; Janas, p. 10

11 J Wemmers, *Lexicon Aethiopicum, Cum Einsdem Linguæ Institutionibus Grammat* (Romæ 1638)

12 Hiob Ludolf of Germany became acquainted with a learned Ethiopian Abba Gorgoryos (aka Gregory) in Italy and acquired from him an intimate knowledge of the Ethiopian language Ge'ez. The fruits of his Ethiopian studies are documented in several works including: H Ludolf and J Phillips, *A New History of Ethiopia, Made Engl. By J.P* (Lond. 1682); H Ludolf, Claudius and JM Wansleben, *Lexicon Æthiopico-Latinum* (London 1661). See: Black p. 10.

13 Janas, p. 11; Metaferia and Donald p. 563

14 Black p. 13; Janas, p. 11

– 1825, it produced the four Gospels and the New Testament in Ge'ez and Amharic; in 1836, it produced the Old Testament in Amharic and finally the complete Bible in four volumes was produced in 1840. Based on the records of the Bible Society, Pankhurst concludes that a total of 14,000 volumes of the Psalms, New and Old Testament including the complete Bible appear to have been produced in the first half of the 19th century.[15]

The missionary enterprise also led to the production of the first printed text book in Amharic. An Amharic spelling and reading text book called "*Ye'temehret Majamariya*" (The beginning of education) and a geography text book called *"Geography – Ye'meder Temehret*" (Geography – the study of earth) were produced by Isenberg of the Church Missionary Society in 1841; and in 1842 the same author produced a history text book called *Ye'alem Tarik* (World History).[16]

Another noteworthy development of this period is the introduction of the regular study of the Amharic language in 1829 at the Kharkov University in Ukraine, Russia.[17] G. Metaferia remarked how the 'use of the Ge'ez language during Mass and the development of the Ethiopic printing press, unique in itself, fascinated and prompted European interest in Ethiopia ... [and it] contributed to the hastening and development of printing in Amharic.'[18]

After the first half of the 19th century, still more of Bibles and other religious works were published in Europe in Amharic, Tigrigna and Afan Oromo. Some were published in

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15 R Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' (1962) 6 Ethiopia Observer p. 247;

16 Ibid., p. 248

17 G Metaferia, *Ethiopia and the United States: History, Diplomacy and Analysis* (Algora Publishing, 2009) p. 12

18 Metaferia and Donald, 'Ethiopia, Status of Media In ' p. 563

Germany and some in Britain, but the most notable publisher of many of the Ethiopian religious books is the Chrischona Press of the St. Chirschona Mission near Basel in Switzerland.[19] Chrischona Press also published a couple of spelling and geography text books in Amharic which appeared in 1873 and 1889.[20]

2.3 The Introduction of Printing Machines to Ethiopia

In the second half of the 19th century, printing machines were gradually brought into the territory of Ethiopia by European missionaries. The first introduction of printing machine into these parts of East Africa was in October 1863 when an Italian Bishop, Lorenzo Biancherie, a member of the Catholic Saint Lazarus order who had been appointed apostolic vicar of Abyssinia,[21] brought to Mits'iwa (which was then under nominal Turkish rule but remained part of Ethiopia until Eritrea's secession from Ethiopia in 1991) a small printing machine with Amharic typeface casts which Antoine d'Abbadie had had prepared[22] in Paris. [23]

According to Pankhurst, Biancherie even called himself "Printer to His Majesty Emperor Theodros" (1855 – 1868) of Ethiopia. Gupta and M Ourgay noted that Biancherie

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19 For more details of the religious publications of the 19th century, see Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 246 – 252. For an account of the work at St. Chrischona and also reference to the printing of the Bible in Amharic See: Luthi cited in Roberts, p. 186 and 193.

20 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 248 – 249

21 Bishop Lorenzo Biancherie was actually appointed apostolic vicar of Abyssinia/Ethiopia on 28 June 1853 and he was succeeded on 31 July 1860 and died on 11 September 1864. See: -- --, 'The Hierarchy of the Catholic Church: Bishop Lorenzo Biancherie, C.M.' (2009) <http://www.catholic-hierarchy.org/bishop/bbianl.html> accessed 20 January 2010

22 See: p. 19 above (note 14)

23 Roberts, p. 186; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 249; Metaferia and Donald, 'Ethiopia, Status of Media In ' p. 563; Gupta, p. 175; Ourgay, p. 222; Janas, p. 11; C Prouty and E Rosenfeld, *Historical Dictionary of Ethiopia and Eritrea* (2nd ed edn African Historical Dictionaries, Scarecrow Press, London 1994), p. 259 - 260

prided himself on being 'Printer to the Emperor,' but Ourgay remarked there is no evidence that he had any relationship with the Emperor. Janas, on the other hand, noted Emperor Theodros supported Biancherie's enterprise.[24] Roberts noted, as described by Fumagalli[25] in his Bibliography, Lorenzo Biancherie published an Amharic catechism in January 1864, but no copies of this work are now extant. Biancherie having died few months later (September 1864), his printing has also ceased after its short life.[26]

According to Sanceau, Portuguese missionaries printed religious books in Ethiopia about the beginning of the seventeenth century.[27] Roberts and Janas, however, remarked that this claim has not been verified.[28] Indeed, I have not been able to verify Sanceau's claim from another source. Janas noted that in 1630, the Jesuit A. Mendez sent from Ethiopia drawings of Ethiopic script types asking for casts to print religious books in Ethiopia. A. Venerius from *Congregatio ad Propagandam Fidem* was ordered to make them. Ready fonts were sent to Ethiopia, but the Jesuits could not use them because the whole Catholic order was banished from Ethiopia.[29]

In 1879 French Saint Lazarus missionaries established the second printing press in Keren (which was then under the Egyptian suzerainty but for the most part remained part of Ethiopia until Eritrea's secession from Ethiopia in 1991). It published prayer books and other religious works in Ge'ez, Amharic and Tigrigna including Ge'ez – Amharic grammar book by

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24 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 249; Ourgay, p. 222; Janas, p. 11; Gupta, p. 175

25 G Fumagalli, *Bibliografia Etiopica* (Milano 1893) cited in Roberts, p. 186

26 Roberts, p. 186; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 249

27 E Sanceau, *Portugal in Quest of Prester John* (Hutchinson, London ; New York 1943)

28 Roberts, p. 186; Janas, p. 11

29 Janas, p. 10.

Gebre-Michael, Christine Doctrine by Monseigneur Touvier and an Amharic prayer book by Father Duflos.[30] Pankhurst noted this may well be considered as the first press in Ethiopian territory because the Bogos province in which Keren was situated was restored to Ethiopia and the press continued to operate after the treaty between Britain, Egypt and Emperor Yohannes of Ethiopia in 1884. However, in July 1888, Keren fell to the Italians and the missionary press started to print announcements for the Italian commandant.[31]

However, the printing press brought by Lorenzo Biancherie to Mits'iwa in October 1863 may well be considered as the first attempt of printing press in Ethiopia, albeit it was short-lived and hardly of no consequence. Mits'iwa was ostensibly under Turkish rule at the time, but the whole province was eventually restored to and remained part of Ethiopia except for the period of Italian occupation and, more recently, until Eritrea seceded from Ethiopia in 1991.

In 1885, the Swedish Evangelic Mission established its own printing press in a place called Monkullo near Mits'iwa. Before the Monkullo press was established, they had their works printed at the St. Chrischona mission press in Switzerland.[32] Richter noted that a boys' school was begun in Monkullo (some six miles from Mits'iwa) in which it was hoped that evangelists might be educated for inaccessible Abyssinia. A printing press was also set up for the production of portions of the Bible and of protestant literature.[33] The Swedish Evangelic

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30 Roberts, p. 186; Janas, p. 11; Gupta, p. 176; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 249

31 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 249

32 Ibid., p. 249; Roberts, p. 186

33 J Richter, *A History of Protestant Mission in the near East* (Oliphant, Anderson & Ferrier, Edinburgh 1910) p. 387

Mission published several religious writings in Geez, Amharic and Tigrigna. The first Tigrigna periodical magazine called *Melekte Selam* was the most notable.[34]

In the same year, an Italian military press was established in Mits'iwa soon after their occupation of the port in February 1885. Pankhurst noted this is the first non-religious press in the area. This printing press, according to Fumagalli cited in Pankhurst, was acquired from an Italian firm and its production, which was entirely in Italian, was mainly regulations, orders and circulars of the Italian military authorities, although some books appear to have been printed as well.[35]

In 1890, *Tipographia e Libertia Italiana*, owned by A. Micheli and Co., established a commercial printing press in Mits'iwa which from November of the following year begun publishing a weekly administrative newspaper called *L'Eritreo*. Around the same time another printing press called *Corriere Eritreo* was also established in Mits'iwa and began to issue a weekly politico-commercial newspaper under the same name of the press.[36] Both of these establishments were in the Eritrean colony of Italy at the time.

After about 1900, French Franciscan missionaries led by Father Marie-Bernard, who established the St. Anthony leprosy hospital in Harar, had begun printing their mission bulletin called *Bulletin du Leprosarium de Harar* with a roneograph duplicator.[37] In 1905, Father Marie-Bernard acquired a small printing press from a French firm called *Raguenot* and replaced

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34 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 263. G Metaferia refers to *Melekte Selam* as the first Tigrigna newspaper. However, it was a periodical religious publication of the Swedish Evangelic Mission published in Mits'iwa from about 1912 to 1915. Metaferia and Donald, 'Ethiopia, Status of Media In ', p. 564

35 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 249

36 Ibid., p. 249

37 Ibid., p. 262; Gupta, p. 176; Roberts, p. 187

the earlier mission bulletin with a French journal called *Le Semeur D'Ethiopie* which began to publish in September 1906.[38] In 1908, Father Bernard introduced some technical improvement to his printing press after his visit to Europe and moved his printing house from Harar to Dire Dawa where it was named St. Alazar Printing Press. It continued to publish until 1914 when the French government called the monks to serve in the First World War. Pankhurst concluded that this can be considered as the first successful commercial printing press in Ethiopia [39]

The first Ethiopian government printing press was also established in 1908. Emperor Menelik had a printing machine imported and established *Ye-Ityop'ya Mahtamiya* (Ethiopian Printing Press), also called *Ye-Ityop'ya Mengist Mahtamiya* (Ethiopian Government Printing Press), and later renamed *Merha Tebeb* (The Beginning of Wisdom) by the Emperor.[40] When Emperor Menelik established the first Ministerial framework and defined the powers and

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38 R Pankhurst, 'Two Early Periodical Publications Djibouti and Le Semeur D'éthiopie as Sources for Late 19th Century and Early 20th Century Ethiopian History.' 19 *Annales d'Ethiopie* p. 241 (Pankhurst gives a detailed annotated chronology of the most important political and other events recorded in the two newspapers. According to the chronology of events, *Le Semeuer d'Ethiopie* did not begin publication until September 1906)

39 Pankhurst, *Ethiopia: A Cultural History* p. 523 – 524; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262; Janas, p. 12; Gupta, p. 176; Metaferia and Donald, 'Ethiopia, Status of Media In ' p. 564; Roberts, p. 187

40 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262; Gupta, p. 177; Janas, p. 12.

Emperor Menelik was instrumental for the beginning of modernising initiatives at the turn of the 20th century. Postal and telegraph services; railroad from Djibouti to Dire Dawa; secular education and printing made modest beginnings under his rule from 1896 – 1910. See: Z Bahru, *A History of Modern Ethiopia: 1855-1974* (James Currey, Oxford 1991); Prouty and Rosenfeld, p. 227. For a brief history of Posts and Telegraph in Ethiopia, See: A Eshete, 'A Page in the History of Posts and Telepgraphs in Ethiopia: 1899 - 1903' 13 Journal of Ethiopian Studies p. 1 – 16. The development of the first formal institutions of government was also accomplished under Emperor Menelik when he created the first ministerial framework in 1908. See: J Paul and C Clapham, *Ethiopian Constitutional Development : A Sourcebook* (Faculty of Law, Haile Sellassie I University, Addis Ababa 1967) p. 320 – 323; S Bekele and J Vanderlinden, 'Introducing the Ethiopian Law Archives: Some Documents on the First Ethiopian Cabinet' 4 Journal of Ethiopian Law 411 . Emperor Menelik was left moribund by a stroke in October 1910 and died in 1913.

responsibilities of the first nine Ministers appointed in January 1908, Minister of the Pen is declared to be the head of all government presses.[41]

Vanderlinden record that he was told by Balambaras Mahtama-Selassie Wolde-Meskel that in the early beginning of the 20th century, there was a small printing press already functioning at the Imperial Palace exclusively devoted to the printing of proclamations and other official documents. I have not been able to verify this claim from other sources, but it appears Vanderlinden and his source are perhaps referring to the first government printing press imported and established by Emperor Menelik.[42]

Missionary printing thus introduced the earliest printing into Ethiopia and it laid the foundation for the gradual growth of the printing industry in the early 20th century. Several skilled workers of the missionary printing enterprises later joined the Ethiopian government printing presses when they were setup by Emperor Menelik. In 1923 when the first biggest homologous printing press and newspaper called *Berhanena Selam* was established, it was able to start with an all Ethiopian staff and an Ethiopian General Manager Gebre-Kirstos Tekle-Haimanot, who was himself educated at the Swedish Evangelic Mission in Asmara.[43]

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41 Bekele and Vanderlinden, p. 424. (The first nine Ministers and their respective Ministries were: Afe Negus Nesibu for Justice; Negadras Ras Haile Ghiorghis for Foreign Relation and Commerce; Bajironde Mulugeta for Finance; Kentiba Wolde-Tsadik for Agriculture; Fitawrari Habte-Ghiorghis for War; Likemekuas Katema for Interior and Alaka Gebre-Selassie for Minister of the Pen.)

42 J Vanderlinden, 'An Introduction to the Sources of Ethiopian Law' 3 Ibid.227

43 Z Bahru, *Pioneers of Change in Ethiopia: The Reformist Intellectuals of the Early Twentieth Century* (Eastern African Studies, James Currey, Oxford 2002) p. 189

SECTION 2

THE FOUR STAGES OF EVOLUTION OF PRESS LAW IN ETHIOPIA

In the first section of this background part, I have discussed the traditional foundations of writing and printing in Ethiopia in the period before 1900 including the introduction of printing machines and print products with missionary printing. From the early Ethiopian manuscripts to the missionary printing, it laid the foundation for the emergence of commercial printing houses and newspapers from the beginning of 1900. The four chapters that will follow in this second section of the background part, will give an analytical account of the evolution of press and press law that spans a period of over one hundred years which is divide into four broad periods of growth or change. The first phase is the period from the inception of press in early 20th century until the end of Italian occupation of Ethiopia in 1941. This is the period when the first newspapers appeared along with the first written laws and institutions to the time of the Italian occupation when the budding Ethiopian press was destroyed and replaced by the colonial press. The second phase is the period of the imperial press from the time of liberation from the Italian occupation to the overthrow of the imperial monarchy in 1974. The third phase is the period of revolutionary press marked by the revolution period (military rule) from 1974 to the overthrow of the Dergue regime in 1991. The fourth phase is the period of developmental press marked by the overthrow of military rule and the EPRDF coming into power in 1991 and it gradually defined the role of press as an instrument of the economic development agenda of the party. The fourth phase examines the period from 1991 to mid-2018, when the EPRDF regime was replaced by reformist leaders of the party.

This methodical framework is crafted to provide a systematic approach and insight into the historical trajectory of press and press law over the last 100 years. The justification of these

four phases is to be found in the developments of press and press law characterized by special features during each of these periods. We will examine the developments of press and press law from the early times to the twenty-first century and thereby identify elements of the present law inherited from former times which continue to negatively affect the realization of press freedom in present day Ethiopia.

Contrary to the commonly held assumption that Ethiopia's press freedom began only in 1991, the historical analysis will also show a century-long history of press development in Ethiopia including earlier periods when independent presses emerged, albeit short-lived. The historical trajectory will largely focus on the development of press related laws in each of the four periods and how sparkles of press freedom at various times were crushed by successive regimes with their political project for consolidation of power.

CHAPTER 3

FROM INCEPTION TO OCCUPATION (1900 – 1941)

In chapter two, we noted how Ethiopian manuscripts were the socio-cultural foundations of learning and writing in Ethiopia; we examined the history of the early Ethiopian prints along with scripture printing and the historical journey from the introduction of printing machines into Ethiopia primarily by European missionaries to the establishment of the first Ethiopian government printing press.

This chapter focuses on the first phase of the evolution of press and press law in Ethiopia. It gives brief historical account of the first newspapers in the early 20th century and its gradual growth until the 1930s. It also examines the development of law from the customary rules to the early beginnings of written laws and institutions relevant to the press.

3.1 The Early Newspapers

The French missionary journal *Le Semeur D'Ethiopie* and the Amharic newspaper *Aymero* are credited as the front runner newspapers in Ethiopia.[1] As discussed above in chapter 2, although *Le Semeur D'Ethiopie*[2] was mainly written in French, it often included special items and news

[1] R Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' (1962) 6 Ethiopia Observer p. 262; S Gupta, 'The Development of Education, Printing and Publishing in Ethiopia' 26 International Information & Library Review p. 176; AD Roberts, 'Documentation on Ethiopia and Eritrea' 1 Journal of Documentation p. 187; J Janas, 'History of the Mass Media in Ethiopia' (1991) Studies of the Department of African Languages and Cultures p. 12; G Metaferia and HJ Donald, 'Ethiopia, Status of Media In '*Encyclopedia of International Media and Communications* (Elsevier, New York 2003) p. 564; HW Lockot, *The Mission : The Life, Reign and Character of Haile Sellassie I* (Hurst, London 1989) p. 36

[2] Lockot remarked that the ambiguous title, *Le Semeur D'Ethiopie* (The Sower from Ethiopia), suggested a connection with missionary activity. Lockot, p. 36. Some research papers refer to this newspaper as *La Se-maine d'Ethiopie*. See for example: Ellene Mocria, M Messele and A Gebre-Hiwot,'Survey of Culture and Media - Ethiopia' (SIDA2171en SIDA, 2003) p. 29 and W Teshome, 'Media and Multi-Party

articles in Amharic, reporting important political events and covering the activities of Emperor Menelik and later that of Ras Teferi (the heir to the throne at the time) as well as publishing the early government decrees.[3]

Otherwise, the first fully Amharic newspaper called *Aymero*[4] was started by Andreas E. Kavadia in about 1902. It was initially written by hand with mere two dozen copies. In due course, a duplicating machine was obtained and Emperor Menelik also pledged his support by promising to import a printing machine from Europe. *Aymero's* publication halted in 1903, then resumed after some time but, it was repeatedly interrupted. The last series of publications

Elections in Africa: The Case of Ethiopia ' (2009) 6 International Journal of Human Science p. 88. Oyvind Aadland and Mark Fackler noted that the newspaper was first called *La Se-maine d'Ethiopie* and later changed to *Le Semeur d'Ethiopie* in 1905, although their account is not confirmed by any other source. See: *Ö Aadland* and *M Fackler*, 'Ethiopia Press, Media, Tv, Radio, Newspaper' (1999) <http://www.pressreference.com/Co-Fa/Ethiopia.html> accessed 20 January 2009.

Pankhurst noted *Le Semeur D'Ethiopie* and *Djibouti Journal Franco-Ethiopien* (a French journal published in the neighbouring Djibouti, then a French Somali Protectorate, from 1899 – 1903 See: Roberts, p. 187; Pankhurst, p. 263) were two important publications of the time as sources for late 19th and early 20th century Ethiopian history. The latter was primarily concerned with the French colony of Djibouti, but it paid considerable attention to Ethiopia, even as the title itself indicates. Although these two newspapers were produced in different countries, they are worthy of a joint study because they complement each other and together they span an important and formative decade of Ethiopian history. Pankhurst also noted how *Djibouti Journal Franco-Ethiopien* was instrumental in introducing Emperor Menelik and his imperial court to modern journalism (See: R Pankhurst, 'Two Early Periodical Publications Djibouti and Le Semeur D'éthiopie as Sources for Late 19th Century and Early 20th Century Ethiopian History.' 19 *Annales d'Ethiopie* p. 231 - 256)

3 Lockot p. 36; Pankhurst, 'Two Early Periodical Publications Djibouti and Le Semeur D'éthiopie as Sources for Late 19th Century and Early 20th Century Ethiopian History.' p. 241 – 251 (Pankhurst gives a detailed annotated chronology of the most important political and other events recorded in the newspaper); J Vanderlinden, 'An Introduction to the Sources of Ethiopian Law' 3 Journal of Ethiopian Law 227 (Vanderlinden cites examples of such publications with government proclamations or legislation: *Le Semeur D'Ethiopie,* August 1908 and November 1908, 4th Year) p. 232 - 233

4 The name of the newspaper which refers to knowledge or intelligence of the mind or conscience was chosen by Emperor Menelik. See a reproduction of the front page of the journal in Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262

resumed in 1924 with the same founding editor, AE Kavadia, and remained in circulation until the Italian occupation of Ethiopia in 1936.[5]

The story of Blata Gebre-Egziabher's handwritten sheets is worth mentioning. Roberts cites the Librarian of the Ethiopian National Library who told him that the 'handwritten sheets produced by Blata Gebre-Egziabher before 1900 was the first Ethiopian journal.'[6] Pankhurst cites Abba Jerome, also of the Ethiopian National Library, and recorded that Blata Gebre-Egziabher was from Eritrea, imprisoned by the Italians, and later joined Emperor Menelik's Imperial court as kind of satirist. He was known for his witty disparagement of the noble men at Imperial dinner banquets and later he began to issue similar statements in a written form. It can hardly be considered as a newspaper, but Pankhurst observed that his writings were an important manifestation of the times as, among other things, they implied the need for unity, strength and modernisation.[7]

In the second decade of the 20th century, conditions became more auspicious for the development of the press as Pankhurst noted.[8] In 1913, a Frenchman, Leopold Polart, started to publish a weekly French journal called *Le Courrier d'Ethiopie*. It gradually came to have a small section and notices in Amharic and after April 1922 it also ran a supplement called *Le petit Courrier d'Ethiopie* giving radio news and information. It was printed by Alexi Desvages,

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5 Ibid., p. 262; Gupta, p. 171; Roberts, p.187; Janas, p. 17. Merab, cited in Pankhurst, noted the interruption in 1916 was because the editor was pro-German and hence out of tune with the Ethiopian government opinion. Docteur Mérab, *Impressions D'éthiopie : L'abyssinie Sous Ménélik I I* (H. Libert, Paris 1921) cited in Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262

6 Roberts, p. 187. According to Roberts, the best account of early Ethiopian periodicals is by Silvio Zanutto whose article includes some reproductions of pages from the originals. S Zanutto, *La Stampa Periodica Etiopica, Rivista Delle Colonie* (Roma 1935). See also A Zervos, *L'empire D'éthiopie : Le Mirroir De L'éthiopie Moderne, 1906-1935* (Geuthner, Paris 1936) cited in Roberts, p. 187

7 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 260

8 Ibid., p. 262

who established a small hand-press printing machine in the same year.[9] Another important development at the beginning of the 20th century which must have helped to hasten newspaper publication was the introduction of the Amharic typewriter by the Italian company Olivetti.[10]

During World War I, an Amharic news bulletin called *Yetor Wore* (War News) was issued from the Italian legation in Addis Ababa. It was printed by Alexi Desvages and stayed in circulation from 1916 to 1918. It included reports from the war front and appeared to be issued with the cooperation of the Ethiopian government as a propaganda publication to counteract the German-Turkish propaganda which was spreading in the Middle East.[11]

Around 1917, a journal called *Goha Atse'bha*, which had a literary character was started by Herouy Wolde-Selassie with the support of Ras Teferi, heir to the throne (later Emperor Haile-Selassie). In addition to Amharic poetry and literary writings, it reflected and praised the modern aspirations of Ras Teferi.[12]

In 1921, Ras Teferi (then still heir to the throne) founded a printing press known at the time as *Ya-Etyop'ya Mengist Alga Warash ya-Leul Ras Teferi Mekonnen Matamiya* (The Ethiopian Government Heir to the Throne, Crown Prince Ras Teferi Printing Press) later renamed *Berhanenna Selam* (Light and Peace) printing press.[13] The printing machine imported

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9 B Franco, *Storia Del Giornalismo in Etiopia* (Rome 1963) as cited by Janas, p.12; See also: S Pankhurst, *Ethiopia: A Cultural History* (Lalibela House, Essex 1955) p. 525; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262; Gupta, p. 171; Roberts, p. 187

10 J Mantel-Niecko, *Etiopia: Podstawowe Wiadomosci O Kraju Jego Dziejach I Historii Badan* (Warsaw 1975) p. 523 cited in Janas, p. 11

11 Pankhurst, *Ethiopia: A Cultural History* p. 524; See also Zanutto cited by Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262.

12 Pankhurst, *Ethiopia: A Cultural History*; p. 524

13 Lockot noted Ras Teferi, who was then still the heir to the throne, could not obtain access to government funds for this end and therefore used his own money to acquire the printing machines. But soon he succeeded in raising the funds from the government to import another printing machine. Lockot observed, introducing printing into Ethiopia on a much larger scale was an urgent necessity for Ras Teferi

from Germany was initially set up in the premises of Ras Teferi's palace but later it was moved into its present location. In 1923, it started to publish a weekly Amharic newspaper called *Berhanenna Selam* (the same name of the printing press).[14] Gebre-Kirstos Tekle-Haimanot with an all Ethiopian staff of 30 people was appointed as the first General Manager.[15] Each Thursday two horsemen distributed 500 copies of the new journal throughout Addis Ababa. In an effort to encourage a tradition of newspaper reading, it was reportedly distributed for free for the first month.[16]

Berhanenna Selam emerged as a semi-official newspaper where not only news and views, but also government notices and decrees were published. The Ethiopian government official gazette was not established until 1942. *Berhanenna Selam* served as semi-official gazette for publishing government laws, decrees and all other kind of public announcements.[17]

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to publish government laws and decrees as well as books and periodicals. Lockot, p. 35 – 36. See also: CF Rey, *In the Country of the Blue Nile* (Duckworth, London 1927) p. 29. Rey observed, the establishment of this printing press was a 'remarkable achievement on the part of the Regent [Ras Teferi later Emperor Haile-Selassie], and one due entirely to his own initiative.'

14 Vanderlinden noted that a complete collection of *Berhannena Selam* cannot be found even at the National Library. From the available issues, he remarked, one can guess that it was inaugurated in January 1925 and was from then on published weekly until the end of 1935. See: Vanderlinden, p. 237

15 GF Black, *Ethiopica & Amharica: A List of Works in the New York Public Library* (The New York public library, New York 1928), p. 7; Roberts, p. 186; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 269 – 270; Gupta, p. 177; Z Bahru, *Pioneers of Change in Ethiopia: The Reformist Intellectuals of the Early Twentieth Century* (Eastern African Studies, James Currey, Oxford 2002) p. 189; Rey p. 29

16 I Kaplan and Others, *Area Handbook for Ethiopia* (US Government Printing Office, Washington 1971) p. 324; Bahru, p. 189

17 Pankhurst, *Ethiopia: A Cultural History*, p. 524; Janas, p.17; Vanderlinden, p. 237; K Redden, *The Legal System of Ethiopia* (The Legal System of Africa Series, Michie Co., Charlottesville, Virginia 1968) p. 179 – 181.

Before *Berhanenna Selam* was started in 1923, *Le Semeur D'Ethiopie* and *Aymero* also used to publish some government decrees and public announcements since the reign of Emperor Menelik. Customarily, laws were made known to the populace mainly by vocal proclamations through the *Awaj Negari* (the heraldry). The *Awaj Negari* beats a drum shouting *awaj, awaj*... (herald) to convene people to a public square. People gather to listen to the new decree and the news about the new promulgation passes around the country with merchant travellers, *azmari* (traditional singers) and monks who travel around the country. Since the reign of Emperor Menelik, there were an increasing number of decrees and proclamations from the Imperial court issued in a simple and hortative form some issued by means of handwritten posters. See: Lockot, p. 36; W Howard, *Public Administration in Ethiopia: A Study in Retrospect and Prospect* (J. B. Wolters, Groningen, Djakarta 1955) p. 77; M Perham, *The Government*

But *Berhanenna Selam* also rose to prominence as a forum for intellectuals to share their views on modernisation initiatives, public administration and political economy.[18] A year later in 1924, *Aymero* resumed its publication with the same founding editor, Andreas Kavadia.

By the mid-1920s, Rey noted there were thus three weekly newspapers in the capital: *Berhanena Selam* and *Aymero* published in Amharic and *Le Courrier d'Ethiopie* published in French.[19] Lockot adds that there was also a monthly journal called *Kesate Berhan*, published in the late 1920s.[20] Gaselee, cited in Pankhurst, noted that *Berhanena Selam* and *Aymero* had a weekly circulation of 500 and 200 copies respectively.[21] A few years later, according to Zervos, *Le Courrier d'Ethiopie* reached about a circulation of 700 copies per week.[22] Rey remarked that the French journal *Le Courrier d'Ethiopie*, edited by a long resident of the country Monsieur de Robillard, 'very wisely eschews politics (a dangerous subject in Abyssinia) and confines itself to matters of commercial and general interest.'[23]

Meanwhile, more printing presses continued to be established: Hermis and Louc printing presses were setup by the Armenian H. Bogdassarian in 1926; the Tesfa Gebre-selassie printing press around the same time; and the Artistic printing press by the Armenian brother E.

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of Ethiopia (John Dickens, London 1969) p. 140; N Marein, *The Judicial System and the Laws of Ethiopia* (Rev. edn Royal Netherlands Printing and Lithographing Co., Rotterdam 1951) p. 23 – 24; CH Walker, *The Abyssinian at Home* (The Sheldon Press, London 1933) p. 163 - 164

18 Bahru, p. 188

19 Rey p. 28

20 Lockot, p. 36

21 Sir Stephen Gaselee's 'The beginnings of printing in Abyssinia.' (unpublished) cited in Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 271. See also: Kaplan and Others, p. 324; C Prouty and E Rosenfeld, *Historical Dictionary of Ethiopia and Eritrea* (2nd ed edn African Historical Dictionaries, Scarecrow Press, London 1994) p. 243

22 Zervos, cited in Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 271

23 Rey, p. 29

and G. Djerriahian in 1934.[24] The number of periodical journals also continued to grow until the fascist Italian aggression. By the 1930s there were no fewer than ten periodical press products in Amharic and foreign languages. The Amharic periodicals were: *Aymero, Berhanena Selam, Atbiya Kokeb*[25] and *Kesate Berhan*[26]. An irregular stencilled news bulletin was issued by the government from the eve of the Italian aggression in 1936.[27]

The foreign language press products consisted of French periodicals *L'Ethiopie Commerciale, Le courrier d'Ethiopie, and La Revue Radionationale;*[28] Greek periodicals

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24 Janas, p. 12 – 13; Gupta, p. 177. See also: M Cohen, 'La Naissance D'tune Litterature Imprimee En Amharique' Journal Asiatique 348 (an article which gives details about books printed in Amharic and the establishment of presses) cited in Roberts, p. 186; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 283

25 *Atbiya Kokeb* was overseen by Herouy Woldeselassie but it was managed by Andreas kavadia, the founding editor of *Aymero*. See: Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 283; Metaferia and Donald p. 564;

26 *Kesate Berhan* was an Amharic monthly bulletin started in late 1920's. See: Lockot, p. 36. A publishing house by the same name was also founded in Addis Ababa, Harar and Jima town. See: Metaferia and Donald p. 564. *Kesate Berhan* is probably one of the earliest attempts to establish a publishing house. We do not have a detailed documentation of its work or publications, except the monthly magazine published under the same name. Publishing houses did not come into existence until late in the 1950s and 1960s. Until then, authors were their own publishers. As Marcel Cohen points out, most of the early publications had a very limited circulation and it was not until 1925 that books were first sold. Cohen, cited in Roberts, p. 186. See also: Gupta, p. 178 – 179. Just before the Italian invasion, Gupta noted, there were few printing presses but no single publishing house. But Janas on the other hand noted a publishing firm called *Goha Atse'bha* was established in 1926. One of the founders, according to Janas, was Herouy Woldeselllasie who had earlier established a journal by the same name. But Janas refers to the printing presses as 'publishing houses' and as such it is not clear if she made a distinction between printers and publishing houses. See: Janas, p. 12 - 13

27 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 283; E Waugh, *Waugh in Abyssinia* (Penguin Classics, Penguin, London 2000) p. 107

28 *La Revue Radionationale* giving radio news from Europe to Ethiopia was started in 1935. See: Franco, as cited by Janas; p. 19

Aithiopicos Kosmos (Ethiopian World) and *Aithiopicos Nea* (Ethiopian News);[29] and an Italian fortnightly called *Il Notizario.*

European newspapers were also sold in the capital Addis Ababa. Balfour, who was a war-correspondent for the *Evening Standard* in 1935, noted that you could get all the European newspapers once a week in Addis Ababa.[30] The first provisional radio station was inaugurated in October 1933[31] and there were two cinema houses in Addis Ababa: *Le Perroquet* run by Madame Idot and *Mon Cine* run by Madame Moritas.[32]

In the period from 1900 to the Italian aggression in 1936, the Ethiopian press was born as free press and it was steadily growing. Although there was no established national information system, there was a remarkable growth of both press products and press freedom. Greenfield noted, for example, 'the Amharic newspapers were weekly and lively and an acrimonious exchange of views between Blatta Kidane Mariam, attacking the Ministry of Interior, and the official reply from Lij Takele Wolde-Hawariat demonstrated a considerably wider measure of freedom of the press.'[33]

A sharply opposing view between *Berhanenna Selam* and *Aymero* also demonstrated a remarkable press freedom. Some writers, for example Rey and Black, noted that *Aymero* was actually revived in 1924 as an opposition sheet to *Berhanena Selam*, founded by Ras Teferi and reflecting his views and aspirations about the modernisation of Ethiopia. *Berhanenna*

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29 The Greek periodicals were edited by P.K. Vryennios from 1927 to 1931. See: Metaferia and Donald p. 564; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 283

30 P Balfour, 'Fiasco in Addis Ababa' in L Farago (ed) *Abyssinian Stop Press* (London 1936) p. 52

31 Prouty and Rosenfeld, p. 262.

32 WF Deedes, *At War with Waugh : The True Story of Scoop* (Macmillan, London 2003) p. 41

33 R Greenfield, *Ethiopia : A New Political History* (Pall Mall Press, London 1965) p. 174

Selam was considered as an organ of the progressive intelligentsia and *Aymero* was known for its virulent attack on the foreign-educated intelligentsia and dubbed as a reactionary opposition paper.[34]

It is also interesting to note that the publication of the Italian pro-fascist newspaper called *Il Notizario* was allowed even in the eve of the Italian aggression. Pankhurst observed that this was a fascist publication, 'profiting by freedom of the press allowed by the Ethiopian government [and used] as the first step in the campaign to disrupt the country.'[35]

On the other hand, Rey tells an anecdote about a publication of an article on *Berhanenna Selam* (apparently reproduced from a French paper) attacking the Italian Fascists and their foreign policy. The Italian government made vigorous protest on the matter and the editor was imprisoned. Rey observed that this draconian penalty hardly seemed calculated to encourage freedom of the newly born Abyssinian press.[36]

The development of press and the exercise of press functions was quite significant for that time as observed by Janas and others. In contrast to other countries in the sub-region, Janas noted that, 'on the eve of the [Italian] occupation, the Ethiopian journalism in Amharic and

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34 Black, p. 7; Rey p. 28. But B Zewde remarked *Berhanena Selam* indeed enjoyed the patronage of Ras Teferi for its rise to prominence but counterpoising the two papers as progressive and reactionary is pushing things a bit too far. He observed, *Berhanena Selam* could justifiably be described as the organ of the intelligentsia as it gives us a richer representation of the views of the contemporary intelligentsia. Few of the leading intellectuals of the time bothered to write in *Aymero*, which tended to specialise on international news than national views. See: Bahru, p. 80, 188 - 189. See also: Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 271

35 *Il Notizario* was an Italian pro-fascist publication started in 1933. See: Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 283; Pankhurst, *Ethiopia: A Cultural History* p. 526

36 Rey, p. 28 – 29. The imprisonment of this editor is also confirmed by Emney who noted that an editor who said something uncomplimentary about the Italians was put in chains. S Emeny, 'Under Fire with the Emperor' in L Farago (ed) *Abyssinian Stop Press* (Robert Hale & Co, London 1936) p. 170

foreign languages was very well developed in comparison to other Eastern African Countries.'[37] Franco noted, 'the Ethiopian periodical press before 1936 is regarded in Ethiopian and Ethiopic literature as the pioneer period in the process of organizing the Ethiopian press and journalism'.[38] Pankhurst also noted that the Ethiopian press as a whole was steadily growing...during the years 1930 – 1935, the pioneers had been joined by a growing number of writers and publishers; books and periodicals were pouring from the press in rapidly increasing numbers.

The legal environment of this period in which the Ethiopian press was freely born, and thriving is arguably comparable to the common law concept of the liberty being residual; i.e. the concept of freedom of expression and press freedom simply existed where there is no common law rule or statutory rule restricting its existence. At that time in Ethiopia, there was neither statutory nor customary prohibition on the liberty.[39] To the contrary, the cultural and traditional foundations discussed in the preceding chapters showed how the concept of freedom of speech simply existed in the Ethiopian cultural life for a long time. The only exception to this liberty was a specific set of limitations imposed by customary rules which is discussed in the following section of this chapter.

3.2 Custom and the *Fetha Nagast* (The Law of the Kings)

Until the mid-20th century and the beginning of the new Ethiopian Empire, indeed up until the promulgation of the first Penal Code of 1930, Ethiopia had no unified, written or codified legal

37 Janas, p. 20

38 Franco; as cited by Janas, p. 20

39 For a discussion on the common law concept of freedom of expression see: EM Barendt, *Freedom of Speech* (2nd edn OUP, Oxford 2005), p. 40

system.[40] However, there have always been legal institutions of some sort administering justice in accordance with customary laws, albeit they varied considerably from place to place. Ethnic diversity and religious variety must have made for a wide variety of customary laws and practices.

When the first newspaper appeared from about 1900, the administration of justice was still based on custom. There is very little documentation on how these customary institutions operated in the past, and customary law did not develop as a defined body of law in Ethiopia. As Redden noted, the customary law that existed in Ethiopia was very uncertain and varied considerably from place to place, group to group and even from time to time.[41]

Howard also noted that little light has been thrown on the obscure and variegated pattern of Ethiopian customary law;[42] Vanderlinden observed that although custom is an important source of law in Ethiopia, not much can be said as it has not been a subject of any systematic study;[43] Ullendorff remarked, the Ethiopian customary law is essentially parochial and usually of rather limited territorial concern and neither properly codified nor written down.[44]

One of the most authoritative historical sources of law in the legal literature of Ethiopia was a venerable book known as the *Fetha Nagast* or the *Law of the Kings*, which is a collection

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40 J Graven, 'The Penal Code of the Empire of Ethiopia' 1 Journal of Ethiopian Law 267 p. 268; For an introduction to the sources of Ethiopian law see: Vanderlinden, p. 227 – 283.

41 Redden p. 41, 61 – 63 and 72 – 81. See also: R David, 'Sources of the Ethiopian Civil Code' 4 Journal of Ethiopian Law 341

42 Howard p. 78

43 Vanderlinden, p. 241; G Krzeczunowicz, 'Code and Custom in Ethiopia' 2 Journal of Ethiopian Law 425

44 E Ullendorff, *The Ethiopians : An Introduction to Country and People* (3rd edn Oxford University Press, Oxford 1973) p. 178

of both religious and secular laws originally written in Arabic by a Coptic churchman in Egypt and introduced to Ethiopia in the 17th century.[45] It was first translated in to the local clerical language of Ge'ez and subsequently into Amharic, and it remained the applicable law of mainly the Christian part of Ethiopia for many centuries until it was replaced by the first Penal Code of 1930.[46] Even after the promulgation of the Penal Code, it remained a source of law referred to by Judges in Higher courts[47] until the beginning of the mid-20th century when it has already receded into the realm of Church law.[48]

The *Fetha Nagast* was the earliest customary edict with a set of provisions imposing restrictions on freedom of expression. It stipulated sanctions against blasphemy and apostasy; obscenity; incitement; spreading falsehood and false accusation.[49] The provisions and sanctions are stipulated in biblical character and hence even a minor infraction of the rules could be punishable by death, beating or mutilation. However, both the religious and secular rules of the *Fetha Nagast* were received as "a true canon with its contents in some way

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45 Ethiopian tradition holds that the *Fetha Nagast* was introduced into Ethiopia during the reign of *Zar'a Ya'qob* (1434 – 1468) but the first record of use of the *Fetha Nagast* dates from the reign of *Sartse Dengel* (1563 – 1597). See: P Tzadua and P Strauss, *The Fetha Nagast: The Law of the Kings* (Faculty of Law, Haile Sellassie I University, Addis Ababa 1968) p. xvii. The *Fetha Nagast* was first written in the 13th century drawing from a number of sources including the Old and New Testament; the proceedings of the early religious councils such as Nicaea and Antioch; books of Roman-Byzantine laws; Syro-Roman law and Canons. p. xv – xvi

46 Redden, p. 42; Howard p. 74 – 85; Tzadua and Strauss p. xv; Vanderlinden, p. 250 – 251; S Lowenstein, 'The Penal System of Ethiopia' 2 Journal of Ethiopian Law 383

47 Tzadua and Strauss p. xxix

48 Perham p. 139; K Redden, *The Law Making Process in Ethiopia* (Faculty of Law, Haile Sellassie I University in association with OUP, Addis Ababa 1966) p. 76

49 Tzadua and Strauss p. 286, 287 and 305

inviolable and sacred; which the priests, scholars and jurists taught, explained and caused to be respected throughout the generations."[50]

There is very little documentation about the functioning of early traditional institutions and barely any documentation about the interpretation and application of the *Fetha Nagast* edicts on the various restrictions it imposed on freedom of expression. However, on the basis of the *Fetha Nagast* provisions and customary conventions, certain observations can be made.

It appears, perhaps unsurprisingly, that the most significant restriction on freedom of expression was in relation to blasphemy and apostasy sanctioned by death penalty. In contrast, the liability for a false accusation is the payment of damages, but only if the accused fails to prove the truth of his allegations. It is worth mentioning that the *Fetha Nagast* stipulated the requirement of a public hearing and the liability of the plaintiff himself for damages if the allegation is proved to be true. The *Fetha Nagast* stated:

> He who accuses another of any wicked action shall give a guarantor that he will confirm his accusation as true by producing witnesses and truthful men against that man. If he cannot [prove the accusation], he shall pay an amount equal to what the accused man would have paid him, if the thing had been proved against the accused; this shall be his punishment. If you judge without partiality, you will know the lie of the one who accuses his neighbour falsely, since he will fall [into contradiction] in the word of his mouth. This must be judged publicly; they must do to him what he wanted done to his neighbour.[51]

Obscenity was also customarily regarded as being offensive and strongly disapproved but there was no severe penalty for it in the *Fetha Nagast*. According to religious custom and

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50 Graven, p. 269

51 Tzadua and Strauss p. 305

the *Fetha Nagast*, obscenity is just regarded as unacceptable behaviour not in conformity with the precepts of religion.

The extent to which free speech and criticism of the authorities was allowed in Ethiopian traditional feudal empire is open to different interpretations. Getachew Metaferia argued that freedom of expression in the sense of any person being free to say whatever one wishes to about any subject is not part of the tradition of Ethiopia; debate and discourse were non-existent; the rulers have been above the law and they were the only ones to enjoy freedom of speech.[52]

Plastow on the other hand tells a story, perhaps anecdotal, of satirical expressions in a drama at the imperial court. Ethiopia's first scripted drama, a play called *Fabula: Ye-awere'och comedia* (Fable: The Comedy of Animals) written by Tekle-Hawariat about 1916 was banned by Empress Zewditu. It was a political satire attacking the ruling class on corruption and the backwardness of the imperial court, but it did not conceal its message very deeply. The Empress understood only too clearly the thinly veiled insults contained within the script and she promptly banned not only this play but any other dramatic performances at the imperial court. The ban on drama was rescinded only after the Empress died and Emperor Haile-Selassie assumed the throne in 1930.[53] Plastow noted that Tekle-Hawariat himself, perhaps owing to his high rank, escaped without any punishment other than incurring the empress' displeasure,

52 Metaferia and Donald, p. 561

53 J Plastow, *Tekle Hawariat: The Comedy of Animals* (Fitzroy Dearborn, London 2001) In 'Censorship: A World Encyclopedia' ed. Derek Jones Vol. 2 p. 1039 - 1040

but it appears to have set a trend where playwrights, even when highly seditious, have earned only temporary demotion or at worst prison sentences of few months.[54]

The rich tradition of learning, writing and printing both before and after the introduction of print machines can hardly be ignored. It is understandable that the extent of free writing and speaking was limited by customary rules befitting the times including showing respect to the authorities but there was a rich tradition of writing, printing and speaking on a wide range of topics including critical of religious and State authorities. Getachew Metaferia also observed that although freedom of speech had not been part of the tradition of Ethiopia in a formal and institutionalized way, there nevertheless existed a tradition of criticising authorities and expressing a political or popular view in several traditional ways. The most notable is the Ethiopian tradition of speaking in *Seme ena Worq* (Wax and Gold), whereby the inner message is deliberately concealed by an apparently different ostensible meaning. He identified the following popular traditions.[55]

Azmari (Wandering musical entertainers known for their witty words): They use wax and gold lyrics to convey individual or collective grievances of the people about bad governance, corruption, injustice or heavy taxes. Azmari is mostly active in local pubs where anyone can either buy the entertainer a drink or give some money and dictate a wax and gold lyric of their own which the Azmari will transform into a melodious song that can charm listeners while conveying the message.

Irengna (A Herds Boy): Herd's boys are known for their melodious flutes and lyrics while shepherding animals. They often sing about a collective public concern or eavesdrop on

54 Ibid., p. 1040

55 Metaferia and Donald, p. 561- 562

the whispering conversations of older people and bring them out into the open. Traditionally, leaders and others alike often inquire what the songs of *Irengna* or *Azmari* have been of late, both as sources of information and a way of measuring public content or discontent.

Alkash (A paid mourner who cries and invokes the good deeds of the deceased to provoke the crowd gathered for the funeral ceremony): These are also another group of community members who, like *Azmari* and *Irengna*, enjoy a degree of freedom to convey popular or political messages while narrating a combination of poems, lyrics, ...etc in the middle of their paid mourning activities.

Bahitawi (A religious hermit who has given up worldly life but who comes to town from time to time often claiming to pass on a message they have received from above): As they claim to be and indeed are regarded as conveyers of messages from above, they are often at liberty and above reproach to criticise the formal religious and political leaders. They claim to have received message from God in a dream and cry it aloud to a public crowd or to a political ruler saying 'such-and-such a dream have I seen! Take heed and give alms to the poor and set prisoners free!'[56]

Such was the tradition of conveying criticism or expressing discontent against the authorities. The same tradition is also often used to attack one's opponent in poetical polemic or slur which may be tolerated or may even be considered as amusing although an outright insult or slander is likely to be disapproved. Ethiopian manuscripts discussed above in chapter 1 and the Ethiopian tradition of speaking in Wax & Gold as discussed above point to a history of Ethiopians exercising freedom of expression as an indigenous concept and knowledge. The meaning and essence of freedom of expression is not something introduced to Ethiopia with

[56] Walker, p. 115.

modern laws and international covenants but rather it was part of the history and tradition in the country. It was this rich tradition and history that laid the foundation for the birth of the modern day free Ethiopian press products in the period between 1900 to the Italian fascist occupation in 1936.

3.3 The First Penal Code and the First Constitution (1930 & 1931)

The first effort towards modern codification of laws in Ethiopia was accomplished with the promulgation of the first Penal Code of 1930 on the occasion of the coronation of Emperor Haile-Selassie in November 1930.[57] It was conceived in the manner of modern codes and introduced four broad categories of protected interests: crimes committed against the government, individual persons, property rights and a section for the punishment of petty offences.

The Penal Code of 1930 was also the first codified law to introduce broad areas of legal restriction on freedom of expression. It not only codified the already existing restrictions of the *Fetha Nagast* and customary laws, but also introduced a broader array of restrictions sanctioned by criminal liability. Specifically, the code provided sanctions against blasphemy; obscenity; false accusation; defamation and sedition. Most notably, the code provided special protection

[57] The Penal Code was drawn up and promulgated in 1930 but it does not seem to have been distributed until 1932. See: Perham p. 140

for the king and his immediate family, the monarchy, and the government, including its officials and representatives of foreign governments.[58]

It is perhaps not surprising that the Penal Code was promulgated the day the Emperor was crowned. The Emperor was very keen both on his modernisation initiatives as well as on consolidation of his political power. On the positive side, the Code represented the first step towards modern legal codification and the penalties section in general were softened and improved compared to the Mosaic type of punishment provided by the *Fetha Nagast*.[59] Redden observed that the Penal Code was a major enactment which was considered essential in order to create the conditions necessary for the modernization of society.[60]

But on the other hand, the Penal Code served quite as a handy instrument in terms of consolidation of political power by the Emperor. The suppression of dissent is written into law in no uncertain terms. The Penal Code stipulated, '[Anyone] who brings into contempt the government or the laws of the government in his public speaking or who publicly says anything else which is untrue shall be imprisoned from 2 months to 2 years.'[61] It further provided, '[Anyone] who utters threats against the King or the heir to the throne or the principal ministers shall be imprisoned up to 5 years...A man who abuses the King or the Bishop out of insolence shall be sentenced to the punishment of mutilation or if the punishment is remitted shall pay a fine of 3000 Ethiopian dollars...A man who sows among the people hatred of the King and the

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58 Ethiopian Penal Code of 1930; Part II: Chapter 1 Article 168; Chapter 2 Articles 172, 173 & 180; Chapter 16 Article 268; Chapter 17 Article 270 & 271; Part III: Chapter 1 Article 273; Chapter 2 Article 291; Chapter 10 Article 386; Part V: Chapter 2 Article 484.

59 Graven, p. 272 – 273

60 Redden, The Legal System of Ethiopia, p. 44

61 Ethiopian Penal Code of 1930: Part II Chapter 16 Article 268.

government or any department of the government...shall be imprisoned from 1 to 3 years and shall pay a fine from 100 to 500 Ethiopian dollar.'[62]

The first written constitution of Ethiopia was subsequently issued by Emperor Haile-Selassie in July 1931 following his coronation in November 1930. Like the Penal Code, the first written constitution was also conceived as one of the driving vehicles towards modernization and establishing a European type of government structure. Howard noted that the intention of the Emperor was to provide a modern constitutional government patterned along the lines of the British system.[63] Gilkes on the other hand observed that the Emperor had indeed introduced modern changes in the operation of government including institutional structures that were entirely lacking when he came to power, but the 1931 constitution was also instrumental in laying down the principles of imperial control.[64]

The constitution provided for, among other things, the powers and prerogatives of the Emperor and succession to the throne; the establishment of the chamber of senate and the chamber of deputies as legislative bodies; the roles of the Ministers of the Empire; the jurisdiction of courts and the rights recognised by the Emperor as belonging to the nation, and the duties incumbent on the nation. The constitution was also undoubtedly instrumental in the consolidation of imperial power as the Emperor was clearly the supreme authority in all branches of the government. Clapham observed that the constitution was, first and foremost, an instrument of centralisation under the Emperor reflecting the traditional principle of absolute

62 Ibid. Part II Chapter 2 Articles 172, 173 & 180

63 Howard p. 89

64 P Gilkes, *The Dying Lion : Feudalism and Modernization in Ethiopia* (Julian Friedmann Publishers Ltd, London 1975) p. 63 – 64;

imperial power but, it also provided the formal basis for a process of centralisation which was necessary for effective modernisation.[65]

The chapter of the constitution which recognised the rights of people provided for such basic rights as: no arrest, search, deprivation of property and violation of secrecy of correspondence except in accordance with the law; the right to be tried in court of law; and the right to present petitions to the government.[66] While the adoption of a written constitution was by itself a milestone in the legal history of the country, the concept of freedom of expression was conspicuously absent from the new constitution.

The constitution was principally modelled after the Japanese imperial constitution of 1889. The lead drafter of the constitution, Bejirond Tekle-Hawariat, consulted copies of other constitutions provided by the foreign legations in Addis Ababa, but for the most part he relied on the Japanese imperial constitution.[67] However, the provisions on freedom of speech, religion and association contained in the Japanese model were left out.[68] It appears the drafter and the imperial monarchy have by then decided that freedom of speech is unnecessary or even undesirable in order to protect the supreme and unlimited authority of the Emperor. The introduction of modern codified laws has unfortunately also ushered a new policy of restrictions and chilling criminal liabilities for freedom of expression and media freedom.

3.4 The First Censorship Rules (1935)

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65 J Paul and C Clapham, *Ethiopian Constitutional Development : A Sourcebook* (Faculty of Law, Haile Sellassie I University, Addis Ababa 1967) p. 340 – 341

66 The Imperial Constitution of Ethiopia 1931 Chapter III, Articles 23 – 28

67 Redden, The Law Making Process in Ethiopia, p. 2

68 Paul and Clapham, p. 341

The effects of the new legal and political order were immediately felt. In the early 1930s, Bahiru Zewde noted, censorship had begun to rear its ugly head.[69] An editorial note of Berhanenna Selam in May 1931 tried to explain why it had had to reject articles that 'were not fit for the time,' and added that contributors would have refrained from blaming the editor for such measures had they consulted someone conversant with the law.[70] Bahiru Zewde observed, 'what the editor was not prepared to admit was the fact that, with the consolidation of [Emperor] Haile-Selassie's power, the role of an independent press had diminished considerably.'[71]

In November 1933, the office of the then Ministry of the Pen had apparently issued an order stipulating that all printed matters would thenceforth be subject to censorship. Not much is known about the implementation of this order. The British Ambassador at the time reported 'even Ethiopians regarded [the order] as a joke' as it was not likely to be enforced.[72] On 7 March 1935, an elaborate legislation investing the Ministry of Interior with authority to censor all publications issued by the government was published in *Berhanenna Selam*.[73] There is not much information about the implementation of this law either, but some level of censorship was attempted on news reports of foreign correspondents on the eve of the Italian aggression of Ethiopia

At that time, there was a flow of foreign war-correspondents into Ethiopia and subsequently a Press Bureau headed by Minister of the Pen, Dr. Lorenzo Teazaz, was

69 Bahru, p. 193

70 , 'Editorial Note' *Berhanenna Selam* (Addis Ababa 14 May 1931) Editorial, as cited in Bahru, p. 193

71 Bahru, p. 193

72 Ibid., p. 193

73 Ibid., p. 193

established. Its main task was to issue press permits for foreign correspondents to travel around the country and to issue press statements of the Ethiopian government in relation to the war.[74]

In the wake of the war and Ethiopian troop mobilisation, the Ethiopian government was concerned about military information being passed by foreign war correspondents and hence the Press Bureau introduced censorship of telegraphic transmissions of foreign correspondents. Initially Belgian officers and later Ethiopian officers were appointed to censor the foreign journalists' telegram transmissions, and they were advised to avoid mentioning the Emperor, troop movements, all war news outside the official communiqués, and anything that might assist the enemy or reflect adversely on Abyssinian way of life.

Deedes, who was a war-correspondent at the time, noted that anything that infringed these conditions would simply be excised from a copy of their telegram transmissions. Balfour and Emeny also noted that censorship was imposed several weeks after the war had started and it caused uproar among the foreign journalists; the racket of the foreign journalists soon died, however, as the system turned out to be not very effective and it did not stop them from sending whatever they wished.[75] Knightley on the other hand observed that some of the foreign correspondents themselves actually pressed the authorities to impose censorship in the hope

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74 Deedes p. 39, (Deedes has also reproduced a copy of his press pass in Ethiopia in the same book); Waugh, p. 56. Balfour noted there were over one hundred press passes issued to foreign war-correspondents. Balfour, p. 56, 66 – 67. See also: Emeny p. 170 – 171

75 Deedes, p. 84; Balfour, p. 74; Emeny, p. 194 – 195

that it would at least ensure accuracy and balance as they were concerned and alarmed at the way some of their frustrated colleagues were inventing stories.[76]

3.5 The Italian Occupation Press (1936)

As we saw in the sub-section of this chapter above, the first phase of press evolution in Ethiopia was marked by a gradual growth of the early Ethiopian press and the beginning of laws and policies restricting freedom of speech and media freedom. This sub-section examines the press related events following the Italian colonial occupation of Ethiopia and how the political space for media was closed during the occupation period. The emerging Ethiopian press of the imperial period was soon halted following the Italian aggression and occupation of Ethiopia.

Italian forces invaded Ethiopia in 1936 with a colonising mission. The Italian invasion and short-lived occupation stalled the emerging Ethiopian press. Pankhurst observed that the Ethiopian press was suspended following the Italian invasion, and that foreign printers and publishers left the country. When Italian forces captured Addis Ababa, they imposed censorship rules on the international war correspondents as well.

Knightley noted how the Italian forces, who were not pleased by the international war correspondents based in Addis Ababa, announced that journalists had to submit their reports for prior censorship and furthermore that they had to apply in writing to Rome requesting accreditation. Four British correspondents refused to agree, and they were expelled.[77] In the years which followed after the Italian occupation in 1936, the free Ethiopian press was replaced

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76 P Knightley, *Abyssinian War* (Fitzroy Dearborn, London 2001) In 'Censorship: A World Encyclopedia' ed. Derek Jones Vol. 1 p. 6 - 7

77 P Knightley, *Abyssinian War* (Fitzroy Dearborn, London 2001) In 'Censorship: A World Encyclopedia' ed. Derek Jones Vol. 1 p. 7

by fascist news-sheets and productions imported from Rome, such as the infamous *Difesta della Razza*, preaching the supremacy of the Italian race and subjection of the Ethiopian people.[78]

Janas also noted that everything that the Ethiopian journalism had obtained hitherto was destroyed during the Italian occupation. The Italians took over all printing houses, suspended publication of all Ethiopian periodicals and started publishing their own press.[79] Getachew Metaferia stated how a cloud was cast over the budding Ethiopian media which was cut off quickly and gave way to the Italian newspapers used to advance Italy's colonial ambitions.[80]

Publications during the Italian occupation period concerned Ethiopia, Eritrea and Somalia (the territories occupied by Italy). Under the *Ministero dell'Africa Italiana*, two offices were set up in Asmara and Addis Ababa primarily responsible for press and cinematography in the whole of the Eastern Africa Italian colony: *L'Ufficio Stampa Africa Orientale* in Asmara and *L'Ufficio Stampa e propaganda dell'Impero* in Addis Ababa. There were over two hundred journalists and correspondents, and a dozen cinema operators and about 15 periodicals were published in the whole of the occupied territories.[81] The most notable of these (published in the occupied territory of Ethiopia) include: *Ye-k'esar Mengist Melek'etegna*, (Messenger of Cesar's Government), an Amharic weekly; *Giornale di Addis Ababa*, a daily in Amharic,

78 S Pankhurst, *Ethiopia: A Cultural History* (Lalibela House, Essex 1955)

79 J Janas, 'History of the Mass Media in Ethiopia' (1991) Studies of the Department of African Languages and Cultures p. 20

80 G Metaferia and HJ Donald, 'Ethiopia, Status of Media In '*Encyclopedia of International Media and Communications* (Elsevier, New York 2003), p. 565

81 B Franco, *Storia Del Giornalismo in Etiopia* (Rome 1963), as cited by Janas; p. 20 and 64

Italian and Arabic; *Ye-Roma Birhan / Luce di Roma* (Light of Rome), an Amharic review; and the Italian periodical reviews *L'Impero del Lavoro* and *La Pattuglia*.[82]

The Italian occupying forces imposed their own laws and regulations, which included an Italian Penal code, but there is not much documentation about it. Howard noted the Italian Penal Code introduced during the occupation period was still used even after liberation by some courts and as a result there was a government decree stating all Ethiopians must be tried by the Ethiopian Penal Code and foreigners may elect either.[83]

Before concluding this section, it is worth mentioning the emergence of underground and overseas periodical publications to sustain the patriots' struggle for liberation and present the cause of Ethiopia to the world community. An underground hand-copied publication called *Ye-Ityopya Birhan Miss'eso* (Ethiopia's Pillar of Light) was edited by a group including a Greek-Ethiopian, Yohannes Semerjibashan.[84]

A publication called *Bandirachin* (Our Flag) edited by exiled patriots in Sudan was smuggled into Ethiopia. It is distinctly known for the picture of the Ethiopian flag on every copy. Sylvia Pankhurst established *New Times* and *Ethiopia News*, in the same week as the Italians entered Addis Ababa in May 1936. It was first published in Essex in Britain with an Amharic supplement edited by Amanuel Abrham. Melakou Beyane established *Voice of*

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82 Ibid.; Metaferia and Donald, p. 565. For a comprehensive listing of journals published in Italian, Amharic and Arabic during the Italian occupation period see The Catalogue of the Italian Governor General's Library p. 184 – 193 (*Azienda Speciale Tipografia del governo Generale* A.O.I , Addis Ababa, 1940) cited in AD Roberts, 'Documentation on Ethiopia and Eritrea' 1 Journal of Documentation p. 187

83 W Howard, Public Administration in Ethiopia: A Study in Retrospect and Prospect (J. B. Wolters, Groningen, Djakarta 1955) p. 76, 84. See also: N Marein, *The Judicial System and the Laws of Ethiopia* (Rev. edn Royal Netherlands Printing and Lithographing Co., Rotterdam 1951) p. 130

84 Metaferia and Donald, p. 565; CS Clapham, *Haile-Selassie's Government* (Longman, London 1969) cited by Janas, p. 23

Ethiopia (later renamed *Ethiopian World*), in 1937 in the United States as an organ of the Ethiopian World Federation.[85] A group of anti-fascist Italians in Paris led by Carlo Rosselli and their organization *Giustizia e Liberta*, published a series of leaflets against the Italian occupation of Ethiopia which were also smuggled into Ethiopia.[86]

[85] Pankhurstp. 526 – 527; Janas, p. 22 – 23. For a detailed account of *Bandirachin* and *New Times*, See: S Pankhurst and R Pankhurst, *Ethiopia and Eritrea : The Last Phase of the Reunion Struggle, 1941-1952* (Lalibela House, Essex 1953); GL Steer, *Sealed and Delivered : A Book on the Abyssinian Campaign* (Hodder and Stoughton Limited, London 1942)

[86] Pankhurst, *Ethiopia: A Cultural History* p. 527

CHAPTER 4

POST-LIBERATION IMPERIAL PRESS (1941 – 1974)

4.1 Revival of Ethiopian Press After Liberation

The Italian occupation ended in 1941 but the war left Ethiopia severely damaged. Virtually a whole generation of modern educated Ethiopians was eliminated. The retreating Italian forces either dismantled or burnt industrial structures, including radio stations and printing presses.[1] The British military policy and action dismantling and removing of Italian factories and assets from Ethiopia was tragic and detrimental to the Ethiopian press. The military dismantling included not only printing presses but also removing even printing stationery which the British military authorities considered as 'war booty'.[2] Pankhurst cites the British Brigadier General Duff who reported that 'he was being pressed – he did not say by who – for the removal of some of the country's printing facilities.'[3] Pankhurst noted the British military authorities had deprived the country of perhaps eighty percent of the industrial assets brought by the Italians,

1 Z Bahru, *A History of Modern Ethiopia: 1855-1974* (James Currey, Oxford 1991); C Prouty and E Rosenfeld, *Historical Dictionary of Ethiopia and Eritrea* (2nd ed edn African Historical Dictionaries, Scarecrow Press, London 1994), p. 262; J Abbink, 'Transformation of Violence in Twentieth-Century Ethiopia: Cultural Roots, Political Conjunctures' 25 Focaal: Journal of Global and Historical Anthropology 57 p. 63

2 R Pankhurst, 'Post-World War I I Ethiopia: British Military Policy and Action for the Dismantling and Acquisition of Italian Factories and Other Assets' 29 Journal of Ethiopian Studies p. 50

3 Ibid., p. 49

which left Ethiopia significantly poorer and made subsequent economic development much more onerous.[4]

Emperor Haile-Selassie returned to power in May 1941. Restarting the printing presses and reviving newspapers was one of the earliest but challenging tasks. The official Amharic newspaper called *Addis Zemen* (New Era) was founded in the same year.[5] An English weekly called *The Ethiopian Star* was also started in 1941 and remained in circulation until 1943 when it was replaced by the *Ethiopian Herald*.[6] In the same year, the Ethiopian News Agency was established and it laid the foundation for a nationwide information system which had not hitherto existed.[7]

In the first decade after Liberation, the press was able to revive, but very slowly and in a much more controlled environment than in the pre-war period. There were less than ten periodical press products, including a small monthly church publication.[8] These were: *Addis Zemen*, an Amharic weekly; *Sendek Alamachin* (Our Flag),[9] an Amharic and Arabic weekly;

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4 Ibid., p. 71 – 72

5 According to Janas, the name *Addis Zemen* was probably inspired by the *New Times* of Sylvia Pankhurst published in Britain during the Italian occupation. Janas, p. 23 and 64

6 Since December 1958, *Addis Zemen* and *Ethiopian Herald* have become official dailies and remain to be in circulation to date as the official newspapers of the successive governments.

7 Janas, p. 64 - 66

8 According to a booklet published by the Press and Information Department of the government at the time, as cited by Seed, there were nine newspapers but the report erroneously refers to *Negarit Gazeta* (the official gazette for the publication of laws) as a periodical newspaper. Seed sarcastically remarks 'it shows how the authorities were anxious to make the list appear as long as possible.' See: WH Seed, *Ethiopia's Iron Curtain* (W. H. Seed, Chicago 1955), p. 8. *Negarit Gazeta* was established in 1942 as the official gazette: (Proclamation No. 1 of 1942, known as 'The Establishment of the *Negarit Gazeta* Proclamation). See also: Marein, p. 19

According to another report entitled 'Continental Daily Mail Survey of the Empire of Ethiopia 1941 – 1951' – also published by the Press and Information Department in 1951 as cited by Seed, there were eleven periodical press products. But this report also erroneously lists the *Negarit Gazeta* as a periodical press. See: Seed, p. 9 - 10

9 It was founded in memory of the war time underground bulletin by the same name *Bandirachin* (Our Flag).

Ethiopian Herald and *Ethiopian Review*, English weekly and monthly respectively; *Ye-Ityopya e'na Ye-Alem Wore* (Ethiopian and World News/ The daily news bulletin)[10]; *Ye-Eritra Dimts* (The Voice of Eritrea), a weekly published by the Eritrean society advocating the incorporation of Eritrea into Ethiopia; *Zena Bete Krystian Ze-Ityopoya* (The Ethiopian orthodox Church News), an Amharic monthly published by the Orthodox Church; and *Progress*[11],an English weekly.[12]

The 1950s up to the early 1970s was a period of further gradual development of press products. The number, types, coverage and the overall appearance and quality of periodical press products had grown over the two decades.[13] There was an increasing proliferation of newspapers, magazines, bulletins, academic journals and other kindred press products. In 1960, the Ministry of Information reported that there were six dailies, eleven weeklies and 34 other periodicals published in different languages (Amharic, Tigrigna, Arabic, English, French and Italian).[14] By the early 1970s, there were about ten dailies and even more weeklies and other periodicals, although some were published at irregular intervals.[15] The number of printing

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10 Described as a daily but an occasional mimeographed sheets focussing mainly on reporting international news items collected from Reuters. See: Seed p. 9

11 It was originally French weekly called *Le Progres Economique* and became English weekly in early 1950. See: Ibid., p. 6

12 Janas gives the only available comprehensive listing of all periodic journals both in Ethiopia and Eritrea. See: Janas, p. 23 – 28; Roberts, p. 187 – 188.

13 Janas gives a listing of the most notable press products of this period. Janas, p. 28 – 38.

14 Ministry of Information,'Ethiopia: Facts and Figures' (Ministry of Information of Imperial Ethiopian Government, Addis Ababa 1960) p. 32 – 35.

15 Prouty and Rosenfeld as well as Kaplan noted there was about the same amount of periodical presses by the early 1970's as it were in the 1960's. But in the absence of a regular update, it appears they have relied on the figures issued by the Ministry of Information in 1960. See: Prouty and Rosenfeld p. 243 – 244; I Kaplan and Others, *Area Handbook for Ethiopia* (US Government Printing Office, Washington 1971) p. 325. But a report by the Ministry of Information published in 1969 indicates there were at least ten dailies and a tremendous increase in printed works. See: Ministry of Information,'The Handbook for Ethiopia' (University Press of Africa, Nairobi 1969) p. 140. See also: RL Hess, *Ethiopia:The Modernization of Autocracy* (Africa in the Modern World, Cornell University Press, London 1970) p. 100 – 102. The exact figures, however, cannot be ascertained because there is no library that documents all periodical presses.

presses had also continued to grow. Just before the revolution in 1974, there were about 40 printing presses in the country.[16]

The growth in periodical press and printed works in general was accompanied by the expansion of radio and television services and progress towards a system of modern mass communication and the development of the education system.[17] With an increasing number of schools and the expansion of the education system, Oxford University Press began operations in Ethiopia in 1963; it mainly published textbooks for the Ministry of Education and Fine Arts until it folded in 1975.[18]

With rising student unrest and demand for social action by young intellectuals, some politically oriented underground periodicals began to appear on the university campus. Typical of such publications was *Struggle*, a mimeo-graphed pamphlet circulated by the University Students Union of Addis Ababa. Its tone and policy were socialistic and sought to raise issues of feudalism in the national government. It openly advocated an imperative purge of the feudal legacy in the class struggle between the ruling classes and the oppressed classes.[19] Another such student publication was a news-sheet called *News and Views* which raised issues of civil rights.[20]

Imperial Laws and Press

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16 Gupta gives a list of the different printing presses throughout the country. S Gupta, 'The Development of Education, Printing and Publishing in Ethiopia' 26 International Information & Library Review p. 180

17 Kaplan and Others, p. 321 – 343; Ministry of Information,'The Handbook for Ethiopia' (p. 139 – 141;

18 Gupta, p. 178

19 Kaplan and Others, p. 329 – 330; M Wubneh and Y Abate, *Ethiopia : Transition and Development in the Horn of Africa* (Westview Profiles. Nations of Contemporary Africa, Westview Press, Colorado 1988) p. 37

20 Janas, p. 34

The period after Liberation was a period of revival and gradual growth, but also the period when steps were taken towards organised and institutionalised control over press and media in general following the re-establishment of the Imperial monarchy and its consolidation of power. Several laws affecting the press were adopted from the early 1940s onwards, some of which were essential and necessary legal developments, whereas others imposed severe restrictions on press freedom and freedom of expression in general.[21] The following sections discusses the most significant legislative developments of this period which had impact on freedom of expression and press.

4.2 Public Security and Printing Control Proclamations (1942)

The Public Security Proclamation issued early in 1942 empowered the Commissioner of Police to order the arrest without warrant and to detain any person who in his opinion would be a danger to public security because of being active in political matters, espionage, propaganda, subversion, acts prejudicial to the interests and safety of the Ethiopian, British or Allied Forces or the Ethiopian Government.[22] Marein observed how the whole wording and content of the proclamation showed that it was a war legislation and similar to legislation of the same nature published in other areas of conflict.[23]

The Printing Control Proclamation issued in October of the same year, required every proprietor, manager, lessee or occupier of a printing press to declare the said printing press to

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21 After Ethiopia's liberation and the return of the imperial monarchy in May 1941, the legal structure of the government was completely reorganized and steps were taken to create modern governmental institutions. Several laws were adopted including a major legislative program to introduce codification of laws and establishment of a formal court system. For a constitutional development of the period after liberation see: J Paul and C Clapham, *Ethiopian Constitutional Development : A Sourcebook* (Faculty of Law, Haile Sellassie I University, Addis Ababa 1967)

22 Public Security Proclamation (Negarit Gazeta Proclamation No. 4 of 1942)

23 Marein, p. 84

the Minister of Pen and thenceforth not to establish a printing press without first obtaining permission from Minister of the Pen. It also provided that all printed matter (except such printings as visiting or invitation cards or similar prints), must state the name of the printing press. By the Ministers (Definition of Power) Order issued in early 1943, the Minister of the Pen was given the power to undertake propaganda and information services of the government and to control and supervise printing presses and newspapers.[24] With subsequent amendments, all powers and duties to conduct and control the propaganda, information and press services were transferred first from the Ministry of Pen to the Ministry of Finance and later to the Ministry of Information.[25]

4.3 Censorship Rules (1943)

In April 1943, a proclamation to provide for the censorship of theatrical and cinematographic performances was issued. It provided for the establishment of a censor and stipulated that no film, play, revue or other similar entertainment shall be presented for public exhibition unless and until it has been passed by the censor for public exhibition.[26] Newspapers and/or periodical products were not specifically referred to in this proclamation but it was actually interpreted to apply to almost all kinds of printed matter and hence the press was

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24 An Order to Define the Powers and Duties of Ministers, Order No. 1 of 1943 (Negarit Gazeta 2nd Year No. 5), Article 57 (j)

25 Printing Control Proclamation (Negarit Gazeta Proclamation No. 28 of 1942): Amended by Proclamation No. 76 of 1945 (Negarit Gazeta 4th Year No. 9): Impliedly amended by Order No. 14 of 1954 (Negarit Gazeta 14th Year No. 2); Penal Code of 1957 (Negarit Gazeta 16th Year No. 1); Order No. 33 of 1964 (Negarit Gazeta 23rd Year No. 10) and Order No. 46 of 1966 (Negarit Gazeta 25th Year No. 23). See: , *Consolidated Laws of Ethiopia* (Faculty of Law, Haile Sellassie I University, Addis Ababa 1972) Vol. I p. 333

26 Entertainment Censorship Proclamation (Negarit Gazeta Proclamation No. 37 of 1943): Amended by Proclamation No. 76 of 1945 (Negarit Gazeta 4th Year No. 9): Impliedly amended by Order No. 14 of 1954 (Negarit Gazeta 14th Year No. 2); Penal Code of 1957 (Negarit Gazeta 16th Year No. 1); Order No. 33 of 1964 (Negarit Gazeta 23rd Year No. 10) and Order No. 46 of 1966 (Negarit Gazeta 25th Year No. 23). See: , *Consolidated Laws of Ethiopia* , Vol. I p. 334

subjected to prior censorship. The printers reportedly received written instruction from the censor not to publish any newspaper without the censorship pass.[27]

The post-liberation Ethiopian press was subjected to strict censorship and control from the early 1940s onwards, leading Seed to remark on the total emasculation and suppression of the press at the time.[28] In 1951, the Imperial government published a report on the 'progresses' of the Ethiopian press in the first decade since liberation. The report claimed, as cited by Seed, that the liberation of the country in 1941 was a day of resuscitation for the Ethiopian press.[29] But whether freedom of the press was really revived in the way it had been emerging in the pre-war period, is open to doubt.

Comparing the level of press freedom in the pre-war period with the post-liberation period, Greenfield remarked that the former demonstrated a considerably wider measure of freedom of the press than had existed especially in the 1940s and 50s, but also in the early 1960s when the national press and radio suffered rigid control.[30]

Seed gives a detailed account of the censorship practices from the late 1940s to the early 1950s. He noted that the censorship board functioned in a mysterious way and that the vague rules were wholly unreasonable. He made a list of the principal instructions given by the

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27 Seed, p. 11

28 Seed was an editor of an independent English newspaper called 'Progress' in Addis Ababa. He was so much embittered about the suppression of press under the Imperial rule that he even took it upon himself as his public duty to expose what he knew and campaign for press freedom and freedom of expression in Ethiopia. For this purpose he set up an informal group called 'The Ethiopian Freedom Committee' and published articles in UK and the US from mid to the late 1950s and he published a pamphlet called 'Ethiopia's Iron Curtain'. Ibid.; See also: W Seed, 'Censorship in Ethiopia' *New York Times* (New York 7 October 1952) cited in R Greenfield, *Ethiopia : A New Political History* (Pall Mall Press, London 1965) p. 366

29 ,'Continental Daily Mail Survey of the Empire of Ethiopia 1941 - 1951' (Press and Information Department of Imperial Government of Ethiopia, Addis Ababa 1951) cited by Seed, *Ethiopia's Iron Curtain* p. 9 – 10.

30 Greenfield, p. 174

censor from time to time: (1) No criticism of anything governmental or anything political is allowed. (2) Whenever the name of the Emperor appears, it must be placed at the beginning of the article; all pronouns and other references to him must be capitalized and no other name must appear before his name. (3) The portrait of a living person must not appear on the same page with that of a deceased person and group photos must not be used if any member of the group is deceased. (4) Copies of newspapers for prior censorship must be submitted at least four days before publication and this order would hold even if the paper is a daily publication.[31] (5) The censors order must be accepted and acted upon without argument.[32]

Seed further observed how the censorship rules were rigidly applied, so that practically every article and news story was struck out and could not be printed. He noted how a news report about the departure of the Foreign Minister to Eritrea to arrange the details of the federation was struck out because it was said to be 'political'; time after time, nearly the whole paper was blue-pencilled except for the market reports and shipping news, and sometimes they could not go to press at all. Seed cites a government official who said that newspapers only filled people's minds with a lot of things that did not concern them, and that Ethiopia was better without newspapers.[33]

Janas cites Franco who relates a story how in a Wingate High School theatrical performance of *Julius Caesar*, the censor ordered the scene of Julius Caesar's murder to be withdrawn. Similarly, in the film version of Hamlet, the censor ordered the part concerning the

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31 Seed noted when they protested about this specific instructions the censor answered, 'we are not your servants.' Seed, *Ethiopia's Iron Curtain* , p. 18

32 Ibid., p. 17 – 18; Janas, p. 67 - 68

33 Seed, *Ethiopia's Iron Curtain* , p. 11 – 12; Greenfield, p. 366

murder of the king to be removed,[34] apparently because the censor feared it might give a wrong idea about the possibility of killing the king.

The inadequacies of the 1931 constitution gradually became apparent with the changing political climate of the early 1950s, and especially with the Federation of Eritrea in 1952.[35] The liberal constitution of Eritrea bestowed by the UN contrasted unfavourably with the imperial constitution of Ethiopia, and it even raised doubts about the applicability of the latter in Eritrea. The Eritrean constitution contained a list of fundamental human rights prescribed by the UN Resolution of December 1950. Article 30 of the constitution clearly stipulated that everyone resident in Eritrea shall have the right to express his opinion through any medium and to learn the opinion expressed by others. In contrast, the Ethiopian imperial constitution was conspicuously silent on freedom of expression. But the legal instruments and structures of the federal arrangement resulted in expanded guarantees of civil rights[36] and subsequently influenced a revision of the Ethiopian constitution. Supporters of reform in Ethiopia also urged

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34 Janas, p. 69

35 Eritrea was an Italian colony from 1890 – 1941, when it came under British military administration, pending the Treaty of Peace, and subsequently, the disposal of the former Italian colonies by the United Nations. On 25 December 1950, the General Assembly of the UN voted that Eritrea be federated with Ethiopia as an autonomous unit under the sovereignty of Ethiopia. A liberal constitution was drafted for Eritrea under the directions of the UN which was finally ratified and adopted by the UN, Eritrean Constituent Assembly and the Emperor of Ethiopia thereby creating the federal government of Eritrea. Paul and Clapham, p. 366, 387

36 The UN Resolution of December 1950, (No. 390A 2 December 1950) the basis of the federation, was adopted and ratified by Ethiopia as the Federal Act. [Federal Incorporation and Inclusion of the Territory of Eritrea within the Empire of Ethiopia (Negarit Gazeta 12th Year No. 1) Order No. 6 of 1952]. Paragraph 7 of the Federal Act ensured the guarantee of human rights and fundamental liberties including the right to freedom of opinion and expression. Further the Public Rights Proclamation No. 139 of 1953 reaffirmed the enjoyment of human rights and fundamental liberties and provided that all treaties, international conventions and obligations and executive agreements henceforth concluded shall be the supreme law throughout the federated empire, shall be included as an integral part of the federal legislation and shall be self-executing throughout the empire. In 1962, following a controversial resolution of the Eritrean Assembly, the federal system of administration was abolished and Eritrea was wholly integrated into the unitary system of administration of Ethiopia. In 1991, Eritrea seceded from Ethiopia and formed an independent state of Eritrea.

for a revision of the Ethiopian constitution including a legal guarantee for freedom of expression.[37]

Following the federal arrangement in Eritrea, court cases in defence of constitutional rights arose before Eritrean courts in the early 1950s. One of the earliest cases, decided in August 1953, concerned freedom of expression and press freedom. A newspaper had been suppressed by the withdrawal of its licence to print just before the person concerned had been acquitted of a criminal charge of seditious libel. The Eritrean constitution provided that all existing laws and regulations would continue to be in force unless in conflict with the constitution, in which case the constitution would prevail. Under the former Italian colonial rules, press printing was not allowed without a licence. The court held that this provision was unconstitutional as a means of controlling the press and that the withdrawal of a licence for this purpose is therefore unlawful.[38]

4.4 The Revised Constitution of the Imperial Government (1955)

In November 1955, the Revised Constitution of the Imperial Government of Ethiopia was adopted.[39] It defined the distribution of power, the rights and duties within the Ethiopian empire state; most notably among the five major elements: the Emperor, the Executive, the Parliament, the Judiciary and the People. It provided the powers and prerogatives of the Emperor; the functions of the parliament, the judiciary and the ministers. Under chapter three, it provided for the rights and duties of the people which included ‘freedom of speech and of

37 Paul and Clapham, p. 387 - 388

38 JAC Smith, 'Human Rights in Eritrea' [Blackwell Publishing on behalf of the Modern Law Review] 18 The Modern Law Review 484

39 Revised Constitution of Ethiopia (Negarit Gazeta 15th Year No. 2)

the press guaranteed throughout the Empire in accordance with the law',[40] but it also further provided that 'respect for the rights and freedoms of others and the requirements of public order and the general welfare, shall alone justify any limitations upon the rights guaranteed [in the same chapter.]'[41] Be that as it may, the 1955 constitution was a positive development in clearly stating freedom of speech and freedom of the press compared to the 1930 constitution which was deliberately silent on freedom of expression and press freedom.

Henze observed that in the 1955 imperial constitution, democratic institutions, procedures and safeguards were formally guaranteed but they were so manipulated and violated in practice that the traditional oligarchy was able to maintain its power, with the support of an increasingly well-educated bureaucracy. He concluded, 'the very real limitations on the exercise of despotic power in Ethiopia were therefore almost entirely unrelated to the innovations introduced by these constitutions'[42]

4.5 The Civil and Penal Codes (1955 & 1960)

In July 1957, a new Penal Code was adopted to replace that of 1930.[43] The new Penal Code was part of a broad legislative program of the Imperial government aimed at the codification of civil, commercial, penal and procedural laws in keeping with the requirements of the modern legal systems of Europe. Several European jurists were invited for the

40 Ibid., Article 41.

41 Ibid., Article 65.

42 PH Brietzke, *Law, Development, and the Ethiopian Revolution* (Associated University Presses, New Jersey 1982) p. 95

43 Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1). For a brief historical background and introduction of the Penal Code of 1957 see: J Graven, 'The Penal Code of the Empire of Ethiopia' 1 Journal of Ethiopian Law 267 p. 267 - 298

elaboration of the various code projects, amongst them Jean Graven of Switzerland, who worked for the Penal Code project and prepared the draft.[44]

The Penal Code of 1957 introduced an extensive set of provisions outlining the principles of criminal liability for participation in offences relating to publications[45] and various types of restrictions on freedom of expression aimed at protection of honour;[46] public order;[47] public moral;[48] and judicial proceedings.[49] It further provided special protection for the monarchy, the government and foreign states as well as their representatives against insult, abuses or defamation.[50]

Subsequently the Civil Code, the Commercial Code and the Maritime Codes were all adopted on 5 May 1960.[51] The Criminal and Civil Procedure Codes were adopted in 1961 and

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44 Graven, p. 279; S Lowenstein, 'The Penal System of Ethiopia' 2 Journal of Ethiopian Law 383 ; R David, 'Sources of the Ethiopian Civil Code' 4 Journal of Ethiopian Law 341 . The Civil Code was drafted by Renne David of France, the Commercial Code by J Escarra and A Jauffret of France, the Maritime Code by J Escarra of France, the Criminal Procedure Code by Sir Charles Matthew of England. The Civil Procedure Code was drafted by an Ethiopian Nirayo Esayas, who was an Assistant Minister for Codification of the Ministry of Justice. See K Redden, *The Legal System of Ethiopia* (The Legal System of Africa Series, Michie Co., Charlottesville, Virginia 1968) p. 44 – 45, 187 – 188.

45 Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1) Articles 41 - 47

46 Ibid., Articles 574 - 588

47 Ibid., Articles 479 – 481, 767, 768

48 Ibid., Articles 486, 608 – 613, 771

49 Ibid., Articles 443, 445, 451

50 Ibid., Articles 256, 276 – 278

51 Ethiopian Maritime Code of 1960 (Negarit Gazeta 19th Year Extraordinary Issue No. 1); Ethiopian Civil Code of 1960 (Negarit Gazeta 19th Year Extraordinary Issue No. 2); Ethiopian Commercial Code of 1960 (Negarit Gazeta 19th Year Extraordinary Issue No. 3)

1965 respectively.[52] The Civil Code provided several provisions governing civil liability of defamation;[53] publishing contracts;[54] and literary and artistic ownership.[55]

While the adoption of the various codes was by far a profound legislative program in keeping with modern legal systems, several of the criminal code provisions imposed even more severe restrictions, on press freedom and freedom of expression in general. The already existing censorship rules, along with the new Penal Code, effectively buried any semblance of a free and independent press. The Imperial regime allowed no criticism and written materials imported into the country were also subject to a rigid censorship control. Greenfield observed that the library shelves of the University College carried neither the works of even moderately left-wing writers, nor any post-liberation work critical of Ethiopia. A mere handful had access to and fully comprehended the picture of the country which the UN and other specialised statistical publications had begun to reveal to the outside world.

In general, the press seldom informed the people about political activities and newspapers contained little more than a record of the affairs of the executive branch of the government, brief foreign news accounts taken directly from the news services, and a few local items of social significance. Except for major decisions and debates, few parliamentary actions were reported in the press. In 1961, for example, the nation's press did not mention the general election that was to occur. Short, factual accounts of the affairs of Parliament appeared occasionally in the Addis Ababa press, but the details of issues involved, and decisions reached had to depend on word of mouth dissemination by those attending the sessions or witnessing

52 Ethiopian Criminal Procedure Code of 1961 (Negarit Gazeta 21st Year Extraordinary Issue No. 7); Ethiopian Civil Procedure Code of 1965 (Negarit Gazeta 25th Year Extraordinary Issue No. 3)

53 Ethiopian Civil Code of 1960 (Negarit Gazeta 19th Year Extraordinary Issue No. 2), Articles 2044 - 2049

54 Ibid., Articles 2672 – 2697

55 Ibid. Articles 1647 - 1674

the events from the public gallery. Markakis remarked that so narrow were the confines of press activity that it was not even permitted to report the deliberations of parliament. The staple fare of the media was an uninterrupted panegyric of the Emperor's rule.[56] Provincial communities and their affairs received scant coverage in the national press.[57]

Books dealing with post occupation economics and social aspects of post liberation Ethiopia fall into two markedly dissimilar groups. Most are unrestrained in praise of Emperor Haile-Selassie for the lead he had given in the development of Ethiopia and contented themselves thereafter with listing the undoubted achievements. Others were openly appalled at the contrast between palaces and hovels, the lives of nobles and serfs, conditions in Addis Ababa and in provinces conquered by Emperor Menelik II, etc. They dwelt on bureaucracy, corruption, inefficiency, etc; they criticised the rigid censorship of all publications and mocked the new democratic institutions of the capital as shallow facade.[58]

4.6 The Decree to Amend the Penal Code (1961)

In 1961, the Emperor issued a Decree which amended the Penal Code to provide that the High Court could impose the punishment of flogging in substitution of other penalties previously provided by the Code, where the Court had duly convicted a person guilty of an offence which the Decree categorized as 'offences to the disturbance of public opinion.' The list of these offences are: Articles 256, 445, 451, 474, 479, 480 and 481 of the Code. These offences deal with insult, defamation or slander against the Emperor or the government; publication of inaccurate or forbidden reports; tendentious publications; public provocation to

56 J Markakis and N Ayele, *Class and Revolution in Ethiopia* (1st edn Spokesman, Nottingham 1978) p. 95

57 Kaplan and Others, p. 325

58 Greenfield, p. 319 - 320

or defence of a crime; alarming the public; false rumours and seditious remarks.[59] The Penal Code of 1957 already provided for a controversial corporal punishment as a sanction for some offences[60], but the Emperor's Decree in 1961 extended the imposition of this inhumane punishment to alleged offences relating to freedom of expression and press freedom, following an attempted *coup d'état* against the imperial monarchy.[61]

These legislative measures were clearly intended to have a chilling effect on freedom of expression and press freedom but could not halt the demand for more press freedom. The greatest freedom from control and censorship was wrested from the authorities by the university students, spurred on at first by Pan-African scholars. The news-sheet *News and Views* was a popular student's forum, but it was not able to be free from more or less direct control by the Dean. A policy statement on student affairs approved by the President on 18 October 1962 in a section entitled 'Student Publications', as cited by Greenfield, categorically stated 'there should not be any article or editorial criticising the national government or derogatory to any particular religion.' A student editor who defied the censorship order was suspended which led to a general student strike in mid-1964'.[62]

The World Press Encyclopaedia report stated that Ethiopia's communication and media systems had never been fully developed. During the rule of Emperor Haile-Selassie, the

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59 The Penal Code Penalties Decree of 1961 (Negarit Gazeta 20th Year No. 15); Lowenstein, p. 389

60 Flogging as a form of punishment was excluded by the drafter of the Code in his original *Avant-projet*, but inserted by the codification commission and the parliament for cases of aggravated theft and robbery. It was included after considerable debate over the general merits of both the policy of corporal punishment and the constitutional issue whether such sanction is inconsistent with Article 57 of the Revised Constitution which prohibits cruel and inhumane punishment. See: Paul and Clapham, p. 402; K Redden, *Ethiopian Legal Formbook* (Faculty of Law, Haile Sellassie I University, Addis Ababa 1966) p. 35 – 36; Lowenstein, p. 388 - 389

61 The Coup against the Emperor was attempted and failed in December 1960. For a brief history of the coup see: HW Lockot, *The Mission : The Life, Reign and Character of Haile Sellassie I* (Hurst, London 1989) p. 73 – 88.

62 Greenfield , p. 174

nation's media were among the worlds most oppressed. Journalists could be fined as much as one-third of their monthly pay for even a trivial offense, such as printing a picture of a prize-winning bull on the same page as a minister's speech. Young liberal intellectuals were unable to gain access to the press. But the report also remarked there were, nonetheless, some hopeful signs. For example, in 1963 the government permitted the operation of a powerful shortwave radio station called Radio Voice of the Gospel and placed relatively few restrictions on its operations.[63]

In the last few months of the Imperial rule, a legal and political process was started in order to revise the imperial constitution. Following the political unrest in opposition of the royal monarchy in early 1974, a new cabinet was appointed in March 1974 and one of its tasks was constitutional reform. On 5 March 1974, Emperor Haile-Selassie announced in a televised speech that he had ordered a revision of the 1955 constitution with a view to making the Prime Minister responsible to parliament and to guarantee greater civil rights. The commission set up to revise the constitution issued a summary report of a draft revision on 7 August 1974. It proposed the total abolition of the feudal system of government and the complete stripping of executive, legislative and judiciary powers from the Emperor, reducing him and any future monarch to a mere symbol of unity; the Prime Minister to be chosen by a national assembly; freedom of speech and of the press and the right to form political and other associations and trade unions to be protected.

But the forces opposed to the imperial regime were not to accept the last-minute concession by the establishment. On 16 August 1974, the Amharic *Addis Zemen* carried a lengthy summary of opinion rejecting the revised constitution. When the military leaders

63 H Fisher, 'Ethiopia' in GT Kurian (ed) *World Press Encyclopedia* (Mansell, London 1982) p. 326

finally deposed the Emperor on 12 September 1974 and took over power, they proclaimed that the new draft constitution would be put into effect as soon as necessary improvements were made to 'include provisions reflecting the social, economic and political philosophy of the New Ethiopia and to safeguard the civil rights of the people.'[64]

In the last few months of the imperial rule and particularly after the political unrest in February 1974, the combined effects of workers strikes, student movements and army mutinies wrested control of the media from the establishment and left them free to be used by the forces which opposed the imperial regime.[65] The press situation of this period will be briefly introduced in the next chapter as part of the revolution period.

64 B Thomson, *Ethiopia : The Country That Cut Off Its Head : A Diary of the Revolution* (Robson Books, London 1975) p. 41, 86 – 91, 105; Wubneh and Abate, p. 44 and 46; Proclamation on the Establishment of a Provisional Military Government in Ethiopia (Published by the Co-Ordinating Committee of the Armed Forces, Police and Territorial Army, 12 September 1974), Article 5(b): Wubneh and Abate noted the draft constitution was approved by parliament on 7 August 1974 but I have not been able to verify this claim from any other source.

65 Thomson p. 46

CHAPTER 5

THE REVOLUTIONARY PRESS (1974 – 1991)

5.1 Press and the Revolution

A combination of economic, social and political crisis precipitated the Ethiopian revolution which led to a military *coup d'état* that deposed Emperor Haile-Selassie in September 1974. But overt manifestations of the revolution had begun in February 1974 with a wave of strikes, student demonstrations and army mutinies.[1] One manifestation and indeed effect of the uprising after February 1974 was wresting press freedom from the imperial regime.

Following the escalation of the political crisis in February, the imperial monarchy announced the appointment of a new cabinet in early March 1974. The students and intellectuals demand for the lifting of press censorship came to be supported by the radicals in the military.[2] On 4 March 1974, military helicopters buzzing low over the city dropped leaflets. They called for a government directly elected by the people; freedom of the press; freedom of speech and redistribution of land.[3] The new cabinet was pressured to allow the free expression of political ideas in the press. The media remarkably took control away from the establishment

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1 The beginning of this political unrest in February 1974 is variously referred to as 'the February Revolt'; 'the February Uprising'; or 'the February Revolution.' See: J Markakis and N Ayele, *Class and Revolution in Ethiopia* (1st edn Spokesman, Nottingham 1978) p. 77;

2 EJ Keller, *Revolutionary Ethiopia : From Empire to People's Republic* (Indiana University Press, Bloomington 1988) p. 177

3 B Thomson, *Ethiopia : The Country That Cut Off Its Head : A Diary of the Revolution* (Robson Books, London 1975) p. 39

and were left free to be used by forces opposed to the imperial regime. Thomson noted this was one of the most remarkable accomplishments of the February uprising.[4]

Markakis noted that the sudden lifting of censorship from the state-controlled media, especially the press, was unprecedented and exhilarating. The press began to report fairly accurate accounts of the current political events and to issue critical reportages. Photographs of the Emperor disappeared from the front pages for a time and more space was given to an increasing number of critical letters from citizens. Newspaper circulation surged far beyond printing capacity. There were even queues to buy newspapers and newsboys learned to mark up the price according to the newsworthiness of the daily issues.[5]

From this point, Keller noted, Ethiopia was deluged with a torrent of political writing through the official press as well as through leaflets printed and disseminated by various groups critical of the imperial regime and its policies. Issues such as bureaucratic corruption and alternatives to imperial rule were considered in newspapers and pamphlet articles. The open climate of political discussion in the press sensitized the general public and the radical elements of the military into the revolutionary political mood of the country.[6] The most notable underground publications were the papers of the two biggest antagonistic underground political parties. *Democracia* of EPRP (Ethiopia People's Revolutionary Party) launched by July 1974

4 Ibid., p. 46

5 Markakis and Ayele p. 94 - 95

6 Keller, p. 177 and 181

and *Voice of the Masses* of AESM (All Ethiopian Socialist Movement, a.k.a. MEISON by its Amharic acronym) launched in August 1974.[7]

The radical military had placed the official mass media under its control in late June 1974, the period which came to be known as the 'creeping coup.' Troops were sent to take command of the national radio and television stations and the missionary-run radio station known as Voice of the Gospel.[8] Thereafter, the military used the official radio, television and newspapers to criticise the imperial monarchy and solicit support for the army and its program of *Ethiopia Tikdem*.[9] Indeed from 2 July 1974, the military had begun broadcasting in the name of its co-ordinating committee using the official media outlets.[10] Wubneh and Abate noted how the press was encouraged to challenge and discredit the legitimacy of the monarchy to bring the creeping coup to its finale.[11]

Dergue Laws and Press

On 12 September 1974, Emperor Haile-Selassie was deposed by a military junta which came to be known as the Dergue.[12] The Dergue proclaimed the establishment of 'Provisional Military Government of Ethiopia' which assumed full governmental powers. The proclamation further

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7 A Tiruneh, *The Ethiopian Revolution, 1974-1987 : A Transformation from an Aristocratic to a Totalitarian Autocracy* (Cambridge University Press, Cambridge 1993), p. 140. For the ideological debate between EPRP and MEISON see: M Ottaway, 'Democracy and New Democracy: The Ideological Debate in the Ethiopian Revolution' [African Studies Association] 21 African Studies Review 19 ; Tiruneh, p. 134 – 155. According to Ottaway, it is the political groupings behind these two clandestine publications that went to become the two political parties: EPRP and AESM which implies the publications precede the formal organization of the political parties.

8 Keller, p. 183

9 Tiruneh p. 66 – 67 and 69

10 Thomson p. 74

11 M Wubneh and Y Abate, *Ethiopia : Transition and Development in the Horn of Africa* (Westview Profiles. Nations of Contemporary Africa, Westview Press, Colorado 1988), p. 46

12 *Dergue* is an Amharic name given to the military coordinating committee of the Armed Forces, Police and Territorial army which officially came into being on 28 June 1974.

stated that parliament had been closed down, the revised constitution of 1955 suspended, that opposing the aims of the new philosophy *Ethiopia Tikdem* (Ethiopia First) was prohibited; and that all existing laws not contravening the provisions of this proclamation remained in force.[13]

The above mentioned Dergue proclamation clearly prohibited any opposition to the aims of the Dergue motto *Ethiopia Tikdem*, including 'to engage in any strike, hold unauthorized demonstration or public meetings or engage in any act that may disturb public peace and security.'[14]

5.2 The Special Penal Code (1974)

In November 1974, the Dergue adopted a Special Penal Code which was declared to be necessary to facilitate the implementation of the revolutionary motto 'Ethiopia Tikdem.'[15] The Special Penal Code imposed severe penalties on a wide array of offences including incitement, provocation, false or tendentious information, which were punishable with up to fifteen years of imprisonment.[16] However, despite the adoption of the Special Penal Code and under the prevailing political circumstances unfolding after February 1974, the military leaders initially appeared to allow a considerable measure of press freedom. The press boom was accompanied

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13 Proclamation on the Establishment of a Provisional Military Government in Ethiopia (Published by the Co-Ordinating Committee of the Armed Forces, Police and Territorial Army, 12 September 1974). Under Article 3 of the same proclamation, the Crown Prince Asfa-Wossen who was abroad on medical treatment, was temporarily designated King of Ethiopia with no power in the country's administrative and political affairs but the monarchy was eventually abolished in March 1975 after Dergue felt secure in its position. See: Wubneh and Abate, p. 51; Thomson p. 151

14 Article 8 of Proclamation on the Establishment of a Provisional Military Government in Ethiopia (Published by the Co-Ordinating Committee of the Armed Forces, Police and Territorial Army, 12 September 1974).

15 Special Penal Code, Proclamation No. 8 of 1974 (Negarit Gazeta 34th Year No. 8)

16 Ibid., Article 10 about 'Provocation and Preparation' punishable up to ten years; Article 35 about 'Offences against the motto of Ethiopia Tikdem' punishable up to ten years and Article 37 about 'False or Tendentious Information' punishable up to fifteen years rigorous imprisonment.

by a mushrooming of underground publications by the different political groupings of the mid-1970s.[17]

Even the columns of the official newspapers *Addis Zemen* and *The Ethiopian Herald* carried political polemics and views. As Ottaway pointed out, in early 1976 the Amharic official daily *Addis Zemen*, opened its columns to a surprisingly free political debate. Through a series of so-called letters to the editor, the two political factions [EPRP and AESM], one violently opposed to the military government, the other reluctantly in favour of it, exchanged daily barbs.[18]

In the wake of the revolution, the military leaders at first permitted free coverage of social, political and economic issues; they promised to give permission for students' publications and to ensure the independence of mass media. But it was only a temporary breath of freedom. As the military rulers tightened their grip on political power, all vestiges of press freedom began to disappear. The military authorities declared 'Ethiopian Socialism' as the new ideology of the new political order and later in the course of 1976 they adopted a program called National Democratic Revolutionary Program of Ethiopia. This was a Marxist-Leninist ideology that came to define the entire socio-economic and political life of the country.

According to the new official ideology, anything contrary to the revolutionary socialist program was not allowed. Any form of opposition was conveniently labelled as 'counter-revolutionary' or 'reactionary' or 'banditry' and penalized. In 1975, all the major printing presses were already nationalized and in July 1975, the Ethiopian Printing Corporation was

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17 For a detailed account about the upsurge of political organizations and their papers see: Tiruneh p. 123 – 155

18 Ottaway, p. 19; Wubneh and Abate p. 54; Tiruneh, p. 143

established as a government enterprise which took care of all the government printing industry.[19] By the late 1976, censorship rules and institutions were already re-established and any form of expression contrary to the spirit of the revolution was not only prohibited but even a slight infraction was severely punished. Foreign publications disappeared from the Ethiopia publishing market and were replaced by a great number of socialist publications. The authorities launched attacks on foreign news media, particularly the BBC and the German Radio *Deutsche Welle*, which were accused of feeding the world with fallacious reports. Foreign correspondents of AFP, Reuters and the Times were deported.[20] All media outlets became official propaganda tools for the new ideology of the 'revolutionary leaders'.[21] The short-lived press freedom gave way to 'revolutionary press.'

In the late 1970s, according to the World Press Encyclopaedia report, there were only three dailies with an aggregate circulation of 43,000 copies and four non-daily newspapers with an aggregate circulation of 31,000 copies and eight periodicals. The report described the Ethiopian press as small, weak, and the mouthpiece of the government. Following the revolution and the imposition of Marxist ideology, the press assumed all the characteristics of a controlled and owned propaganda arm of the communist government. The Ministry of Information and National Guidance published the official dailies and four other official weeklies. All the dailies were small, typically four or six pages in length . From among the weeklies, the largest was the Amharic *Yezareitu Ethiopia*, which had a circulation of about 30,000 copies. A smaller Amharic weekly, *Ethiopia,* published 2,000 copies. The other two

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19 T Garedew, 'Status of Printing and Publishing Industries in Ethiopia' (National Policy on Information Systems band Services in Ethiopia 1991) p. 2 – 3 cited in S Gupta, 'The Development of Education, Printing and Publishing in Ethiopia' 26 International Information & Library Review p. 178

20 Thomson, p. 135 and 151; J Janas, 'History of the Mass Media in Ethiopia' (1991) Studies of the Department of African Languages and Cultures p. 66

21 Janas, p. 70 and 74; H Fisher, 'Ethiopia' in GT Kurian (ed) *World Press Encyclopedia* (Mansell, London 1982) p. 326

weeklies also reported low circulations: the Arabic *Al-Alem* 2,500 copies, and the Afan Oromo *Berisa* about 2,000 copies. [22]

Several other periodical and irregular publications were published mainly by some official arm of the government and a few others by non-governmental agencies and the church, and several Marxist-Leninist propaganda publications proliferated. Janas noted that it was peculiar for this time that a great deal of the periodicals and papers were published in offices, factories and army quarters.[23] Some of the important periodical publications of the 1970s after the revolution include: *Birhan Ye-Beteseb Magazine* published by the Ethiopian Evangelic Church since 1974; *Abyotawit Ethiopia* (Revolutionary Ethiopia) published by the Addis Ababa Chamber of Commerce since 1975; *Addis Fana*, perhaps the lone privately published magazine in 1975; *Keste Demena* a monthly published by Ministry of Information since 1978; *Abyotawi Polis* (Revolutionary Police) published by the Police Force since 1979; *Be'irachin* (Our Pen) a quarterly published by the Journalists Association since 1979; and *Serto Ader*, a weekly political organ of the Commission for Organizing the Workers Party of Ethiopia.[24] But detailed information such as comprehensive listing of all periodical publications; the exact period of their circulation; the editors; number of copies published;...etc is very scant. Distribution of newspapers and other publications had also been largely confined to the principal cities.[25]

In the 1980s, Janas noted, the situation did not substantially differ from the previous decade but there were few more additional press products.[26] Some important periodical

22 Fisher p. 325

23 Janas, p. 38

24 Ibid., p. 38 – 43

25 Fisher, p. 327

26 Janas, p. 43 and 71

publications of this period include: *Addis Hiwet*, a quarterly magazine published by the Revolutionary Ethiopia Women's Association from 1981; *Meskerem*, an Amharic and English quarterly, and *Yekatit*, an Amharic monthly published by the Ministry of Information from 1980; Biruh Tesfa, a quarterly published by the Ethiopian Peasant's Association; *Merha Sport*, a sports fortnightly published by the Sports Commission from 1987; and *Zena Memiheran*, a quarterly published by the Ethiopian Teachers Association.[27]

In November 1980, the government owned Kuraz Publishing Agency was established[28] and it soon opened several branch offices throughout the country (six of which were in Addis Ababa). The purpose of the Kuraz Publishing Agency was declared to be the fulfilment of the Workers Party mission, 'with respect to the production, translation, importation and distribution of publications.'[29] As Gupta pointed out, the 'publishing agency' was rather only a namesake as its main function was importing and selling books.[30]

Comparing the situation of media freedom under the Dergue to that of the Imperial rule, Fisher observed, considerable space was given to general news besides reporting on the activities of and affairs of governmental agencies under Haile-Selassie. Since the Dergue took over, the newspapers had devoted most of their space to official propaganda and to the discussion of the finer points of Marxism-Leninism. While Haile-Selassie ruled, the powerful Christian radio station called Voice of the Gospel (RVOG) was given freedom to broadcast programs as it wished and had only limited censorship of news.[31] In March 1977, the Dergue

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27 Ibid., p. 43 – 45

28 Kuraz Publishing Agency Establishment Regulations, Legal Notice No. 72 of 1980 (Negarit Gazeta 40th Year No. 7)

29 Ibid., Article 6

30 Gupta, p. 178

31 Radio Voice of the Gospel began broadcasting in Ethiopia in 1963. Programmes were designed for listeners in Ethiopia and other African states. Legally it remained under the jurisdiction of the Ministry

accused RVOG of spreading bourgeois ideology and it was taken over by the government and eventually merged with the official Ethiopian Radio Agency. Fisher concluded, 'the media in Ethiopia have always been under the dominance of the government. Strictures were firm during the reign of Emperor Haile-Selassie; since the [Dergue] took power, they have become oppressive.... Press freedom is non-existent. The media will almost certainly remain enslaved to the government as long as it is in power.'[32]

5.3 The PDRE Constitution (1987)

In September 1984, the military leaders and their civilian partners founded the Marxist-Leninist Workers Party of Ethiopia (WPE), and subsequently a constitution establishing the People's Democratic Republic of Ethiopia (PDRE) was adopted and entered into force in September of 1987.

The constitution was modelled on the socialist countries 'people's democratic republics'. It provided for the division of the country into administrative areas and autonomous regions; the establishment of a national *shengo* (assembly) as the supreme organ (an equivalent of parliament), and other organs of state power, including the President of the republic, council of state and council of ministers.[33]

Under the section entitled fundamental freedoms, rights and duties of citizens, it provided that 'Ethiopians are guaranteed freedom of speech, press, assembly, peaceful

of Information which controlled program content and it was allowed a certain degree of independence. It cooperated with overseas radio stations and it had several professional international staff. After the revolution, it operated until March 1977 when it was accused of promoting hostile ideological views and taken over by the military government. See: Janas, p. 52 - 53

32 Fisher, p. 327 - 329

33 Constitution of the People's Democratic Republic of Ethiopia (Negarit Gazetta 47th Year No. 1)

demonstration and association.'[34] It further stipulated, 'the state shall provide the necessary material and moral support for the exercise of these freedoms'[35]; and 'the exercise of freedom and rights by citizens may be limited by law only in order to protect the interests of the state and society as well as the freedoms and rights of other individuals.'[36] The constitution of 1987 was a step forward for the military leaders only as a means for formalizing and further consolidating their power. Otherwise Ethiopia remained under the autocratic dictatorship of Colonel Mengistu Haile-Mariam who emerged as the undisputed leader of Dergue through violent means.[37]

After the new constitution and the formation of the PDRE, all media outlets simply continued as propaganda tools. Even writers like Schwab, who saw the Ethiopian revolution under the Dergue as a positive step, clearly saw that all newspapers, radio and television were merely units of ideological propaganda. Political dissent and opposition to the socialist state were almost entirely quashed through politics and violence. The military regime was unafraid to use overwhelmingly deadly force to terrorize out of existence any form of opposition.[38]

Getachew Metaferia remarked that the media under the military leadership of the revolution period were not different from those of the imperial era because all media outlets remained under government control and served as the mouthpiece of the government.[39] Janas

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34 Ibid., Article 47

35 Ibid., Article 47 (2)

36 Ibid., Article 58

37 For more on the PDRE constitution and formalization of power see: Tiruneh, p. 265 – 299. Colonel Mengistu Haile-Mariam emerged victoriously after a palace coup on 3 February of 1977 when he succeeded in eliminating his competitors in a fierce palace shootout.

38 P Schwab, *Ethiopia : Politics, Economics and Society* (Marxist Regimes Series, Frances Pinter, London 1985) p.49 and 65 – 67. See also: Markakis and Ayele, p. 119

39 G Metaferia and HJ Donald, 'Ethiopia, Status of Media In '*Encyclopedia of International Media and Communications* (Elsevier, New York 2003) p. 567

noted that the revolution in 1974 completely changed the Ethiopian periodical press but she also points out that the media situation in revolutionary Ethiopia returned to the situation which had prevailed in the 1960s, when media outlets expressed only official points of view.[40] Andargachew Tiruneh noted that the acquisition of a new socialist constitution had not brought about a liberal transformation but replaced a medieval feudal autocracy with a twentieth-century totalitarian dictatorship.[41]

[40] Janas, p. 38 and 73 - 74

[41] Tiruneh, p. 298

CHAPTER 6

DEVELOPMENTAL PRESS (1991 – 2017)

The fourth phase is marked by the collapse of the military regime in 1991 and EPRDF taking power. This chapter introduces the context of the initial promises for media freedom and the major legislative development in the early periods of EPRDF coming to power. A comparative analysis of the more recent EPRDF laws restricting freedom of expression and media freedom is discussed on the second part of the thesis

EPRDF Laws and Press (The Beginning)

6.1 The Charter of the Transitional Government (1991)

In May 1991, the Dergue regime collapsed and the Marxist revolutionary rebel movement called the Ethiopian People's Revolutionary Democratic Front (EPRDF),[1] took control of state power in Ethiopia. This political transition in Ethiopia was also happening in the context of the collapse of the former Soviet Union which triggered an international wave of democratisation reform from the eastern bloc countries in Europe to Africa.

The EPRDF was a Marxist – Leninist guerrilla movement for nearly two decades but in a bid to win both national and international support at the time of global democratic reform movement, it dropped the Marxist-Leninist ideology and pledged for a democratic reform

[1] An umbrella front of ethnically based political parties and rebel forces principally dominated by the Tigrean People's Liberation Front (TPLF). For a discussion about EPRDF's Marxist-Leninist ideology and TPLF domination in the party, See: C Clapham, 'Ethiopian Development: The Politics of Emulation (2006)' 44 Commonwealth and Comparative Politics 137

process based on multiparty system, democratic freedoms, respect for human rights and the adoption of a market economy.

In early July 1991, the EPRDF convened a national conference which adopted a transitional Charter establishing the Transitional Government of Ethiopia (TGE).[2] The Charter proclaimed the sanctity of human rights, and the commitment of the transitional government to respect human rights in accordance with the Universal Declaration of Human Rights.[3] The EPRDF made press freedom one of its prominent policies. The first article of the Charter specifically provided for freedom of expression and under Article 9 it provided that one of the functions of the transitional government should be to 'provide the mechanism to ascertain the fair and impartial application of the mass media.'[4] This was soon followed by the Proclamation to Provide for the Determination of the Application of State Owned Mass Media,[5] which provided for the use and application of the state owned media by the government, the newly emerged organizations at the time (political or otherwise), and the public at large.

With the new political and legal reform, there was euphoric exercise of press freedom and subsequently a proliferation of newspapers and magazines. Some of the journals that appeared early in the transition period included: *Tobia, Ifoyta, Addis Tribune, Addis Dimts, Ruh* and *Iyita*.[6] Several political parties as well as civic groups eagerly engaged in the newly found political space early in the transition period. However, some of the major political groups

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2 Transitional Period Charter of Ethiopia (Negarit Gazeta 50th Year No. 1, Adopted 22 July 1991)

3 Universal Declaration of Human Rights, (Adopted 10 December 1948) U.N.G.A. Resolution No 217. A (I I I)

4 Transitional Period Charter of Ethiopia (Negarit Gazeta 50th Year No. 1, Adopted 22 July 1991), Article 9 (J).

5 Proclamation to Provide for the Determination of the Application of State Owned Mass Media (Negarit Gazeta 51st Year No 1)

6 S Bonsa, *Survey of the Private Press in Ethiopia: 1991-1999* (F.S.S. Monograph Series 1, Forum for Social Studies, Addis Ababa 2000)

including the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF) reported political harassment and killings of their members in the early periods of the transition and they withdrew from participation in the transitional government. Indeed the EPRDF had begun to dominate the political landscape by favouring the regional political parties affiliated to it and clamping down on opposition political parties and dissidents.[7] It soon became increasingly clear that opposition forces, civic groups and the private press could only participate in the civic and political space within the limits and controls drawn by the new rulers, often referred to as 'within the limits of the red line.'

6.2 The Press Proclamation (1992)

In October 1992, the transitional government enacted Press Proclamation No 34/1992.[8] Among other things, it provided for the registration and licensing requirements for any kind of press activity,[9] restrictions on media content,[10] and the penalties for violation of the law.[11] The content restrictions provided under the new law included the responsibility of the press to ensure that it is free from 'any criminal offence against the safety of the state, any defamation or false accusation against any individual/nation/nationality/people or organization, any criminal instigation of one nationality against another or incitement of conflict between people,' and the penalties included imprisonment even for a mere administrative infraction,

7 S Pauswang, K Tronvoll and L Aalen (eds), *Ethiopia since the Derg: A Decade of Democratic Pretension and Performance* (Zed Books, London 2002)

8 Freedom of the Press Proclamation No 34 of 1992 (Negarit Gazeta 52nd Year No 8)

9 Ibid, Article 6(1)

10 Ibid, Article 10

11 Ibid, Article 20

such as breach of registration requirements or failure to submit a copy of press to the relevant government office.[12]

Sceptics viewed the introduction of this law with considerable apprehension as being the first step towards control on press freedom. Private press journalists criticised the content restrictions as excessively broad and unjustified in a democratic society, and the penalties as excessively harsh. Tecola Hagos remarked that one could surmise that Ethiopians enjoyed about a year of great non-interference by the government against their privately-owned publications, until the transitional government enacted the press law.[13] The authorities for their part defended the new law as being necessary to develop a responsible press in the country.

In 1993, the transitional government acceded to the International Covenant on Civil and Political Rights (ICCPR).[14] The status of regional and international conventions acceded to by Ethiopia is discussed in more detail in the second part of this thesis under Chapter 7.

6.3 The FDRE Constitution (1995)

In August 1995, a new constitution entered into force replacing the transitional period Charter and establishing the Federal Democratic Republic of Ethiopia, based on ethnically defined regions.[15] The constitution re-confirmed the legal guarantee for freedom of expression,

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12 For a detailed analysis of the Press Law of 1992, see: D Bekele, The Legal Framework for Freedom of Expression in Ethiopia' (Article 19: Global Campaign for Freedom of Expression, London 2003)

13 TW Hagos, *Democratization? : Ethiopia, 1991-1994 : A Personal View* (Khepera Publishers, Cambridge, Mass. 1995)

14 The UN reported Ethiopia's accession to ICCPR on 11 June 1993 and entry into effect as of 11 September 1993. -- --, 'Un Treaty Collections: Status of Ratifications' (2010) <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en> accessed 26 April 2010

15 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1). The new constitution established a federal state structure and parliamentary form of government. The federal government now consists of 9 regional states (*Afar,*

press freedom and the legal limitations. In particular it stipulated the right to freedom of expression without interference, the prohibition of any form of censorship, the right of access to information of public interest, the prohibition of any propaganda for war as well as the public expression of opinion intended to injure human dignity, and that legal limitations can be laid down in order to protect the well-being of the youth, and honour and reputation of individuals.[16]

The Constitution further provided that all international agreements ratified by Ethiopia form an integral part of the law of the land, and that the fundamental rights and freedoms specified in the constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, the international covenants on human rights and international instruments adopted by Ethiopia.[17]

The federal constitution is the right starting point for understanding Ethiopia's current national legal framework for freedom of expression and press freedom.[18] It guarantees freedom of thought and freedom of expression 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

Amhara, Benishangul/Gumuz, Gambela, Harari, Oromia, Somalia, the Southern Region and Tigray) drawn along ethno-linguistic lines as part of the new federal arrangement. The city of *Addis Ababa* (the capital city) and *Dire Dawa* (city in the eastern part of the country with a multi-ethnic settlement) are established as self-governing administrations of the federal government. The regional states are organized with legislative, executive and judicial branches of government similar to the federal government. The head of the federal government is a Prime Minister to be designated by the party which has the majority seat in the federal parliament (the House of People's Representatives).

16 Ibid, Article 29.

17 Ibid, Articles 9(4) and 13(2).

18 Following the collapse of the military leadership in 1991, a constitutional commission was established in 1992 to draw up a draft constitution. Transitional Period Charter of Ethiopia (Negarit Gazeta 50th Year No. 1, Adopted 22 July 1991), Article 10. A draft constitution prepared by the commission was first submitted to the Council of Representatives and finally approved by a constituent assembly convened for the purposes of considering and adopting the constitution.

> all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.[19]

The constitution expressly provides for the guarantee of not only freedom of expression but also freedom of the press (including other mass media and artistic creativity) and its legal protection as an institution. The relevant sections of the constitution state as follows:

> (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, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.[20]

The constitutional protection for freedom of expression and press freedom generally follows the international standards and should serve as a strong legal foundation to secure freedom of expression and press freedom in Ethiopia. Perhaps the most fundamental drawback in Ethiopia's constitutional framework is the absence of judicial review whereby the constitution could serve as a standard against which other subsidiary laws can be tested as to their constitutionality in a court of law. The power to interpret the constitution is given to the House of Federation which shall organize the Council of Constitutional Inquiry.[21] These provision bars Ethiopian courts from deciding on constitutional disputes or constitutional

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19 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 29 (1) & (2)

20 Ibid., Article 29 (3) & (4)

21 Ibid, Article 62 (1) & (2), Article 82 and 83

interpretation. However, it was not possible to establish the practice of courts in the course of this thesis research because of unavailability of case law.

Berger observed that the absence of judicial review in Ethiopia weakens the overall rule of law and risks turning constitutional principles into hollow symbols rather than effective realities. He noted that this situation also accounts in part for the persistence of seeming contradictions between the spirit of the constitution and the terms of other subsidiary laws.[22]

Apart from this limitation, Ethiopia's federal constitution coupled with the international human rights covenants which are an integral part of the laws of Ethiopia are one of the strongest legal articulation in defence of freedom of expression and press freedom in the constitutional history of Ethiopia.

Ethiopia's constitution also recognises limitations on the exercise of the right to freedom of expression in the following terms:

> These rights [freedom of expression and freedom of the press] can be limited only through laws which are guided by the principle that freedom of expression and information cannot 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 wellbeing of the youth, and honour and reputation of individuals. Any

[22] G Berger, Media Legislation in Africa: A Comparative Legal Survey' (UNESCO, Grahamstown 2007), p. 137

> propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.
>
> Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.[23]

This provision of the constitution is generally consistent with the relevant international standard as it explicitly states that freedom of expression and freedom of the press can be limited only by law, and it further lists the legitimate purposes for which legal limitations can be laid down. The third element of the 'three-part test'[24], i.e. 'being necessary in a democratic society' is arguably implicit in the statement of the constitution which provides that laws limiting freedom of expression shall be guided by the principle that 'freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed.' The free flow of information and ideas in a democratic society does not allow the restriction of freedom of expression on account of the content or effect of the point of view expressed.

Despite the controversy about certain elements of the constitutional provisions,[25] it should have been a powerful foundation for the legal protection of freedom of expression and the press. However, the EPRDFs' political will and commitment to the protection of freedom of expression and the press was on the wane as it began to consolidate political power. It may be difficult to analyse the press in Ethiopia separately from politics but the complex nexus

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23 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 29(6).

24 See Chapter 7.5 for more discussion on the "Three Part Test"

25 For a brief commentary on controversial elements of the constitutional provisions see: Bekele, p. 17

between press and politics is outside the scope of this thesis.[26] The general political background to the press – politics dynamics of Ethiopia will nevertheless put the discussion in context.

After the collapse of military rule in 1991, EPRDF promoted the idea of ethnic federalism and claimed a 'new' Ethiopia is to be made based on ethnic identity and equality of all ethnic groups, nations and nationalities of Ethiopia. Although the EPRDF adopted the political reform process including multi-party system, it maintained its defining ideology of 'revolutionary democracy'[27] in contrast to the western conception of liberal democracy, as the right form of ideology for Ethiopia's new transformation.

However, both the ideological foundations of the 'new' Ethiopia project and the democratic nature of the new political governance were open to doubt from the outset. Debate about the new federal structure of government, the secession of Eritrea, democratic governance and the rule of law raged on.[28] The polarised political dynamics of Ethiopia came to be reflected in a polarised press. Stremlau observed how 'the press has come to reflect a society that has not reconciled a complex transition and that contains many groups that feel disenfranchised,

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26 For a detailed study about Ethiopian press, politics and consolidation of power, see: N Stremlau, *The Press and Consolidation of Power in Ethiopia and Uganda* (London School of Economics, London 2008)

27 Meles Zenawi, who was the leader of the EPRDF and Prime Minister of Ethiopia, outlined this theory in an Amharic publication entitled *Revolutionary Democracy*. This publication is now out of print. For political ideology within TPLF/EPRDF and some of the ideological shifts since the time of guerrilla movement, See: Ibid, p. 154 - 155

28 For a more recent analysis of political tensions and debates, See: International Crisis Group, Ethiopia: Ethnic Federalism and Its Discontents' (2009)

are angry at the present situation and are pushing competing agendas for the future of Ethiopia.'[29]

In spite of the legal guarantees of freedom of expression, press freedom, and promises for a fair and impartial use of government owned media, the latter have slowly settled into their age-old role as mouthpieces of the government. Political opposition forces, dissenters and rights activists have found the private press to be the only available forum to express their views or to criticise the government policies and actions. The government and the ruling party attacked the private press, portraying the journalists as irresponsible, politically motivated, and incompetent. Several private press journalists have often been subjected to arbitrary arrest, intimidation, harassment, criminal prosecution and subsequent conviction. Many were forced to flee the country. Repression of the private press and attacks on journalists of the private press escalated to a level that the government of Ethiopia was listed as one of the worlds' 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.[30] In the same year, Reporters without Borders reported that the late Ethiopian Prime Minister Meles Zenawi was on the worldwide list of 'predators' of press freedom.[31]

While the government continued to accuse the private press of being politically motivated and lacking in professional responsibility; the private press, political opposition forces and dissidents accused the government of maliciously attacking journalists and criticised the government-controlled media as being a political mouthpiece of government rather than

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29 Stremlau, p. 62

30 Committee to Protect Journalists, 'Editor Released after 9 Months in Prison' (Report, CPJ 2002) <http://cpj.org/2002/03/editor-released-after-nine-months-in-prison.php> accessed 25 August 2010

31 Reporters without Borders, 'Predators of Press' (Report, RSF 2001) <www.rsf.org/article.php3?id_article=1065 <http://www.rsf.org/article.php3?id_article=1065>> accessed December 2002

serving the public interest. There was indeed little doubt that the government media officially acted on behalf of the government whereas the private press served as a forum for critics from a range of sectors, including civil society, opposition forces, academia and the public at large. Stremlau observed that the private press in Ethiopia has largely been used by elites and opposition forces to argue for an alternative vision of what the Ethiopian nation should be, which came to reflect some key fundamental disagreements about the EPRDF policies.[32] The rivalry role of the private and government-controlled press has aggravated the antagonistic relationship between the government and the private press.

Since the beginnings of the transition period, several private presses have appeared, disappeared, some forced to close-down and some remain in circulation to date. There is no comprehensive list or statistical details about each of the papers, but a mix of Amharic and English journals and papers list includes: *Tobia, Gohe, Tomar, Moresh, Wonchif, Kibrit, Aymero, The Daily Monitor,* and *Nation.*[33]

According to Stremlau, the dominant perspectives of Ethiopian press under EPRDF rule can broadly be grouped into three categories: strongly pro-government, strongly anti-government and the 'gray zone' (which is a mix of Amharic and English papers that seek to be in the middle, but some of which are largely perceived as government-leaning and others as opposition-leaning). Accordingly, the pro-government category includes all the State and ruling party controlled papers such as: *Addis Zemen, Ethiopian Herald, Al Alam,* and *Barifa* (under the supervision of the Ethiopian Press Agency) and *Iftin*.[34] The most notable in the anti-

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32 Stremlau, p. 25

33 For a good survey of private press in Ethiopia from 1991 to 1999, See: Bonsa; For a more detailed analysis of Ethiopian press including the social and political context of press in Ethiopia until the period of the disputed parliamentary elections in 2005, See: Stremlau

34 *Iftin* was a private newspaper started by Zerihun Teshome immediately after the election crisis and it was widely perceived as strongly pro-government.

government category included: *Tobiya*,[35] *Ethiop*,[36] *Addis Zena*,[37]*Menelik, Asqual* and *Satenaw*.[38] The gray zone included: *Reporter*,[39] *Fortune*,[40] *Addis Admas*,[41] and *Meznangna*.[42]

According to Andargachew Tiruneh, the problem of political communication in Ethiopia is the polarisation between the political and media elite of the country and at the bottom of this confrontation is the illiberal political culture of all sides. He argues that both the traditional political culture of Ethiopia, autocracy, and the post-Imperial period elite imported political culture, communism, are illiberal cultures which inform the actions and prejudices of Ethiopia's modern elite. He noted:

> Throughout the 20th century, illiberal culture led to the tendency of the government to want to monopolise and control society and Ethiopian writers to want to be as adamant as they can about government policies. Examples of the latter are the Japanizers in the 1920s, the Ethiopian Student's movement starting from the 1960s and now the journalists after 1991. The last of these may not be

35 Initially edited by Mulugeta Lule and later by Goshu Mogus.

36 Edited by Sissay Agena

37 Edited by Fassil Yene-Alem

38 Edited by Eskinder Nega

39 Edited by Amare Aregawi and perceived as government-leaning

40 Edited by Tamerat Gebre-Ghiorghis and perceived as government-leaning

41 Edited by Nebiy Mekonnen which has substantial focus on social, educational and cultural issues in contrast to the highly politicized papers in the two opposing categories. Stremlau notes Nebiy Mekonnen used the phrase 'gray zone' to describe the space in which his paper operates.

42 Edited by Abiye Teklemariam who latter closed it and co-founded *Addis Neger*.

> communists but it does not take a commitment to left-wing politics to be radical about one's view.[43]

He concludes that Ethiopia's problem of press freedom can be explained more by political factors and as such a free and responsible journalism cannot be achieved without achieving liberalism.

The parliamentary election in May 2005 was another turning point in which the press took centre stage in the political history of Ethiopia. It was the third national election after the EPRDF came into power in 1991. In the first two national elections of May 1995 and May 2000, some opposition parties boycotted for lack of an even playing field, whereas some opposition parties won few seats. But overall, the elections were dominated by the EPRDF and largely dubbed as merely nominal multiparty elections which were neither fair nor free.[44] The May 2005 national election, in contrast, was the first ever highly contested election the country had ever seen. The ruling party faced two major opposition groups - the Coalition for Unity and Democracy (CUD) and the United Ethiopian Democratic Front (UEDF), along with several other smaller parties and individual candidates. Although there were reports of human rights violations including killings, arbitrary detention and harassment of opposition party members and their supporters,[45] the run-up to the election was significantly different from past elections as evidenced by several developments such as the unprecedented live televised debate, active

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43 A Tiruneh, *Legal and Political Context of Media (Unpublished)* (2007)

44 National Democratic Institute, 'An Evaluation of the Election in Ethiopia' (Report, NDI 2002) <<http://www.ndi.org/ndi/library/068_et_evaluation.txt>> accessed 8 November 2003; For a detailed analysis of these elections See: Pauswang, Tronvoll and Aalen (eds)

45 Amnesty International, Ethiopia: The 15 May 2005 Elections and Human Rights - Recommendations to the Government, Election Observers and Political Parties. ' (Amnesty International, London 2005); Human Rights Watch, Suppressing Dissent: Human Rights Abuses and Political Repression in Ethiopia's Oromia Region' (HRW Report, New York 2005)

role of the press, participation of international election observers, huge public interest and participation in the electoral process.

The election race was very heated and oftentimes rather acrimonious, but with unprecedented levels of voter turnout and a largely peaceful polling day, Ethiopia seemingly looked ready for a democratic transition. The private press that enjoyed extensive freedom hosted vibrant debates. Circulation of some newspapers such as *Addis Admas*, *Ethiop* and *Menelik* doubled and tripled to an all-time high. Even the State controlled broadcast and press allowed a degree of access to opposition forces.[46] But the glimmer of hope for democratic transition and democratic progress was dashed when the ruling party and the opposition coalition were embroiled in furious election disputes immediately after the polling day. Amid accusation and counter-accusation about election fraud, the political tension escalated when government security forces harshly cracked down on a street demonstration in the capital, Addis Ababa, on 8 June 2005, which reportedly claimed the lives of over 20 people and many more wounded.[47] The unrest subsequently spread to many parts of the country where reports emerged about killings, beating and mass arrest of opposition party members, their supporters and protesting students.[48] In August 2005, the European Union Election Observation Mission expressed serious concern about the human rights situation following the polling day, and about

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46 A French independent journalist and researcher Rene LeFort has a different take about the situation in the rural communities of Ethiopia. Drawing from his observation in two rural communities in South-East Amhara region, he argued that it reveals a different picture from that presented in the national-level analyses which is derived largely from urban areas. He noted that 'deeply entrenched attitudes to power and government in the study area make the idea of peaceful electoral competition inconceivable. Peasants are first and foremost concerned to vote for the winning side, since to do otherwise carries intense risks to their welfare and even survival.' R LeFort, 'Powers - Mengist - and Peasants in Rural Ethiopia: The May 2005 Elections' 45 Journal of Modern African Studies 253

47 BBC News, 'Ethiopia in Danger after Deaths' (BBC 9 June 2005) <http://news.bbc.co.uk/1/hi/4074822.stm> accessed 30 September 2010

48 Human Rights Watch, 'Ethiopia: Crackdown Spreads Beyond Capital ' (2005) <http://www.hrw.org/en/news/2005/06/14/ethiopia-crackdown-spreads-beyond-capital> accessed 30 September 2010

the fairness of the election complaints process,[49] but the late Prime Minister Meles Zenawi strongly criticized and dismissed it as being not related to the election process and even worse, as garbage.[50]

When the National Election Board announced the final election results, it confirmed a landslide victory for the opposition CUD in the Addis Ababa City Council and a significant number of seats in the federal parliament, but it declared that the EPRDF has gained enough seats in the federal parliament and the regional assemblies to form a government. The CUD accused the EPRDF and the government of having colluded in rigging the election. EPRDF in turn accused the opposition of conspiracy for a violent overthrow of the government. Ethiopia was gripped in a political impasse when the opposition CUD threatened to boycott parliament. An emerging democratic process was teetering on the brink of collapse with an increasingly polarized position of the ruling party and the opposition coalition. Efforts to mediate the dispute between the two not being successful, the CUD boycotted parliament and called for a campaign of non-violent protest. The deepening political crisis led to another wave of protests and demonstrations particularly in Addis Ababa. Heavily armed government security forces cracked down on protests across the country, which claimed the lives of at least 200 citizens, and tens of thousands were rounded up.[51] Almost the entire upper echelon of the opposition leadership (several of them elected members of parliament and the city council including the mayor-elect), two dozen journalists and human rights activists were charged with crimes of

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49 European Union Election Observation Mission, European Union Election Observation Mission to Ethiopia Iterim Report' (EUOM, Addis Ababa 2005)

50 M Zenawi, 'Easy to Remove the Garbage That Has Covered Lumps of Truth' Ethiopian Herald (Addis Ababa 31 August 2005) <http://www.ethioembassy.org.uk/Facts%20About%20Ethiopia/Elections/Letter%20by%20Prime%20Minister%20Meles%20Zenawi%20to%20the%20Editor%20of%20the%20Ethiopian%20Herald.htm> accessed 25 August 2010

51 BBC News, 'Ethiopian Protesters Massacred' (BBC 19 October 2006) <http://news.bbc.co.uk/1/hi/6064638.stm> accessed 30 September 2010

attempted genocide, high treason and conspiracy to overthrow the government based on the new Criminal Code which entered into force just one week before the election on 15 May 2005.[52]

The EU Election Observation Mission concluded that 'while the pre-election period saw a number of positive developments and voting on 15 May was conducted in a peaceful and largely orderly manner, the counting and aggregation processes were marred by irregular practices, confusion and a lack of transparency. Subsequent complaints and appeals mechanisms did not provide an effective remedy. The human rights situation rapidly deteriorated in the post-election day period when dozens of citizens were killed by the police and thousands were arrested. Overall, therefore, the elections fell short of international principles for genuine democratic elections.'[53]

Despite a worldwide protest condemning the arrest of opposition leaders, journalists and human rights activists, the authorities pressed criminal charges. Many of the defendants refused to defend themselves, questioning the independence of the court and the politically motivated charges. The court subsequently sentenced several of the defendants to life imprisonment, but international rights groups and other observers of Ethiopian politics described it as a sham trial. In a somewhat complicated negotiation process involving 'admission of mistakes' in return for 'pardon', almost all the defendants were subsequently released. But some of the opposition leaders and journalists including Birtukan Mideksa,

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52 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004). Published and entered in to force on 9 May 2005.

53 European Union Election Observation Mission, Ethiopia Legislative Elections 2005: European Union Election Observation Mission Final Report' (EU, Brussels 2005)

Andualem Aragie and Eskinder Nega were re-arrested with various spurious charges and spent various amount of times in prison.

Since the disputed May 2005 parliamentary election ended up in tragic violence, the Ethiopian government has shown a downward trajectory in the protection of freedom of expression, press freedom and human rights in general. In May 2005, a new Criminal Code entered into force[54] which was followed by a new Mass Media law in 2008,[55] a Charities and Societies proclamation in 2009,[56] and an Anti-Terrorism law in the same year.[57] (Relevant aspects of these laws are discussed in the second part of this thesis). International human rights advocates observed that these laws serve to limit freedom of expression, weaken civil society and to suppress and punish dissent.[58] In December 2006, the Committee to Protect Journalists (CPJ) reported that Ethiopia was one of the top four jailers of journalists in the world.[59] Abbink observed how the election crisis and its aftermath led to a crisis of the entire democratisation process.[60] Political opponents, civic activists and private press journalists were intimidated, harassed, arrested and charged with alleged crimes of conspiracy and incitement.[61] In September 2007, a media legislation survey sponsored by UNESCO across a number of African countries identified that Ethiopia keeps a tight legal rein on the entire media landscape

54 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004)

55 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64)

56 Charities and Societies Proclamation (Proclamation No. 621 of 2009 Negarit Gazeta 15th Year No. 25)

57 Anti-Terrorism Proclamation (Proclamation No. 652 of 2009 Negarit Gazeta 15th Year No. 57)

58 Amnesty International, The State of the World Human Rights' (2010); Human Rights Watch, One Hundred Ways of Putting Pressure' (2010)

59 Committee to Protect Journalists, 'Internet Fuels Rise in Number of Jailed Journalists' (Report, CPJ 2006) <<http://cpj.org/reports/2006/12/imprisoned-06.php>> accessed 25 May 2010

60 J Abbink, 'Discomfiture of Democracy? The 2005 Election Crisis in Ethiopia and Its Aftermath' [Oxford University Press on behalf of The Royal African Society] 105 African Affairs 173

61 Human Rights Watch, One Hundred Ways of Putting Pressure: Violations of Freedom of Expression and Association in Ethiopia' (New York 2010)

and as a result it is found to be at the bottom of the list in terms of media density and in the per capita information services available to the citizenry.[62]

In an increasingly repressive political environment, almost all state institutions and administrative structures down to the local level have become politicised blurring the distinction between the state and the party. These developments culminated in the April 2008 local elections in which the EPRDF was declared to have won 99.9 percent of the *kebele* and *woreda* seats.[63] Aalen and Tronvoll observed that after the May 2005 elections, the Ethiopian government rolled out a deliberate plan to prevent any future large-scale protest against its grip on power by establishing an elaborate administrative structure of control, developing new legislative instruments of suppression and, finally, curbing any electoral opposition as seen in the conduct of the 2008 local elections. They concluded, 'Ethiopia has by 2008 returned firmly into the camp of authoritarian regimes.'[64]

Restriction on freedom of expression was not limited to the traditional private press. International media watch groups documented patterns of media repression including the blocking of websites. In March 2008, RSF included Ethiopia in the list of 'Internet Enemies.'[65] In 2009, Open Net Initiative (ONI) reported Ethiopia was the only country in Sub-Saharan Africa that engaged in a politically motivated internet filtering targeting independent media,

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62 G Berger, Media Legislation in Africa: A Comparative Legal Survey' (UNESCO, Grahamstown 2007), p. 1, 27 – 37.

63 L Aalen and K Tronvoll, 'The 2008 Ethiopian Local Elections: The Return of Electoral Authoritarianism' 108 African Affairs 111

64 L Aalen and K Tronvoll, 'The End of Democracy? Curtailing Political and Civil Rights in Ethiopia' 36 Review of African Political Economy 193

65 Reporters without Borders, 'The New List of Internet Enemies' (Report, RSF 2008) <http://en.rsf.org/first-online-free-expression-day-12-03-2008,26086.html> accessed 26 August 2010; J Crawford, Ethiopia: Poison, Politics, and the Press' (CPJ Special Report, New York 2006)

political blogs and human rights websites.[66] In the same year (2009), CPJ also reported that the Ethiopian government was the second worst jailer of the press in Sub-Saharan Africa.[67] Stremlau observed that despite the constitutional rhetoric about freedom of expression and press freedom, there has been a history of regularly arresting and persecuting journalists since the EPRDF came to power thereby earning Ethiopia 'the dubious distinction of being Africa's worst jailer of journalists after Eritrea.'[68] Stremalu concluded, 'from the government's perspective, a free press is a privilege and a tool to be exploited when beneficial for consolidating power.'[69]

The general downward trend on freedom of expression and human rights was further exacerbated during the May 2010 parliamentary elections. International rights groups such as Human Rights Watch[70] and Amnesty International as well as the US State Department extensively reported on a wide range of systemic human rights violations and repression of freedom of expression.[71] The Ethiopian government for its part simply dismissed the various human rights situation reports as factually inaccurate, politically motivated and as interference in sovereign affairs. However, Ethiopia's downward slide was further illustrated by the May 2010 parliamentary elections in which the EPRDF was declared to have won 99.6 % of the seats thereby cementing a complete hegemony of the ruling party. The opposition parties and an independent candidate won just two of the 547 parliamentary seats. The European Election

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66 Open Net Initiative, 'Internet Filtering in Sub-Saharan Africa' (2009) <<http://opennet.net/research/regions/ssafrica>,> accessed 19 May 2010

67 CPJ, 'C.P.J. Urges Ethiopia to Pursue Press Reform' (2010) <http://www.cpj.org/2010/02/cpj-urges-ethiopias-zenawi-to-pursue-press-reforms.php> accessed 28 May 2010

68 Stremlau, p. 131 – 132

69 Ibid, p. 142

70 Human Rights Watch, One Hundred Ways of Putting Pressure: Violations of Freedom of Expression and Association in Ethiopia'

71 US Department of State, Human Rights of Ethiopia' (2008)

Observation Mission once again concluded that the election fell short of international standards, notably regarding 'the transparency of the process and the lack of level playing field for all contesting parties.'[72]

According to the Ethiopian Broadcasting Agency officially available data, in July 2010, there were a total of 150 registered periodical newspapers and magazines with a range of focus including political, religion, sport, business, culture and arts.[73] However, only a handful of notable socio-economic and political newspapers have attained a circulation of 20,000 copies. These were the Amharic weeklies *Addis Admas* (an average circulation of about 31,000 copies), *Addis Neger* (about 30,000 copies)[74] and the *Reporter* (about 20,000 copies). Several private newspapers that were either closed or suspended their publication following the arrest of dozens of journalists and many more fleeing the country after the clamp down in November 2005 remained closed.[75] Some journalists remained prohibited from restarting any press.[76] One of them was prominent Ethiopian journalist and blogger Eskinder Nega. Remembering the fifth year of the clampdown on private press he opined:

> The trials and tribulation of Ethiopia's journalists as they were imprisoned, tortured, beaten and exiled became, next to the permanent fixture of hunger, one

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72 European Union: Election Observation Mission in Ethiopia, Preliminary Statement on Ethiopia's Election 2010' (2010)

73 But not all of them are currently in circulation because some have reportedly ceased whereas others are yet to begin publishing. Ethiopian Broadcasting Authority, 'Number of Periodicals Registered in Ethiopian Broadcasting Authority from February 2009 - January 2010' (Report, EBA 2010) <http://www.eba.gov.et/web/data/Periodicals/main.htm> accessed 23 August 2010

74 Addis Neger achieved an average circulation of 29,000 copies. It closed down in December 2009 when all its editors and several of the reporters were forced to flee abroad after months of harassment. See: Reporters without Borders, 'Weekly Forced to Stop Publishing, Its Journalists Flee Abroad' (Report, RSF 2009) <http://en.rsf.org/ethiopia-weekly-forced-to-stop-publishing-04-12-2009,35258.html> accessed 23 August 2010

75 These newspapers include: *Abay, Addis Zena, Asqual, Ethiop, Hadar, Lisane Hizb, Menelik, Mezenagna, Moged, Netsanet, Satenaw, Seyfe Nebelbal, Tikusat, Tobia*, and *Tomar*. Very few have been revived since then.

76 Eskinder Nega and his wife Serkalem Fassil, an award winning journalist and Sissay Agena are refused a press registration license.

> of the most recurrent stories to come out of Ethiopia. No government as that of Ethiopia has more frequently and wantonly clampdown against journalists and still ended up with a far more militant press than before. Nowhere in the world have journalists demonstrated more courage and commitment for freedom of the press[77]

Eskinder was re-arrested in September 2011, reportedly for the seventh time and convicted of 'supporting terrorism' along with other journalists and political activists. Just prior to his arrest, he had published an online article on the Ethiopian government's use of the Anti-terrorism law to stifle and punish freedom of expression and media freedom.[78] The wave of arrests in 2011 also included prominent journalist Woubshet Taye[79]; freelance journalist and prominent columnist Reeyot Alemu[80]; and freelance photojournalists Johan Persson and Martin Schibbye[81]. In the subsequent years from 2012 to mid-2018, Ethiopian authorities continued to arrest more journalists, bloggers and activists. Journalists Yusuf Getachew[82] and Solomon Kebede of the newspaper *Ye Muslimoch Guday* (Muslim's Affairs) were arrested in July 2012 and January 2013 respectively. More wave of arrests in 2014 included the prominent collective bloggers known as Zone 9 Bloggers (Abel Wabella, Atnaf Berhane, Befekadu Hailu, Mahlet Fantahun, Nathenael Feleke and Zelalem Kibret) along with freelance journalists Edom Kassaye and Tesfalem Weldeyes accused of inciting violence and terrorism (Soleyana Shimeles who was a member of the Zone 9 blogging collective was charged in absentia);

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77 E Nega, 'Fifth Anniversary of the Suppression of the Free Press' (Addis Neger 2010) <http://addisnegeronline.com/2010/11/fifth-anniversary-of-the-suppression-of-the-free-press/> accessed 03 November 2010

78 J McLure, 'Standing with Ethiopia's Tenacious Blogger Eskinder Nega' <http://www.freeeskindernega.com/www.FreeEskinderNega.com/Home.html> accessed 10 February 2012

79 Woubshet Taye was imprisoned in June 2011 and sentenced to 14 years in January 2012.

80 Reeyot Alemu was imprisoned in June 2011, convicted of 'terrorism' and sentenced to 14 years which was later reduced to 5 years by an appellate court.

81 Swedish journalists imprisoned in June 2011 in Ethiopia, convicted of 'rendering support for terrorism' and entering the country illegally for subversive purposes

82 Yusuf Getachew was accused under the anti-terrorism law and in August of 2015 sentenced to 7 years.

journalists Asmamaw Haileghiorgis and Temesgen Dessalegn[83] were arrested in April and October 2014 respectively. The same wave of arrests targeting journalists and social media activists continued in 2015 to mid-2018 when the reformist leadership of EPRDF took over power and released all political prisoners. The arrests in 2015 and 2016 included journalists Darsema Sorri and Khalid Mohammed of Bilal Radio arrested in February 2015; Getachew Shiferaw arrested in December 2015; prominent academic and blogger Seyoum Teshome arrested in October 2016; freelance journalists Anania Sorri arrested in November 2016 and prominent social media activist and member of Zone 9 blogging collective Befekadu Hailu re-arrested in November 2016. The foregoing is only an indicative list of the more prominent cases and several of the journalists have repeatedly been harassed, detained and subjected to torture and ill-treatment while in detention. Human Rights and Media Rights groups have extensively documented the wide range of abuses.[84]

After the crisis of the May 2005 parliamentary elections, the government introduced a new discourse about the role of the press in the economic development process of the country. It is referred to as 'developmental journalism.'[85] The government discourse on this subject looks to the experiences of China and South-East Asia, where economic progress was allowed to override and subordinate democracy and human rights. The underlying assumption, although not explicitly stated, is that Ethiopia needs more economic growth than more freedom; and

83 Temesgen Dessalegn was sentenced to 3 years imprisonment.

84 As already discussed in this thesis, Human Rights Watch, Amnesty International, CPJ, RSF, US State Department Human Rights Reports are some of key sources for detailed information of the various human rights abuses.

85 Nebiyou Yonas in his Master's Thesis noted journalists he interviewed at the state-owned media outlets, most notably the state-owned newspapers practice 'developmental journalism' and furthermore several journalists confirmed they practice self-censorship. N Yonas, *Self-Censorship among Print Journalists in Ethiopian Government Media* (Addis Ababa University, Addis Ababa 2008), p. 20, 24

hence this approach argues that the western liberal conception of democracy and press freedom is not relevant for Ethiopia.

The idea of 'developmental journalism' is an extension of the EPRDF government discourse about the 'developmental state.' While there is no official government policy document expounding on the contents of the idea of the 'developmental state', it has nonetheless became an official motto in government mass communication, the ruling party discourse and official statements of government agencies. One available document was a draft chapter of the late Prime Minister Meles Zenawi's thesis paper for the University of Rotterdam entitled 'Democracy, Developmental State and Development' posted on the Internet.[86] Journalist Peter Gill recounts his interview with Meles Zenawi and how he gave him 'something of a tutorial on the "developmental state", one of the themes of his thesis for the University of Rotterdam.'[87]

Gill quotes telling extracts both from the thesis paper and his interview of the late Prime Minister Meles Zenawi. A section from the thesis is cited as follows:

> There is a 'hustle of democracy', and the burden of government having 'to deal with democratic legitimisation of its rule'. Politicians are able to think no further than the next election. 'It is argued therefore that the developmental state will have to be undemocratic in order to stay in power long enough to carry out successful development.' '…The most likely scenario for a state that is both democratic and developmental to emerge is in the form of a dominant party or dominant coalition democracy.' A democratic outcome is never guaranteed in

86 A draft thesis entitled 'African Development: Dead Ends and New Beginnings' is posted on the internet.

87 P Gill, Famine and Foreigners : Ethiopia since Live Aid (OUP, Oxford 2010), p. 168

> the developing world, but in the right conditions 'there is a reasonable chance to a developmental and democratic state to emerge'.[88]

Gill observes how the late Prime Minister Meles Zenawi's quarrel with the big donors centred on their use of aid as a lever to propel process of democratization with measurable performance indicators, timetables and guarantees. Meles disagreed with the proposition of the donors and stated:

> Some in the neoliberal world seem to believe that economic development and growth and good governance and democratization are inseparable. That is not validated by historical facts. Theoretically there is no reason to believe that democratization is a precondition of economic development. The reverse – that democratization can be the result of a certain level of economic development – appears to be more robust than the other way round, but even that in our view is not a proven fact.[89]

These excerpts are quite telling about the view of Ethiopia's leadership at the time which has clearly prioritized its claim that economic development can subordinate civil and political rights along with the democratization process.

Amartya Sen's famous proposition that 'no famine has ever taken place in the history of the world in a functioning democracy…[and] Free press and an active political opposition constitute the best early warning system a country threatened by famine can have'[90] is wholly validated by historical facts in Ethiopia's infamous famine. A detailed study by ARTICLE 19, the Global Campaign for Freedom of Expression, on Censorship Reports documented how Amartya Sen's statement is vindicated by clear evidences in case studies of the China's famine

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88 Ibid, p. 168 – 169

89 Ibid, p. 169 – 170

90 A Sen, *Development as Freedom* (OUP, Oxford 2001)

of 1959 – 1961 and more recently famine in Ethiopia and Sudan in the 1980s. The study report observed that:

> In both [Ethiopia and Sudan] the major participating factors for the famines were indeed rain failure and crop loss. [But the report argued] that these are not sufficient conditions; if timely information can be collected and if it is then made freely available to governments and donors, widespread damage and loss of life can be mitigated. … Information on the impending famines was indeed available, but it was in the political interests of the governments of both countries, as well as the international donor countries, to suppress and ignore warnings until the need to act became overwhelming, and too late to save the lives of many thousands. Censorship therefore played a pivotal and disastrous role. In China, Ethiopia and Sudan the potential victims of starvation were unable to alert the wider world to their plight until their governments agreed. … The Ethiopian famine of 1982 – 85 was rightly called an information crisis. Underdevelopment, which is the root cause of famine, is a political as well as an economic issue. It cannot be resolved in the absence of freedom of information and freedom of expression.[91]

Indeed, as the report rightly indicates this is not a momentous discovery as it is now generally established that all human rights are interdependent, and no set of human rights take precedence over another set of human rights. But some African governments are known to manipulate the debate as they try to suppress civil and political rights in the name of advancing economic rights and economic development. The suppression of freedom of expression and press freedom wrapped up in the idea of 'developmental state' promoted by Ethiopia's then leadership is no exception. As the discussion in this chapter demonstrated, despite Ethiopia's claim about 'developmental state' and 'developmental press', Ethiopia remained as one of the leading jailer of journalists and bloggers until mid-2018 when the reformist wing of EPRDF took over power. The harassment, arrest and conviction of these journalists is based on the Criminal Code, the Mass Media law and the Anti-terrorism law which shall be discussed in detailed comparative analysis in the following second part of the thesis.

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[91] ARTICLE 19, Starving in Silence: A Report on Famine and Censorship' (ARTICLE 19, London 1990), p. 3 - 4

PART II

COMPARATIVE ANALYSIS OF CURRENT LEGAL FRAMEWORK FOR PRESS FREEDOM

The first descriptive part of the thesis documented and analysed the important history of the origin and growth of press and press laws in Ethiopia over a tumultuous period of political history in which the Ethiopian press had moments of rise and fall as successive regimes initially allow political space for press freedom but eventually closed the legal environment for press freedom by a systematic use of various laws and regulations including the penal code.

The historical trajectory shows the traditional foundation for the exercise of freedom of expression in Ethiopia; the birth and growth of Ethiopian free press in the period from 1900 until the Italian occupation; the emergence of press restrictive laws from the 1930's and demands for press freedom at different stages of Ethiopia's political history. But the legal environment for press work remained overly restrictive and punitive which had a chilling effect on freedom of expression and press freedom. This historical context is crucial for understanding the nature and types of press restriction in the current legal framework even after Ethiopia's accession to international human rights covenants (1993) and Ethiopia's adoption of the new constitution (1995) with strong human rights protection including on freedom of expression and press freedom.

The second part of the thesis analyses the current legal framework. As the analysis will show, despite the new constitution and international obligations, several of the current restrictions and repressive laws are inherited from the past and it continues a pattern of archaic laws and principles which are inconsistent with the international law standards. The newly

adopted federal constitution (1995) with strong human rights provisions stipulates that the human rights provisions of the constitution should be interpreted in line with the international human rights covenants. This should have served as a strong foundation for securing freedom of expression and press freedom in accordance with international human rights standards but as the analysis in this second part of the thesis shows, the current legal framework for press leaves a lot to be desired.

Before I delve into analysis of the current laws, I will first begin by setting out the relevant international human rights law standards on freedom of expression and press freedom. In the same chapter on the international human rights framework, I will also discuss the legal status of the international standards under Ethiopian law. After introducing the relevant international standards, the subsequent chapters set out the relevant provisions of the three major laws (the Criminal Code, the Mass Media law and the Anti-terrorism proclamation) to examine the approach of the law in key free speech topics.

The international human rights standards are the critical organizing framework for the comparative analysis. There are both legal and policy reasons to the relevance and applicability of the international human rights frame work. The legal argument or justification emanates from Ethiopia's legal obligation under international law because Ethiopia has acceded to the international human rights standards. Furthermore, the Ethiopian Federal Constitution has clearly stated that the fundamental rights and freedoms specified in the constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human

Rights, the international covenants on human rights and international instruments adopted by Ethiopia.

Since Ethiopia's accession to the international human rights instruments and adoption of the, legal and political discourse on fundamental rights and freedoms including on freedom of expression and press freedom has drawn a lot from the international human rights standards and best practices from developed democracies with particular emphasis on developed democracies from Europe. It is not uncommon for Ethiopian legal and social science scholars as well as politicians, journalists and civil society activists to draw and cite examples from European democracies. Hence, this thesis also looks into the jurisprudence of the European Court of Human Rights to deepen the comparative analysis from one of the oldest and arguably most developed regional human rights systems.

The comparative analysis and recommendations based on the international human rights framework also has a policy justification and practical significance in terms of advocating for and advancing the best possible and state of the art standards for the promotion and protection of human rights including freedom of expression and press freedom. It is to be noted that there has been a degree of push back in some countries, particularly in the developing parts of the world, against the international standards on the basis of cultural relativism but the international human rights standards remain universal and to the extent Ethiopia has acceded to the international human rights covenants, the demand for an improved legislative framework should be based on the international human rights standards. Therefore, the broad regime of international human rights standards including from the UN human rights mechanisms as well as regional human rights mechanism with particular focus on the Africa and Europe regional

human rights mechanisms will form the basis for the comparative analysis and accompanying recommendations.

It should be noted that while Ethiopia's legislative development from the Constitution to subsidiary laws have been significantly influenced by international human rights standards since 1991, Ethiopia's influence on the development of international and regional human rights standards is however very limited, if not non-existent. Until the recent political reform in April of 2018, the Ethiopian government has barely engaged with either the regional or international human rights mechanisms in any meaningful way apart from a desperate propaganda like attempt to defend the international image of the government.

CHAPTER 7

INTERNATIONAL HUMAN RIGHTS LAW STANDARDS

7.1 The Universal Declaration of Human Rights

The first of the international human rights documents to be proclaimed by the world community recognising the right to freedom of expression was the Universal Declaration of Human Rights (UDHR), which was adopted by the General Assembly of the United Nations.[1]

The UDHR provides for two broad categories of rights: civil and political rights on the one hand and social, economic and cultural rights on the other. In the category of civil and political rights, it proclaims 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.[2]

At the time of its adoption, the UDHR was considered as a statement of principles to serve as 'a common standard of achievement' and as such not having a force of law. However, over the years the UDHR has acquired increasing moral, political and legal significance and certain of its provisions, including the provision on freedom of expression, are widely held to have acquired legal force either as rules of customary international law or as a general principles of law.[3] Eide and Alfredsson observed that 'the plentiful evidence of practice by

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1 Universal Declaration of Human Rights, (Adopted 10 December 1948) U.N.G.A. Resolution No 217. A (I I I). (Adopted by the General Assembly with 48 votes in favour, no opposition and 8 abstentions).

2 Ibid., Article 19

3 T Buergenthal, *International Human Rights in a Nutshell* (West Publishing Co, Minnesota 1995), p. 33 – 38; For more on the UDHR see also: L Oppenheim and H Lauterpacht, *International Law* (8th ednLondon 1967)

States and international organizations [shows]…that the UDHR constitutes binding law as international custom in accordance with article 38 of the Statute of the International Court of Justice.'[4]

Buergenthal observed that the UDHR, because of its moral status, legal and political significance, ranks with the Magna Carta, the French Declaration of the Rights of Man and the American Declaration of Independence 'as a milestone in mankind's struggle for freedom and human dignity.'[5] The Proclamation of Tehran assured that the UDHR states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.[6]

Since its adoption in 1948, the UDHR has served as the most important yardstick by which the content and standard of observance of human rights has been measured. Eide and Alfredsson noted that the performance of governments, and even their legitimacy, is being measured against the standards of the UDHR. No government can afford to ignore these standards, and all governments are bound to feel their impact at home and in external relations.[7]

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4 G Alfredsson and A Eide, *The Universal Declaration of Human Rights : A Common Standard of Achievement* (Martinus Nijhoff, London , 1999), p. xxxi

5 Buergenthal, p. 30

6 United Nations General Assembly, Final Act of the International Conference on Human Rights (Endorsed 19 December 1968) U.N.G.A. Resolution No. 2442 (X X I I I)' (1968)

7 Alfredsson and Eide, p. xxv

It is an important elaboration of human rights obligations set forth in the UN Charter and a most important first step in the formulation of the International Bill of Human Rights.[8]

The UDHR has served as an authoritative guide in the development of both international and national human rights law and the constitution of many countries. It has further served as an authoritative guide in the interpretation of the UN Charter and it has come to be regarded by the UN General Assembly and some jurists as a part of the 'law of the United Nations.'[9] Buergenthal concludes that the international community attributes a very special moral and normative status to the Universal Declaration that no other instrument of its kind has acquired.[10]

7.2 The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR)[11] guarantees the right to freedom of expression in the same way as the UDHR but in more elaborate terms. The covenant

8 The Universal Declaration of Human Rights, the two International Covenants on Human Rights and the Optional Protocol to the Covenant on Civil and Political Rights are collectively known as the International Bill of Human Rights. See: R Bernhardt and JA Jolowicz (eds), *International Enforcement of Human Rights : Reports Submitted to the Colloquium of the International Association of Legal Science.* (Springer-Verlag, Berlin 1987)

9 I Brownlie and GS Goodwin-Gill, *Brownlie's Documents on Human Rights* (6th edn OUP, Oxford 2010), p. 39

10 Buergenthal, p. 37 – 38.

11 International Covenant on Civil and Political Rights (U.N. General Assembly Resolution 2200a(X X I), Adopted 16 December 1966, Entered in to Force 23 March 1976)

is generally drafted with greater juridical specificity and lists more rights than the Universal Declaration.[12]

Article 19 of the ICCPR states as follows:

> 1. Everyone shall have the right to hold opinions without interference.
> 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.
> 3. 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.[13]

The three paragraphs respectively provide for the right to freedom of opinion, the contents of the right to freedom of expression and the conditions under which the exercise of the right to freedom of expression may be subjected to certain restrictions.

The first paragraph guarantees the right to freedom of expression. In the second paragraph, the right to freedom of expression is defined in the same way as the UDHR to include 'freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers', but in addition, it specifically stipulates that this right can be exercised 'either orally, in writing or in print, in the form of art or through any other media.' The third paragraph provides the conditions under which the exercise of the rights provided for in Paragraph 2 may

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12 Buergenthal, p. 40 – 41

13 International Covenant on Civil and Political Rights (U.N. General Assembly Resolution 2200a(X X I), Adopted 16 December 1966, Entered in to Force 23 March 1976), Article 19 (1 – 3)

be subjected to certain restrictions. This restriction does not apply to the right provided for in Paragraph 1 (the right to freedom of opinion, which is an absolute right).

The ICCPR is a multilateral treaty and imposes legal obligations on all the state Parties to the treaty. Accordingly, each state party to the covenant 'undertakes to respect and to ensure to all individuals within its territory' all the rights recognized in the covenant without any discrimination.[14] This obligation is further supplemented by a duty of each state to 'adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the covenant', when such provisions do not already exist in the domestic law.[15] Each state party further undertakes to ensure that there is an effective remedy whenever rights are violated, that a claim for such a remedy shall be determined by a competent authority and that the competent authorities shall enforce such remedies.[16]

The UN Human Rights Committee[17] in its General Comment on Article 2 of the ICCPR has stressed that the obligation under the covenant is not confined to the respect of human rights, but that States Parties have also undertaken to ensure the enjoyment of these rights to

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14 Ibid., Article 2

15 Ibid., Article 2 (2)

16 Ibid., Article 2 (3) a – c

17 The Human Rights Committee is established by the ICCPR and it is endowed with various functions to ensure compliance with the obligations of the covenant. Its functions include administration of the state reporting system and, under the Optional Protocol, to consider and decide on individual petitions. In the discharge of its functions, the committee has adopted a number of General Comments that give an authoritative interpretation of various provisions of the covenant. For an extensive analysis of the practice of the committee see: D McGoldrick, *The Human Rights Committee : Its Role in the Development of the International Covenant on Civil and Political Rights* (Clarendon Press, Oxford 1991)

all individuals under their jurisdiction. This aspect calls for specific activities by the States Parties to enable individuals to enjoy their rights.[18]

Schachter and others used the concept of 'obligation of result' and 'obligation of means' making a distinction between the two types of obligations that may be identified under Article 2 of the ICCPR.[19] While the first paragraph of Article 2 is concerned with the obligation of State Parties 'to respect and to ensure to all individuals…the rights recognised in the covenant', sub-article 2 goes on to specify the means by which state Parties are to carry out their obligation to respect and ensure rights; thereby making a distinction between 'obligation of result' and 'obligation of means.'

The concept of 'obligation of result' and 'obligation of means' provides a valuable conceptual framework to identify the two types of obligations that can be identified under Article 2 of the ICCPR. According to these two types of obligations, it is just not enough for a state party to say that it respects (obligation of result) the rights recognised in the covenant, unless it also carries out specific activities for the actual enjoyment of the rights (the obligation to use the specified means required by Article 2(2) and (3) in its domestic legal system).

The central characteristic of the obligation imposed under Article 2 of the ICCPR is that it imposes an immediate obligation 'to respect and to ensure' the rights recognised in the

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18 Human Rights Committee: General Comment 3 on Article 2 of the ICCPR (Thirteenth session, 1981), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 4 (1994).

19 O Schachter, 'The Obligation of the Parties to Give Effect to the Covenant on Civil and Political Rights' 73 AJIL 462

covenant, unlike the Covenant on Economic, Social and Cultural Rights which calls for progressive implementation of rights.

7.3 The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights[20] was adopted by the Organization of African Unity[21] and all African States who are members of the Union have now ratified the Charter. The African Charter establishes a regional human rights system designed to function within the institutional framework of the regional intergovernmental organization.

The African Charter is a regional multilateral treaty, which imposes legal obligations on African States Parties to the treaty. The Charter stipulates a basic obligation that States Parties 'shall recognize the rights, duties and freedoms enshrined in [the] Charter and shall undertake to adopt legislative or other measures to give effect to them.'[22] This obligation is

[20] African Charter on Human and Peoples' Rights (Adopted 26 June 1981, Entered in to Force 21 October 1986). Ethiopia ratified the African Charter without any reservation on 15 June 1998. A Ratification of the Accession to the African Human and Peoples' Rights Proclamation No. 114 of 1998 (Federal Negarit Gazeta 4th Year No. 41)

[21] The intergovernmental regional Organization of African Unity is now replaced by the African Union. Constitutive Act of the African Union (Adopted 11 July 2000)

[22] African Charter on Human and Peoples' Rights (Adopted 26 June 1981, Entered in to Force 21 October 1986), Article 1

supplemented by a duty of State Parties to submit a report to the African Commission on 'legislative or other measures' adopted to give effect to the rights recognised in the Charter.[23]

The African Charter guarantees the right to freedom of expression in the following terms:

> (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.*[24](Emphasis added).

The provision of the African Charter slightly differs from other treaties as the contents of the right to freedom of expression does not expressly include a 'right to receive ideas or to impart information of all kinds through any media and regardless of frontiers', which is explicitly stated in the other international human rights instruments. The African Charter is much less elaborate than the other international human rights instruments and arguably phrased in a language that seems to deprive the guarantee of much meaning.[25]

Furthermore, Article 6 of the African Charter, which provides that 'no one may be deprived of his freedom except for reasons and conditions previously laid down by law', raises an issue about which law prevails in possible cases of contradiction between the Charter and national laws. Berger observed that as the Charter does not give guidance on this, it leaves open the possibility for governments to defend their national laws as having precedence over the convention even in cases where there is a violation of the convention protected rights.[26] However, there is a general principle of law requiring States to ensure that their municipal law

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23 Ibid., Article 62

24 Ibid., Article 9

25 Buergenthal, p. 232

26 G Berger, Media Legislation in Africa: A Comparative Legal Survey' (UNESCO, Grahamstown 2007), p. 12

and practice is in conformity with their international obligations. (Article 27 of the Vienna Convention on the Law of Treaties).

Although not having a binding legal effect, a more recent and authoritative instrument in Africa in terms of expounding the legal protection of the right to freedom of expression is the *Declaration of Principles on Freedom of Expression in Africa*[27] adopted by the African Commission on Human and Peoples' Rights in 2002.[28]

The Declaration of Principles in its 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.' The first Article of the Declaration states the guarantee of freedom of expression in the following terms:

> 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.
> Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.[29]

The Declaration is phrased in more elaborate terms and juridical specificity than the African Charter. Although it is obvious that the Declaration has no force of law, it nonetheless

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27 Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002)

28 The African Commission on Human and Peoples' Rights was established by the African Charter and charged with a task of ensuring the promotion and protection of Human and Peoples' Rights throughout the African Continent. The promotional mandate is very broad and includes studies, publications, dissemination of information, collaboration with other institutions and giving its views and recommendations to African governments. As part of the promotional function the commission is further empowered 'to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental problems upon which African governments may base their legislations.' [Article 45(1)(a) and (b) of the African Charter].

29 Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002), Article 1.

is an authoritative instrument adopted by the African Commission within its promotional mandate and as such member States to the African Charter are expected to make diligent efforts to give practical effect to the principles laid down under the declaration. The extent to which the principles laid down by this Declaration influence national legislations and judicial practices is yet to be seen, as is its impact on the Commission's own work.

Another recent instrument concerning freedom of expression in Africa is the African Charter on Democracy, Elections and Governance (ACDEG), adopted by the 8th ordinary session of the General Assembly of Heads of States and Governments of the African Union in January 2007.[30] The charter includes freedom of the press and access to information as one of the objectives. It further requires member States to ensure fair and equitable access by contesting political parties and candidates to state controlled media during elections.[31]

7.4 The European Convention for the Protection of Human Rights and Fundamental Freedoms.[32]

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[33] was adopted within the institutional framework of the Council of Europe, a regional intergovernmental organization created in 1949 for the protection of human rights within Europe. The European human rights system is the oldest and the most developed of the regional

30 The Charter was adopted by the General Assembly of the African Union held in Addis Ababa on 30 January 2007 and entered in to force on 15 February 2012.

31 For a critical commentary on this charter see, ER McMahon, The African Charter on Democracy, Elections and Governance: A Positive Step on a Long Path' (Open Society Institute, 2007)

32 The European Convention is of course not directly applicable to Ethiopia. But it is included here as part of the international human rights law standard given the vastly developed European jurisprudence elaborating several of the relevant international rules and norms which are arguably useful body of legal literature in any jurisdiction.

33 European Convention for the Protection of Human Rights and Fundamental Freedoms (Adopted 4 November 1950, Entered in to Force 3 September 1953)

human rights system.[34] The catalogue of rights guaranteed by the convention has been expanded over the years by a series of additional Protocols.[35]

The ECHR guarantees the right to freedom of expression and freedom of information in the following terms:

> 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of

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34 Buergenthal, p. 104. For more on the European Human Rights System, See generally: JG Merrills and AH Robertson, *Human Rights in Europe : A Study of the European Convention on European Rights* (4th ednManchester University Press, Manchester 2001); P Van Dijk, GJH Van Hoof and AW Heringa, *Theory and Practice of the European Convention on Human Rights* (3rd ednKluwer Law International, The Hague 1998); RCA White and C Ovey, *Jacobs, White & Ovey : The European Convention on Human Rights* (5th ednOUP, Oxford 2010)

35 A number of Protocols have been adopted amending or supplementing the convention. Some of these have been superseded by Protocol No 11, which has substantially restructured the control machinery by allowing cases to be directly referred to the court. See: Brownlie's Documents on Human Rights, p. 681

> information received in confidence, or for maintaining the authority and impartiality of the judiciary.[36]

The European Court of Human Rights[37] has developed an extensive body of jurisprudence particularly concerning Article 10 of the Convention.[38] In the leading case, *Handyside v United Kingdom*, the court stated as follows:

> 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'[39]

This statement, originally stated in the *Handyside* case, has since been repeatedly and consistently used by the court emphasizing the importance of the right protected under Article 10 of the convention. The fundamental importance of freedom of expression as 'one of the

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36 The European Convention for the Protection of Human Rights and Fundamental Freedoms (Entered in to Force 3 September 1953), Article 10 (1) & (2)

37 The European Court of Human Rights was first set up in 1959. But with the entry into force of Protocol No. 11 to the European Convention of Human Rights in November 1998, it instituted the 'new court' which began to sit as a full-time court. It is now a permanent court which replaces the former two supervisory organs of the convention (the court and the commission). All alleged violations of human rights are now referred directly to the Court. In the majority of cases the Court sits in Chambers of seven judges. The Court decides both on the admissibility and merits of applications and if necessary undertakes an investigation. The parties to a case shall abide by the judgments of the Court and take all necessary measures to comply with them. The Committee of Ministers supervises the execution of judgments. The Secretary General may request State parties to provide explanations on the manner in which their domestic law ensures the effective implementation of the Convention.

38 The substantial body of case-law relating to Article 10 of the Convention includes both the European Court and the European Commission of Human Rights. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, the control machinery established by the Convention has been restructured and the two supervisory organs are now replaced by a permanent European Court of Human Rights. For a summary of the case-law of the Court on Freedom of Expression, See: M Oetheimer, *Freedom of Expression in Europe : Case-Law Concerning Article 10 of the European Convention of Human Rights* (Human Rights Files, Council of Europe, Strasbourg 2007)

39 *Handyside V. United Kingdom* (1976) 1 EHRR 737. The Handyside case involved the publication of a book called *The Little Red School Book* which was held by English court as being obscene for children and likely to deprave and corrupt significant proportion of school aged children. Although the book has been published in most other member states of the European Council, the European Court held that the margin of appreciation about moral issues should be seen in light of local circumstances and agreed with the decision of the English Courts.

essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's fulfilment' has been repeatedly stressed in a number of cases.[40] The court has established that the right guaranteed includes all forms of expression through any medium (for example, artistic expression including paintings, cartoons, books, video-recordings and films, statements in radio interviews, information pamphlets and the internet).

The court further established a careful balance between freedoms of expression on the one hand and the rights of others on the other, even in the most extreme forms of expression including racist hate speech and pornography.[41]

The American Convention on Human Rights[42] also guarantees the right to freedom of expression in terms that are generally similar to the ICCPR. It states that the right includes 'freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers,

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40 Some of the more recent examples include: *Lindon, Octchakovsky-Laurens and July v France* (2008) 46 EHRR 761, Application No 21279/02 and 36448/02, judgment of 22 October 2007 ; *Guja v Moldova* (2008) Application No. 14277/04, judgment of 2008 ; *Frankowicz v Poland* (2008) Application No. 53025/99, judgment of 16 December 2008 , cited in, White and Ovey, p. 425.

41 *Jersild v Denmark* (1994) 19 EHRR 1. The Jersild case involved racist remarks made by the Greenjackets in a Danish TV program. Jersild was a Danish TV journalist and reported about an extremist youth group called Greenjackets who made a racist attack on minority black people and immigrant communities in Denmark. The Court recognised that the racist remarks of the Greenjackets did not enjoy the protection of Article 10 but it also held that penalties imposed on the media in this case were not necessary in a democratic society. In several other cases, even where the court held that there has not been a violation of Article 10, it has however expounded on the content of the right and gave authoritative guidance on interpretation and application of the rights guaranteed under the convention. For example, the court recognised artistic expression, paintings, films, radio interviews, pamphlets as different forms of expression. *Muller v Switzerland* (1991) 13 EHRR 212 , (the Muller case was the first in which the European Court extended the right to freedom of expression to artistic expressions); *Otto-Preminger Institute v Austria* (1994) 19 EHHR 34 ,(relating to films); *Barthold v Germany* (1985) 7 EHRR 383 , (relating to statements in radio interviews); *Open Door Counselling and Dublin Well Woman v Ireland* (1993) 15 EHRR 244 , (relating to information pamphlets); *Wingrove v United Kingdom* (1997) 24 EHRR 1 , (relating to pornography); *Perrin v United Kingdom* (2005) Application No. 5446/03, decision of 18 October 2005 and *Times Newspapers Ltd. (Nos. 1 & 2) v United Kingdom* (2009) Application No. 3002/03 and 23676/03, judgment of 10 March 2009 , (relating to Internet); *Leroy v France* (2008) Application No. 36109/03, judgment of 2 October 2008 , (relating to cartoons); *Monnat v Switzerland* (2006) Application No. 73604/01, judgment of 21 September 2006 , (relating to video-recordings).

42 American Convention on Human Rights (Adopted 22 November 1969 Entered into Force 18 July 1978)

either orally, in writing, in print, in the form of art, or through any other medium of one's choice.'[43]

Therefore, as the foregoing summary of the various international human rights instruments indicates, freedom of expression is a key human right explicitly guaranteed by all the international human rights documents. It is now generally recognised that freedom of expression is a key human right in its own right and because of its fundamental role in underpinning democracy. The fact that freedom of expression is explicitly guaranteed in all the international human rights instruments confirms a consensus of the international community recognizing freedom of expression as a fundamental human right. As a result of this consensus, there is now no more room for questioning the necessity of this right. The international community in the last two decades has moved into the examination of the question of the legitimacy and extent of limitation that may be imposed upon freedom of expression. In the next section, I will examine the permissible grounds for restriction of freedom of expression.

7.5 Restrictions on Freedom of Expression

The right to freedom of expression is a right, which needs to be balanced with other legitimate social needs and rights of others. The exercise of the right to freedom of expression carries with it a special responsibility to protect the right of others. This calls for a justifiable restriction of the exercise of the right under certain circumstances.[44]

There is a general recognition that free expression, particularly by the use of a mass media, is a powerful tool and hence it should carry a special sense of responsibility and specific

43 Ibid., Article 13 (1 & 2).

44 For law and philosophical discussions on issues of free speech and justifications for limitations, See: W Sadurski, *Freedom of Speech and Its Limits* (Kluwer Academic Publishers, Boston 1999); WJ Waluchow

duties. Barendt observed that, if it is vital to protect the right to freedom of expression and press freedom because of its power to promote democracy, uncover abuses and advance political, artistic, scientific and trade development, it is also equally important to recognize that freedom of expression can be used to incite violence, spread hatred and impinge on individual privacy and safety.[45]

International human rights law recognises that certain restrictions may be imposed upon the exercise of the right to freedom of expression. The ICCPR lays down the conditions, which any restriction on freedom of expression must meet. It states:

> 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.[46]

In a similar way, all the other human rights instruments recognise the need for restrictions and lay down the permissible grounds and conditions for legitimate limitation on the exercise of the right to freedom of expression. There is, however, some variation among the different human rights documents concerning the legitimate purposes, which should be the grounds for restricting the exercise of the right to freedom of expression. The UDHR permits restrictions on freedom of expression (and other substantive rights) only to secure 'due recognition and respect for the rights and freedoms of others and ... the just requirements of

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(ed), *Free Expression : Essays in Law and Philosophy* (Clarendon Press, Oxford 1994); F Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge University Press, Cambridge 1982); EM Barendt, *Freedom of Speech* (2nd ednOUP, Oxford 2005)

45 EM Barendt, *Freedom of Speech* (2nd edn OUP, Oxford 2005), p. 74 - 116

46 International Covenant on Civil and Political Rights (U.N. General Assembly Resolution 2200a(X X I), Adopted 16 December 1966, Entered in to Force 23 March 1976), Article 19 (3)

morality, public order and the general welfare.'[47] The International Covenant is more detailed, permitting restrictions to protect the 'rights or reputations of others', 'national security or *ordre public*' (which is broader concept than 'public order' and includes general welfare and even public policy) and 'public health or morals'.

In spite of the above variations, all the international human rights documents set forth essentially the same 'three-part test' for determining the legitimacy of restrictions on freedom of expression. These are:

(1) The restriction must be 'prescribed by law' or 'in accordance with the law,'[48]

(2) The restriction must serve one of the legitimate purposes expressly enumerated in the instrument and

(3) The restriction must be necessary in a democratic society.

This three-part test is developed in the jurisprudence of the international judicial bodies, most notably the UN Human Rights Committee[49] and the European Court of Human Rights.[50] The European Court of Human Rights, in particular, has developed an extensive body of jurisprudence elaborating on the essence and application of the 'three-part' test. The court cautions that this test presents a high standard, which any interference must overcome in the strictest sense. In evaluating a particular restriction, the court has stressed, it is faced 'not with

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47 Universal Declaration of Human Rights, (Adopted 10 December 1948) U.N.G.A. Resolution No 217. A (I I I), Article 29

48 The two expressions are used interchangeably. As White and Ovey rightly observed the difference in the language in this case is immaterial. White and Ovey, p. 312

49 Mukong v Cameroon (Communication No 458/1991) UN Human Rights Committee

50 Handyside v United Kingdom ; The Sunday Times v United Kingdom (No. 2) (1991) 14 EHRR 229 ; Goodwin v United Kingdom (1996) 22 EHRR 123

a choice between two conflicting principles but with a principle of freedom of expression that is subject to a number of exceptions, which must be narrowly interpreted.'[51]

The European Court of Human Rights has repeatedly stated that the respondent state must establish that any restriction: (1) is 'prescribed by law', (2) has a 'legitimate aim' [namely, one of the aims enumerated in paragraph 2 of the text[52]], and (3) it is 'necessary in a democratic society' to promote the aim pursued.[53] The court has further elaborated on the meaning of the foregoing phrases.

To be 'prescribed by law', implies that not only a law should exist that provides for the restriction but also it must be 'adequately accessible' and foreseeable, that is, formulated with sufficient precision to enable the citizen to regulate his conduct.[54]

As White and Ovey note, this requirement of being 'prescribed by law' has in turn three requirements. First, it must be established that the interference has some basis in national law.[55] Second, the law must be accessible and thirdly, the law must be formulated in such a way that a person can foresee, to a degree that is reasonable in the circumstances, the consequences

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51 The Sunday Times v United Kingdom (No. 2), paragraph 65.

52 Paragraph 2 of Article 10 of the European Convention of Human Rights (n 33) enumerates list of legitimate aims that a restriction on freedom of expression may pursue. These are: national security, territorial integrity or public safety, prevention of disorder or crime, protection of the health or morals, protection of the reputation or rights of others, preventing the disclosure of information received in confidence, and maintaining the authority and impartiality of the judiciary. The European Convention for the Protection of Human Rights and Fundamental Freedoms (Entered in to Force 3 September 1953).

53 *Handyside v United Kingdom* ; *The Sunday Times v United Kingdom (No. 2)* ; *Goodwin v United Kingdom*

54 *The Sunday Times v United Kingdom (No. 2)* ; *Gaweda v Poland* (2002) No. 26229/95 Judgment of 14 March 2002

55 For example in the *Djavit An* case the court could find no relevant law for the interference. *Djavit an v Turkey* (2005) 40 EHRR 1002, Application No. 20652/92, judgment of 20 February 2003 , cited in, White and Ovey, p. 312

which a given action will entail. The requirement of being accessible and being foreseeable is referred to by White and Ovey as the 'quality of law' requirement.[56]

In order to have a 'legitimate aim', a restriction must be in furtherance of, and genuinely aimed at, protecting one of the permissible grounds listed in Article 10(2) of the European Convention of Human Rights. Once the requirement of legal prescription is satisfied, the next test is whether or not the restriction is for one of the permissible list of specified legitimate aims.

As White and Ovey rightly noted, the convention provides an exhaustive list of justifications but fairly broad enough to cover a broad range of protected interests. The relevant section of the provision thus provides that restrictions may be imposed,

> In the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.[57]

The permissible justifications are so comprehensive that it is not as such difficult for States to relate restrictions with one of the stated aims. Kempees observed that there is no case

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[56] White and Ovey, p. 312. Examples of cases cited by White and Ovey are: *Huvig v France* (1990) 12 EHRR 528, Application No. 11105/84, judgment of 24 April 1990, Series A, No. 176 - B and *S and Marper v United Kingdom* (2009) 48 EHRR 1169, Application No. 30562/04 and 30566/04, judgment of 4 December 2008 , (in relation to foresee-ability); *Al-Nashif v Bulgaria* (2003) 36 EHRR 655, Application No. 50963/99, judgment of 20 June 2002 , (in relation to the quality of law requirement).

[57] The European Convention for the Protection of Human Rights and Fundamental Freedoms (Entered in to Force 3 September 1953), Article 10 (2)

in which the European Court of Human Rights has found a violation of Articles 8 – 11 purely on the basis of the failure of a respondent State to satisfy the requirement for a legitimate aim.[58]

The third part of the 'three-part test' is the requirement for the restriction to be 'necessary in a democratic society.' In order to meet the requirements of being 'necessary in a democratic society', a restriction does not have to be 'indispensable', but it must be more than merely 'reasonable' or 'desirable.' The court has defined this to mean that a 'pressing social need' must be demonstrated, the restriction must be proportionate to the legitimate aim pursued, and the reasons given to justify the restriction must be relevant and sufficient.[59] As White and Ovey observe the classic formulation of this test is to be found in the *Silver* case which explains all the elements as follows:

- The adjective 'necessary' is not synonymous with 'indispensable', neither has it the flexibility of such expression as 'admissible', 'ordinary', 'reasonable', or 'desirable';
- The contracting States enjoy a certain but not unlimited margin of appreciation in the matter of imposition of restrictions, but it is for the court to give the final ruling on whether they are compatible with the convention;
- The phrase 'necessary in a democratic society' means that, to be compatible with the convention, the interference must, inter alia, correspond to a 'pressing social need' and be 'proportionate to the legitimate aim pursued';
- Those paragraphs of Articles of the Convention which provide for an exception to a right guaranteed are to be narrowly construed.[60]

White and Ovey observe that in cases involving the balancing of values between the interests of individuals and society as a whole, the question frequently before the European

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58 P Kempees, "Legitimate Aims' in the Case-Law of the European Court of Human Rights' in P. Mahoney and others (eds), *Protecting Human Rights: The European Perspective. Studies in Memory of Rolv Ryssdal* (Carl Heymanns, Koln, 2000), p. 659, cited in, White and Ovey, p. 317

59 *Handyside v United Kingdom*, paragraph 48 – 50; *The Sunday Times v United Kingdom (No. 2)* , paragraph 62

60 *Silver v United Kingdom* (1983) 5 EHRR 347, cited in, White and Ovey, p. 325

Court of Human Rights is whether the interference goes beyond what is necessary in a democratic society.

In some cases, therefore, the court moves directly to the question of whether an interference can be regarded as necessary in a democratic society without determining whether the complained-of measure was taken in accordance with law for a legitimate aim.[61] In such cases, the court will note that it was not necessary for it to determine the issue whether or not the disputed measure was in accordance with the law and whether or not it served a legitimate aim, because the court has found the measure as being not necessary in a democratic society.[62]

The court has further stressed the need for a strict application of this three-part test by stating that although freedom of expression is subject to a number of exceptions as enshrined in Article 10(2) of the convention, however '[it] must be narrowly interpreted and the necessity for any restrictions must be convincingly established.'[63] Although the court recognised a 'margin of appreciation' for member states in assessing and determining the existence of such a pressing social need, it also stressed that the 'margin of appreciation' is subject to European review.

In exercising its power of review, the court assesses the proportionality of a restriction on freedom of expression to the aim pursued. If the interference is disproportionate to the legitimate aim pursued, it will not be deemed as being 'necessary in a democratic society' and

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61 White and Ovey, p. 312

62 *Christian Democratic People's Party v Moldova* (2007) 45 EHRR 392, Application No. 28793/02, judgment of 14 February 2006, cited in, White and Ovey, p. 312

63 *Thorgeirson v Iceland* (1992) EHRR 843 ; *Worm v Austria* (1997) Judgment of 29 August 1997, Reports 1997 - V, paragraph 47 ; *Autronic Ag v Switzerland* (1990) Judgment of 22 May 1990, Series A No. 178, paragraph 61

will therefore violate the convention.[64] The notion of 'margin of appreciation' can be somewhat difficult as there is no one formula which applies to every case; instead its application will depend on its context.[65]

White and Ovey observe limitations common to Articles 8 – 11 of the European Convention of Human Rights. Although there are some differences of detail in the nature of the limitations arising under each article, they argue that there is sufficient commonality of approach to justify a collective consideration of these limitations. They identify limitations that are inherent in their nature, as well as express limitations provided mainly in the second paragraphs of these provisions.

The express limitations under the conventions essentially relate to the 'three-part enquiry' adopted by the European Court of Human Rights, but they also further emphasize that central to the determination of the 'three-part enquiry' is the proportionality of the interference in securing the legitimate aim; i.e. only the minimum interference with the right which secures the legitimate aim is permitted.[66]

As indicated above, the UN Human Rights Committee has also confirmed the requirements of the 'three-part test' for any restriction on freedom of expression. In the case of Mukong v Cameroon, the UN Human Rights Committee held that:

> Any restriction of the freedom of expression pursuant to paragraph 3 of article 19 must cumulatively meet the following conditions: it must be provided for by

64 Oetheimer, p. 9

65 Y Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the E.C.H.R.* (Intersentia, Antwerp, 2002), cited in, White and Ovey, p. 325

66 White and Ovey, p. 311

> law, it must address one of the aims enumerated in paragraph 3(a) and (b) of article 19, and must be necessary to achieve the legitimate purpose.[67]

The principle of the three-part test restriction on freedom of expression is also clearly and fully adopted by the *Declaration of Principles on Freedom of Expression in Africa*, which states that 'any restriction on freedom of expression shall be provided by law, serve a legitimate interest and [must] be necessary in a democratic society.[68]

The African Charter on Human and Peoples' Rights also recognises restrictions that may be imposed in accordance with law. It provides that, 'Every individual shall have the right to express and disseminate his opinions *within the law*.'[69] (Emphasis added). The grounds for permissible restriction under the African Charter are formulated a little differently from the other human rights documents.

While it does not include any express restrictions, the general restrictions set forth in Articles 27-29 are applicable, the most pertinent of which requires the individual to exercise protected freedoms 'with due regard to the rights of others, collective security, morality and common interest.' However, in practice it may well be interpreted to impose similar requirements as in the other human right documents.

7.6 Freedom of the Press

The guarantee of freedom of expression applies with particular force to the institution of the press. The right to freedom of expression and peoples' right to seek and receive information

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67 *Mukong v Cameroon (Communication No 458/1991)*

68 Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002), Article 2 (2)

69 African Charter on Human and Peoples' Rights (Adopted 26 June 1981, Entered in to Force 21 October 1986), Article 9 (2)

cannot have a meaningful application unless the media plays its key role in a democratic society. It is often stated that a free press is one of the most important ways of promoting and protecting freedom of expression.

The pre-eminent role of the media has been consistently emphasized by the European Court of Human Rights which has stressed that enhanced privileges for the press are necessary in order to enable it to perform its vital role as 'purveyor of information' and 'public watchdog.'[70] The European court has stated that while the press must not overstep the bounds set under Article 10(2) of the convention, 'it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog.'[71]

As a result, White and Ovey observe that the national margin of appreciation is limited when the author of the expression in question is a journalist, fulfilling his social duty to impart

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70 Lingens v Austria (1986) 8 EHRR 407 ; Goodwin v United Kingdom

71 *Thorgeirson v Iceland* , paragraph 63; *Castells v Spain* (1986) 14 EHRR 445 , paragraph 45; *The Observer and the Guardian v United Kingdom* (1991) 14 EHRR 153 , paragraph 59; *The Sunday Times v United Kingdom (No. 2)* , paragraph 65

information and ideas on matters of public concern to an extent that journalists should even be free to use a degree of exaggeration and provocation.[72]

The court further emphasized the need for affording a special protection for information or ideas concerning matters of public interest,[73] and communication in the context of political debate or about politicians.[74] The court clearly stated that:

> Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate, which is at the very core of the concept of a democratic society.[75]

It is also worth reiterating at this point the principle the court has repeatedly and consistently reaffirmed first in the *Handyside* case, and subsequently in a number of cases brought before the court. The principle in which the court has 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

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72 White and Ovey, p. 433; *Prager and Oberschlick v Austria* (1996) 21 EHRR 1, Application No. 15974/90), judgment of 26 April 1995, Series A, No. 313 (1996)

73 The Sunday Times v United Kingdom (No. 2)

74 Lingens v Austria

75 Castells v Spain

population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society.'[76]

Underlying the importance and role of press freedom the US Supreme Court also held that:

> In the First Amendment, the founding fathers gave the free press the protection it must have to fulfil its essential role in our democracy. The press was to serve the governed, not the governors…The press was protected so that it could bare the secrets of government and inform the people. Only free and unrestrained press can effectively expose deception in government.[77]

The underlying premise is that an informed citizenry is necessary to hold the government to account for its actions and to enable citizens to make informed decisions. This essential feature of democracy will be undermined, if not destroyed, without a free press playing its indispensable role in a democracy.[78]

7.7 Status of International Human Rights Law under Ethiopian Law

Ethiopia's transitional period Charter, adopted in July 1991, established the Transitional Government of Ethiopia[79] and proclaimed that human rights shall be respected in accordance with the Universal Declaration of Human Rights.[80] Ethiopia acceded to the International

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76 Handyside v United Kingdom

77 *New York Times v U.S.* (1971) 403 US 713 , cited in: T Mendel, Comparative Study of Laws Governing the Media: [a Study for the Ethiopian Parliament]' (2006), p. 94

78 Mendel, p. 94

79 The period immediately following the overthrow of the military government in 1991 up to the establishment of the Federal Democratic Republic of Ethiopia in 1995 is known as the transition period in Ethiopia.

80 Transitional Period Charter of Ethiopia (Negarit Gazeta 50th Year No. 1, Adopted 22 July 1991)

Covenant on Civil and Political Rights in 1993,[81] and ratified the African Charter on Human and Peoples' Rights in 1998.[82]

Ethiopia's federal constitution provides that 'international agreements ratified by Ethiopia are an integral part of the law of the land.'[83] It further provides that the fundamental rights and freedoms specified in chapter three of the constitution[84] '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.'[85]

In the Ethiopian constitutional framework, the UDHR, international covenants on human rights (which include the ICCPR) and other relevant international instruments that may be adopted by Ethiopia are given a pre-eminent role and status because of the fact that the constitutional provisions are subjected to a special interpretive regime in conformity with these human rights instruments. Arguably, the international human rights instruments are accorded a higher status than national laws in the constitutional framework of Ethiopia.

However, while the African Charter on Human and Peoples' Rights was ratified and made an integral part of the laws of the land in accordance with the established constitutional

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81 The UN confirmed Ethiopia's accession to the ICCPR on 11 June 1993. United Nations, 'United Nations Treaty Collections: Status of Ratification of the International Covenant on Civil and Political Rights' <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en> accessed 16 October 2010

82 A Ratification of the Accession to the African Human and Peoples' Rights Proclamation No. 114 of 1998 (Federal Negarit Gazeta 4th Year No. 41)

83 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 9 (5)

84 Chapter 3 of the Ethiopian Constitution is on Fundamental Rights and Freedoms. It provides for a list of Human and Democratic Rights in terms that are generally similar to the international human rights instruments. Ibid., Chapter 3

85 Ibid., Article 13 (2)

practice; i.e., a ratification proclamation is duly published in the Negarit Gazeta,[86] there has not been any ratification proclamation for the ICCPR. This raises a question about the status of the ICCPR in Ethiopia.

As indicated above, the constitution provides that 'international agreements ratified by Ethiopia are an integral part of the law of the land.'[87] The power to ratify international agreements is vested in the House of Peoples' Representatives.[88] Laws deliberated upon and passed by the House are submitted to the President of the country for signature.[89] One of the powers and functions of the President is to 'proclaim in the *Negarit Gazeta*[90] laws and international agreements approved by the House of Peoples' Representatives.'[91]

Therefore, once an international agreement is deliberated upon and passed by the House, it shall be submitted to the signature of the President and subsequent issuance of the ratification proclamation in the *Negarit Gazeta*. Hence a treaty becomes 'an integral part of the

86 A Ratification of the Accession to the African Human and Peoples' Rights Proclamation No. 114 of 1998 (Federal Negarit Gazeta 4th Year No. 41)

87 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 9 (5)

88 Ibid., Article 55 (12)

89 Ibid., Article 57

90 The official Gazeta by which laws are formally promulgated in Ethiopia. Negarit Gazeta was first established in 1942 as the official gazette of the imperial government in which shall be published all Proclamations, Decrees, Laws, Rules, Regulations, Orders, Notices and subsidiary legislation. Establishment of the Negarit Gazeta, Proclamation No. 1 of 1942 (Negarit Gazeta No. 1, Published in Addis Ababa 10th March 1942). In 1995 following the establishment of the Federal Democratic Republic of Ethiopia, the Negarit Gazeta is renamed and reconstituted as 'Federal Negarit Gazeta.' It provided that all laws of the federal government shall be published in the Federal Negarit Gazeta and all federal or regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of laws published in the Federal Negarit Gazeta. Federal Negarit Gazeta Establishment Proclamation No. 3 of 1995 (Federal Negarit Gazeta 1st Year No. 3)

91 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 71 (2)

law of the land' when it is approved by the House and the ratification proclamation is published in the *Negarit Gazeta.*

The publication of a law in the Federal Negarit Gazeta is the final legal step that gives a legislative decision of the House a force of law. An exception to this is where the President fails to sign a law submitted to him or her by the House within fifteen days, in which case the law shall take effect without his/her signature.[92]

As indicated above, the African Charter on Human and Peoples' Rights has been ratified in accordance with the procedure described above, and Ethiopia's accession to the African Charter was proclaimed by a ratification proclamation published in the *Federal Negarit Gazeta*.[93]

But the case of Ethiopia's accession to the ICCPR appears to be different. Ethiopia acceded to the ICCPR in June 1993 during the transitional period.[94] The supreme law of the land at the time was the transitional period charter.[95] Under the charter, the power to ratify international agreements was vested in the Council of Representatives.[96] The Council of Representatives in the exercise of its power to ratify international agreements decided on

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92 Ibid., Article 58

93 A Ratification of the Accession to the African Human and Peoples' Rights Proclamation No. 114 of 1998 (Federal Negarit Gazeta 4th Year No. 41). The Convention on the Rights of the Child is another example of a multilateral treaty duly ratified and published in accordance with this established constitutional practice. Ratification of the Convention on the Rights of the Child, Proclamation No. 100 of 1998 (Federal Negarit Gazeta 4th Year No. 23)

94 The period immediately following the overthrow of the military government in 1991 up to the establishment of the Federal Democratic Republic of Ethiopia in 1995 is known as the transition period in Ethiopia. Transitional Period Charter of Ethiopia (Negarit Gazeta 50th Year No. 1, Adopted 22 July 1991).

95 Ibid., Article 18

96 Ibid., Article 9 (h)

Ethiopia's accession to the ICCPR, but unlike other laws it passed during the transition period, it failed to publish the ratification in the official *Negarit Gazeta*.

One may wonder whether this was a deliberate omission or lack of guidance on adoption of international treaties during the transitional period. The past constitutional history of the country is clear in terms of officially proclaiming laws and international agreements in the *Negarit Gazeta*. Consistently with this established constitutional practice, the transitional period charter itself was published in the *Negarit Gazeta* and, during the transition period, the transitional government continued to publish laws passed by the Council in the *Negarit Gazeta* until it was replaced by the Federal *Negarit Gazeta* following the establishment of the federal government in 1995.

While there appears to be no explanation why the transitional government failed to publish the ratification proclamation, it is more worrying that this omission has not been rectified for over two decades since Ethiopia acceded to the ICCPR. This may open room for debate on the legal status of the covenant in the national law of Ethiopia. What is the legal effect of the failure to publish the ratification proclamation? Does it imply that Ethiopia is not legally obliged under the covenant?

Arguably this may affect the direct applicability of the provisions of the convention in the national courts as Judges may not have a legally binding legal instrument which they can refer to in delivering a judgment. However, the failure of the Ethiopian government to publish the ratification proclamation does not affect the international obligation of the country to give effect to the fundamental rights guaranteed under the convention.

Although the established constitutional practice has not been fully followed up in the adoption of the ICCPR, Ethiopia's accession to the ICCPR has been duly decided up on by the

Council of Representatives and Ethiopia's accession process at the international level was completed with the notification to the United Nations which creates a binding international obligation on the government of Ethiopia to give effect to the rights guaranteed under the convention.

According to the Vienna Convention on the Law of Treaties,[97] accession is defined as 'an international act …whereby a State establishes on the international plane its consent to be bound by a treaty.'[98] The government of Ethiopia has officially declared that it has acceded to the ICCPR and the instrument of accession was sent to the UN Secretary General as depository of instruments of ratification and accession.[99] To the extent that the government of Ethiopia has formally acceded to the ICCPR in accordance with the Vienna Convention, it is bound by the convention and is obliged to give effect to the fundamental rights and freedoms guaranteed under the convention.

Therefore, even if the absence of a ratification proclamation remains to be a noticeable gap, the fact that a ratification proclamation has not yet been published in accordance with past constitutional practice of the country cannot justify a failure to give effect to the fundamental rights and freedoms guaranteed under the convention. The Vienna Convention further provides

97 Vienna Convention on the Law of Treaties (Adopted 22 May 1969 Entered in to Force 27 January 1980)

98 Ibid., Article 2 (1) (b)

99 The UN confirmed Ethiopia's accession to the ICCPR on 11 June 1993. (See note 3 above)

that ‘a [state] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.’[100]

The fact that the government has failed or voluntarily abstained to comply with its own constitutional requirements of issuing a ratification proclamation is no defence to a failure to protect the fundamental human rights and freedoms guaranteed under the covenant. The Vienna Convention is clear in confirming the principle of customary international law that a provision of internal laws may not be invoked as a justification for failure to perform a treaty obligation.

However, EPRDF’s government failure to issue the necessary ratification proclamation for over two decades may raise a question about the quality of political commitment to the ICCPR.

Given the fact that many ratification proclamations have been issued since accession to the ICCPR and in the absence of any official explanation on the part of the government as to why the ratification proclamation is delayed for so long, one is left to question whether or not the government was fully committed in taking the necessary legal steps to give full effect to the fundamental rights and freedoms guaranteed under the covenant.

In conclusion, while the failure to publish the ratification proclamation should not and cannot lessen the international obligation created by acceding to the covenant, the government of Ethiopia is yet to take a prompt measure to publish a ratification proclamation.

7.8 Ethiopia and International Human Rights Mechanisms

[100] Vienna Convention on the Law of Treaties (Adopted 22 May 1969 Entered in to Force 27 January 1980), Article 27

Ethiopia submitted the first cycle report under the Universal Periodic Review (UPR) mechanism in 2009 which was part of Ethiopia's first initiative to submit long over-due reports on various international mechanisms.[101] The second cycle report was submitted in 2014 and the third cycle report was submitted in 2019 just after the new reformist administration came to office in Ethiopia.[102]

The 2009 first cycle of Ethiopia's report claimed in its introduction that it was prepared with a spirit of examining challenging and shortcomings and it has elaborate sections on the normative and institutional frameworks for human rights in Ethiopia as well as sections on protection of human rights including civil and political rights. However, the report is conspicuously silent on the wide range of violations on freedom of expression and media freedom extensively investigated, documented and reported by various international human rights organizations. Ethiopia's UPR largely limited itself to reiterating the constitutional guarantees for fundamental human rights and the mandates of various relevant government bodies.

Under the section on civil and political rights, the few paragraphs on freedom of expression only gave some unverified statistical accounts of number of press products, trainings organized by government for journalists and number of press conferences attended by private press journalists.[103] During the interactive session on Ethiopia's report , several countries raised serious concerns about the wide range of human rights conditions in Ethiopia including Ethiopia's laws, policies and practices restricting freedom of expression and media

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101 https://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ET/A_HRC_WG6_6_ETH_1_E.pdf

102 See https://www.ohchr.org/EN/HRBodies/UPR/Pages/ETIndex.aspx both for the 2014 and the 2019 UPR Reports of Ethiopia.

103 See page 12 -13 https://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ET/A_HRC_WG6_6_ETH_1_E.pdf

freedom; the problems created by Ethiopia's infamous Charities and Societies Proclamation and the Anti-Terrorism Proclamation which are inconsistent with international human rights standards. However, the Ethiopian government strongly defended these laws arguing that they don't contravene freedom of expression and freedom of media.[104]

The Working Group on Ethiopia's UPR submitted a wide range of recommendations which were adopted by the UN Human Rights Council including to guarantee genuine freedom of expression; to adopt all necessary measures to provide free and independent media; to fully and effectively implement access to information and to respond positively to the request by the UN special procedure mandate holders to visit Ethiopia.

However, almost all of these critical recommendations including the repealing or amendment of the controversial Charities and Societies Proclamation and the Anti-Terrorism Proclamation in line with international human rights standards with respect to freedom of expression did not enjoy the support of the Ethiopian government.[105] The recommendation for a visit of Ethiopia by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and freedom of expression did not enjoy the support of the Ethiopian government.[106]

Ethiopia's first periodic report of state parties to the UN Human Rights Committee under the International Covenant on Civil and Political Rights was submitted around the same time as the first UPR report in July of 2009 and it followed the same pattern and language as

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104 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/101/47/PDF/G1010147.pdf?OpenElement Page 9

105 The Charities and Societies Proclamation has since been repealed after the reformist leadership led by PM Abiy Ahmed came to office in April 2018 and the Anti-Terrorism Proclamation is under review for an amendment.

106 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/101/47/PDF/G1010147.pdf?OpenElement pages 23 - 25

Ethiopia's UPR submission in merely reiterating the constitutional provisions on freedom of expression, unverified alleged statistical accounts of increased media outputs and media trainings organized by the government. The state report further blamed the private press for 'working in irresponsible manner, contributing to the violence following the 2005 Elections,' and noted the prosecution and conviction of some 17 press products for violating the law.[107]

In the course of the interactive dialogue at the Human Rights Committee 99th session in July of 2010, issues on freedom of expression were rightly raised including the forced closure of media houses, harassment of journalists, and problems of criminal defamation under the Mass Media law and the revised criminal code which is leading to self-censorship.[108]

The UN Human rights Committee in its concluding observations noted that it ' is concerned by provisions of the Proclamation on the Freedom of the Mass Media and Access to Information (No. 591/2008), in particular the registration requirements for newspapers, the severe penalties for criminal defamation, and the inappropriate application of this law in the combat against terrorism, as illustrated by the closure of many newspapers and legal charges brought against some journalists…[and furthermore] reports received about the impossibility of accessing various foreign websites and radio stations.' The Committee therefore recommended that Ethiopia 'should revise its legislation to ensure that any limitations on the rights to freedom of expression are in strict compliance with article 19, paragraph 3, of the

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107 UN Human Rights Committee CCPR c/ETH/1. First periodic report of State parties: Ethiopia: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsicLYXUre%2bR39DzqmpyQk4Vr9JBYjs%2fc90T4ZUO56oHKIJ2zhauS9TcFZTJrcJi5lFSeQaxomwIUzQCL9UFq%2ff7%2fW84H1dIffqafZzOT05G%2b para 185 - 193

108 UN Human Rights Committee: List of Issues: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsicLYXUre%2bR39DzqmpyQk4XMEpEPm4jt8Q%2fw68e00LNEb2huyjvRfRF1MS3N%2fTshFEkwqeusZUIVyjxvFDjHj1DN%2bqMf%2bNvJuJ5vbAsPl0aY para 24

Covenant, and in particular it should review the registration requirements for newspapers and ensure that media are free from harassment and intimidation.'[109]

Ethiopia submitted the second cycle of report under the UPR in 2014[110] which generally reiterates the mandates of various relevant government agencies in a similar pattern with the first cycle report submitted in 2009 and it provided an update on implementation of the recommendations the government accepted during the earlier UPR. In terms of civil and political rights including freedom of expression and media freedom, it is worth noting that the government report in 2014 ironically claimed the infamous Charities and Societies Proclamation and the Anti-terrorism Proclamation are legislative measures in Ethiopia to strengthen human rights.[111] During the interactive dialogue on the UPR, Ethiopian government claimed 'freedom of expression continues to thrive in Ethiopia and Ethiopians freely advocate their views'.[112]

The Working Group report on Ethiopia's UPR which is adopted by the UN Human Rights Council continued to note the wide range of human rights concerns and made series recommendations including on freedom of expression and media freedom in the same line with earlier recommendations but all of these critical recommendations did not either enjoy the

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109 UN Human Rights Committee; Concluding Observations: Ethiopia: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsicLYXUre%2bR39DzqmpyQk4XgVagNSHCji%2fEXt09R1Sx%2fWZu7vHNWrHvsoNAE6lM9lS%2bHvMOuJXdQpiGrmEx5a5SHiSqsVgTn9u0mKjs%2btuy1 para 24

110 https://www.ohchr.org/EN/HRBodies/UPR/Pages/ETIndex.aspx

111 Ibid pages 2, 6 – 7

112 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/077/54/PDF/G1407754.pdf?OpenElement. Page 4

support of the Ethiopian government or the government claimed they are already implemented and freedom of expression and media freedom is respected in Ethiopia.[113]

In 2019 the new administration of PM Abiy Ahmed submitted the third cycle report under UPR which has for the first time acknowledged and noted from the very outset that 'popular demands for human rights and democracy have culminated in the Government's embarkation on the most meaningful series of political reforms in Ethiopia's recent history. These reforms are centred on enhancing the protection and promotion of human rights as well as widening the democratic space. Recognizing the universality, indivisibility and inter-relatedness of all human rights, Ethiopia places equal emphasis on the civil and political rights of its citizens as well as their economic, social and cultural rights'.[114]

Ethiopia's report further noted that it has accepted the request from the UN Special Rapporteur on freedom of expression; amendment of the controversial Charities and Societies Proclamation and the Anti-Terrorism Proclamation is well underway[115]; freedom of expression and media freedom is one of the focus area in the ongoing political reform process in the country; and the government will work towards amending the Mass Media law aimed at

113 Ibid pages 24 - 28

114 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/053/56/PDF/G1905356.pdf?OpenElement. Page 2

115 The Charities and Societies Proclamation has since been repealed.

removing any structural and institutional impediments to the exercise of freedom of expression and media freedom.[116]

[116] Ibid page 8

CHAPTER 8

FREEDOM OF EXPRESSION AND THE CRIMINAL CODE

8.1 The Criminal Code (2005)

The Criminal Code provides general principles establishing criminal liability for participation in offences relating to Mass Media as well as provisions on various types of restrictions on freedom of expression aimed at certain protected interests including protection of honour, public morality, judicial proceedings and special protection for the government. The following sections introduce the general principles establishing criminal liability and a comparative analysis on the various specific prohibitions provided under the Criminal Code.

Several of these provisions are directly adopted from the Imperial Penal Code of 1957,[1] (discussed in the first part of this thesis) which in turn was adopted from the draft Swiss Penal Code of 1937 which entered into force on 1 January 1942.[2] The Swiss Penal Code has since been amended several times with substantial changes,[3] but the Ethiopian drafters of the 2005 Criminal Code appear to have simply adopted the outdated criminal code provisions without regard to the development of law over the past half a century and almost completely ignoring the inconsistency of these outdated provisions with constitutional guarantees for freedom of

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1 Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

2 The Swiss Penal Code which was submitted to a referendum and passed by a narrow majority decision in December of 1937 has entered into force on 1 January 1942. The Ethiopian Imperial Penal Code of 1957 was first drafted by the Swiss legal scholar Jean Graven who modelled it after the Swiss Penal Code. For a brief historical background and introduction of the Imperial Penal Code of 1957, See: J Graven, 'The Penal Code of the Empire of Ethiopia' 1 Journal of Ethiopian Law 267 ; S Lowenstein, 'The Penal System of Ethiopia' 2 Journal of Ethiopian Law 383

3 F Dessemontet and T Ansay, *Introduction to Swiss Law* (3rd ednKluwer Law International, The Hague 2004), p. 246 – 247

expression, constitutional protection for press as an institution and the demands of modern day democracy for an open and uninhibited public discussion. Relevant aspects and provisions of the Criminal Code are discussed in detail in the following sub-sections of this chapter.

8.2 Rules of Criminal Liability relating to Mass Media

Crimes relating to mass media are defined as those offences which are 'committed by means of newspapers, books, leaflets, journals, posters, pictures, cinemas, radio or television broadcasting or any other means of mass media.'[4]

The editor-in-chief or deputy editor is held principally liable for crimes committed through periodicals but if he or she is not available or in cases where the editor-in-chief was appointed merely for the sake of appearance or he or she was otherwise manifestly not in a position to exercise his/her powers at the time the periodical was published, subsidiary liability attaches to the publisher and in turn, to the printer and to the distributor. In the case of non-periodical publications, the author is principally liable but if his liability is not established in accordance with the law or if he is not available, subsidiary liability attaches to the responsible editor and in turn, to the publisher, the printer and the distributor.[5]

These provisions are directly adopted from the Imperial Penal Code of 1957[6] which in turn was modelled on Article 27 of the draft Swiss Penal Code of 1937,[7] which in turn was

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4 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 42 (2)

5 Ibid., Article 43 (1) & (2)

6 Compare with Articles 41 – 47 of the Penal Code of 1957. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

7 For a discussion about Article 27 of the Swiss Penal Code, See: P Logoz and Y Sandoz, *Commentaire Du Code Pénal Suisse* (2. éd. mise à jour / ednDelachaux & Niestlé, Neuchâtel ; Paris 1976) and for citations to the Swiss Jurisprudence, See: A Panchaud, *Code Penal Suisse* (Payot, Lausanne 1942), both

derived from the Belgian and French provisions of the same nature. These provisions were subject to considerable criticism in Europe because they provide for punishment without guilt and further they restrict free discussion of public issues as they lead to a rather conservative and safe publication.[8] The drafter of the Penal Code of 1957 inserted an additional sub-article which did not exist in the Swiss Penal Code in response to the criticism about subsidiary criminal liability which potentially punishes publishers, printers or distributors without guilt. The additional sub-article provided that, 'the offender's guilt shall be viewed [determined] in accordance with the relevant provisions of [the code].'[9] However, the drafters of the new Criminal Code of 2005 completely omitted this provision which is a marked retrogression even from the Penal Code of 1957 which at least required the offender's guilt to be established in accordance with the general rules of the Criminal Code.

Without prejudice to the criminal liability provided for under Article 43, the Criminal Code further provides for a special criminal liability in cases where any person by contributing as an author, originator or publisher of a product published or diffused through mass media, participates in the commission of crimes: armed rising or civil war, treason, espionage, attempted incitement and assistance, provocation and preparation, crimes against humanity, incitement to disregard military orders, disclosure of military secrets, breaches of military and official secrecy, inciting the public through false rumour, or the deliberate disregard for an obligation to maintain secrecy specified by law. In such cases, the general rules of the Criminal

cited in S Lowenstein, *Materials for the Study of the Penal Law of Ethiopia* (2nd ednHaile Sellassie I University, Addis Ababa 1967), p. 256.

8 Lowenstein, *Materials for the Study of the Penal Law of Ethiopia* , p. 256

9 Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1), Article 43 (2); Lowenstein, *Materials for the Study of the Penal Law of Ethiopia* , p. 256

Code concerning participation in a crime as a principal offender, as an instigator or an accomplice shall apply.[10]

8.3 Criminal Defamation

Ethiopian law imposes both civil and criminal defamation liability under the Criminal Code, the Civil Code and the Mass Media law. Arguably, the most problematic of these laws is the criminal defamation provisions provided under the Criminal Code and the Mass Media law.

The Criminal Code protects crimes against the honour or reputation of individuals (including deceased persons and persons declared absent) as well as juridical persons. A direct or indirect injury to honour may be committed by word of mouth or sound, in writing, by image, drawing, sign, behaviour or gesture or by any other means.[11]

Defamation and calumny are punishable upon complaint with simple imprisonment not exceeding six months or fine; where the defamatory imputations or allegations are false and are uttered or spread with knowledge of their falsity it is punishable as calumny with simple imprisonment for not less than one month and fine; where the offender has acted with deliberate intent to ruin the victim's reputation, the punishment shall be simple imprisonment for not less

[10] The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 44 (1) & (2)

[11] The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Articles 607 & 608

than three months and fine; where the imputation or allegation is false and made negligently, it is punishable with simple imprisonment not exceeding one year or fine.[12]

All these provisions are adopted from the Imperial Penal Code of 1957[13] with one exception of a new sub-article added which provides that 'where the imputation or allegation is false and made negligently, it is punishable, upon complaint, with simple imprisonment not exceeding one year or fine.'[14]

In defamation cases, the Criminal Code does not recognise a defence that one has acted without intent to injure or that he confined himself to repeating allegations emanating from other sources or that it was a matter of common knowledge or that he uttered suspicions or conjectures. However, if a person has committed the act by expressing the truth or had enough ground to believe that it is true, he shall not be criminally liable if he can prove that:

- He did not have the intention to injure the honour or reputation of another or
- He acted in the public interest or he was actuated by a higher interest or moral aim.[15]

In addition to defamation and calumny provided under Article 613, the Criminal Code further provides that any one directly addressing the victim or referring to him, offends him in

12 Ibid., Article 613

13 Compare with Article 580 of the Imperial Penal Code of 1957. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

14 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 613 (4)

15 Ibid., Article 614

his honour by insult or injury or outrages him by gesture or in any other manner, is punishable with simple imprisonment not exceeding three months or fine.[16]

Where the defamation or calumny, insult or outrage, has been deliberately committed against a public servant in the discharge of his official duty, or in relation thereto, the punishment could be simple imprisonment up to one year in cases of defamation and less in cases of insult and outrage.[17]

Accordingly, defamation or calumny or insult or false accusation which imputes the honour or reputation of someone is criminally punishable with simple imprisonment and/or fine.[18] Where the defamation has been committed against a public servant in the discharge of his or her official duty, or in relation thereto, it shall be a special case aggravating the crime and punishable with up to one-year imprisonment.[19]

Furthermore, the Criminal Code imposes criminal punishment with simple imprisonment or fine for insults, defamation or slanders to the State and insult or desecration of the national emblem or insignia; insults, defamation or slander of a foreign State, either directly or in the person of its Head or one of its official representatives in Ethiopia, including

16 Ibid., Article 615

17 Ibid., Article 618

18 Ibid, Article 613

19 Ibid, Article 618

insult or desecration of a foreign emblem or insult to the representatives or official's emblems of inter-state institutions.[20]

The new Criminal Code entered into force in May 2005, ten years after the federal constitution was adopted. All the foregoing constitutionally suspect provisions relating to criminal defamation are directly inherited from the Imperial Penal Code of 1957; indeed, several of them are verbatim copies of the Imperial Penal Code.[21]

The defamation rules of the new Criminal Code in some cases represent a marked retrogression, even from the Imperial Penal Code of 1957. For example, Article 613 (4) of the 2005 Criminal Code is a new sub-article which makes a clear expansion of the scope of defamation to include cases 'where the imputation or allegation is false and made negligently, it is punishable, upon complaint up to one-year imprisonment.'[22] This is a major step backwards and in complete contradiction of the Criminal Code on two points. First, it unjustly expanded the scope of defamation to negligence, and second it imposes an even higher penalty for what is otherwise a lesser crime. Under Article 613 (1), (2), intentional defamation is punishable with simple imprisonment not exceeding six months or fine; and where the imputation or allegations are false and are uttered or spread with knowledge of their falsity, it shall be punishable as calumny with simple imprisonment for not less than one month and fine.

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20 Ibid, Articles 244 and 264 – 266. (The provisions relating to the said crimes against foreign states shall apply only on conditions of reciprocal protective treatment for Ethiopia. See Article 267 of the Criminal Code.)

21 Compare Article 244 of the new Criminal Code (2005) with Articles 256 and 257 of the Imperial Penal Code (1957); compare Articles 264 – 266 of the new Criminal Code (2005) with Articles 276 – 278 of the Imperial Penal Code (1957); compare Articles 607 – 619 of the new Criminal Code (2005) with Articles 574 – 588 of the Imperial Penal Code (1957). Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

22 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 613 (4)

By contrast, Article 613 (4) provides that where the imputation or allegation is false and made negligently, it is punishable with simple imprisonment not exceeding one year or fine.

The Mass Media law adopted in 2008 has also accorded unnecessary and outdated special protection both for elected and appointed public officials by providing that false accusation and defamation against public officials of the legislative, executive or judicial authorities shall be prosecuted without private complaint.[23] This is again a step back both from the Imperial Penal Code (1957) and the new Criminal Code (2005) which provided that criminal proceedings shall be taken only upon complaint by the individual or body corporate claimed to have been injured.[24]

Although there are still several countries that have maintained criminal defamation laws in their legal system, there is a growing body of basic principles and laws against criminal libel. In some countries, criminal defamation laws are still in the book but they have effectively become obsolete, while some other countries have taken steps to formally abolish criminal defamation laws, such as Argentina, Sri Lanka, Uruguay, South Africa and Ghana.[25] Drawing from the jurisprudence of the European Court of Human Rights, White and Ovey observed that sentences of imprisonment will be particularly hard to justify as they create an unacceptable chilling effect on journalistic freedom of expression.[26] Berger argued that 'jail terms for defamation are wholly inappropriate in terms of international jurisprudence and should be

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23 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 43 (7).

24 Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1), Article 587 and The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 618.

25 ARTICLE 19, International and Comparative Defamation Standards.' (London 2004), p. 4 – 5; Latin America Press, 'In a Historic Vote, Uruguayan Lawmakers Approve Legislation to Decriminalize Defamation' (Latin America Press 2008) <http://lapress.org//articles.asp?art=5773> accessed 29 October 2010

26 RCA White and C Ovey, *Jacobs, White & Ovey : The European Convention on Human Rights* (5th ednOUP, Oxford 2010), p. 439

abolished.' In his survey of media legislation across Africa, including Ethiopia, he further recommended that 'changing the onus of proof of defamation to complainants (rather than the accused having to prove their innocence) would be a sign that the authorities embrace a climate for free debate and repudiate a "chilled" environment where journalists operate in fear and practice self-censorship.'[27]

The African Court on Human and Peoples' Right ruled that the harsh criminal penalties levied by Burkina Faso against journalist Lohé Issa Konaté, on charges of defamation for publishing several newspaper articles alleging corruption by a state prosecutor, represented a disproportionate interference with his guaranteed rights to freedom of expression.[28] This landmark decision of the African Court established that criminal penalties for defamation is unacceptable and that Burkina Faso must amend its domestic law to reflect that defamation criminal penalties are not allowed.

In the UK, the Libel Act 1843 had long fallen into desuetude before defamation was formally decriminalized in November 2009.[29] The Coroners and Justice Act (2009) also repeals the criminal offences of sedition and seditious libel, defamatory libel, and obscene libel in England, Wales and Northern Ireland.

In Canada, Howard observed that defamation law is almost exclusively pursued as a civil matter, although defamatory libel remains in the books. However, the Supreme Court held

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27 G Berger, Media Legislation in Africa: A Comparative Legal Survey' (UNESCO, Grahamstown 2007), p. 156

28 *Lohé Issa Konaté v Burkina Faso* (2014) African Court on Human and Peoples' Rights. App. No. 004/2013, judgment of 5 December 2014

29 The Coroners and Justice Bill was given Royal Assent and became an Act of Parliament on 12 November 2009.

that the prosecution of criminal defamation must be reserved for attacks on reputation that are 'so grave and serious that the imposition of a criminal sanction is not excessive.'[30] The Court further noted that criminal defamation is so far removed from the core values of freedom of expression that it merits but scant protection.[31]

In developed democracies, even when they maintained criminal defamation laws, public bodies and authorities are prohibited from suing in defamation. In the UK, the House of Lords ruled that a county council as an elected body should be open to uninhibited public criticism.[32] The House of Lords held that criticism of government is vital to the success of a democracy and defamation suits inhibit free debate about matters of public concern. Furthermore, any reputation that elected bodies might have would belong to the public, and 'it is difficult to say the local authority as such has any reputation of its own.'[33]

In the US, the Supreme Court held that public officials or public figures cannot sue for defamation unless they can establish 'actual malice' with 'convincing clarity.'[34] After the Sullivan case, it is now well established that public officials or public figures must tolerate more criticism than others. Barendt observed that in the US and many common law jurisdictions, the trend now is to give increasing protection for freedom of speech, at the cost of rights or interests in reputation; courts have accepted that the press has a right to publish defamatory allegations about the conduct of politicians and other public figures, in so far as

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30 *R. v Lucas* (1998) 1 SCR 439 cited in R Howard, 'Laws Governing the Media in Canada' in T Mendel (ed) *A Comparative Study of Laws Governing the Media (Study Report for the Ethiopian Parliament)* (USAID/PACT, Addis Ababa 2006), p. 189

31 Howard, p. 189

32 *Derbyshire County Council v Times Newspapers Ltd and Others* [1993] 1 All ER 1011

33 Ibid p. 1017 and 1020 cited in T Mendel, Comparative Study of Laws Governing the Media: [a Study for the Ethiopian Parliament]' (2006); See also: ARTICLE 19, p. 7.

34 New York Times v Sullivan [1964] 376 US 254

these stories are of public interest and provided that the press does not act with 'actual malice.'[35]

The European Court of Human Rights has also stated that politicians and public officials are required to tolerate more, not less, criticism because of the public interest in open debate. The court held that the limits of acceptable criticism are wider as regards politicians as such than as regards a private individual, because they inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and the public at large, and must consequently display a greater degree of tolerance.[36] This principle applies to all politicians, whether or not they are in the government[37]; for civil servants acting in an official capacity,[38] and other persons who have voluntarily entered the public domain, such as

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35 Barendt, p. 199

36 *Lingens v Austria* (1986) 8 EHRR 407, paragraph 44. The Linges case involved the publication of articles in Vienna critical of an Austrian Politician. The journalist accused the politician of protecting and assisting former members of the Nazi SS. The politician instituted a criminal defamation proceeding and the journalist was convicted and fined by the Austrian courts. The European Court found that the case was an unjustified interference with freedom of expression and information as guaranteed by Article 10 of ECHR. The European Court of Human Rights has affirmed this principle in a number of cases. See, for example, *Lopes Gomez da Silva v. Portugal*, 28 September 2000, Application No. 37698/97, paragraph 30; *Wabl v. Austria*, 21 March 2000, Application No. 24773/94, paragraph 42; and *Oberschlick v. Austria*, 23 May 1991, Application No. 11662/85, paragraph 59. Cited in: ARTICLE 19 p, 7.

37 *Dichand and Others v Austria* (2002) Application No. 29271/95, judgment of 26 February 2002; *Scharsach and News Verlagsgesellscaft Mbh v Austria* (2005) 40 EHRR 569, Application No. 39394/98, judgment of 13 November 2003; *Kulis v Poland* (2008) Application No. 15601/02, judgment of 18 March 2008

38 *July and Sarl Liberation v. France* (2008) Application No. 20893/03, judgment of 14 February 2008. But the scope for attacking public servants in their regular public service function is narrower than politicians. This is because public servants in their regular public service function should not be considered as knowingly laying themselves open to close scrutiny of their every word in the way politicians do, and furthermore, for a an effective accomplishment of their public service task, public servants should enjoy public confidence in conditions free of undue perturbation. *Lesnik v Slovakia* (2003) Application No. 35640/97, judgment of 11 March 2003; White and Ovey, p. 434.

prominent businesspeople actively involved in the affairs of large public companies,[39] or persons and associations that take part in a public discourse.[40]

In this context, the court made clear the need to distinguish between facts and value judgments. Freedom of expression is not limited only to verifiable factual data, but also includes value judgments. The court noted that the existence of facts can be demonstrated but the truth of value judgments is not susceptible of proof. This implies that, in a democratic society, journalists should not be expected to prove their opinions as statements of facts. Therefore, requiring defendants to prove the truth of a value judgment may be a violation of the convention protected right.[41]

The European Court also has adopted the concept of the US Supreme Court that politicians must tolerate greater public scrutiny and criticism than average citizens. It also further stressed the role and importance of a free media in a democracy by stating that 'freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.'[42]

The European Court reaffirmed this principle in the *Castells* case. The applicants, a Basque militant and a Spanish politician, were convicted of insulting the government by publishing an article accusing it of supporting or tolerating attacks on Basque by armed groups. The European Court held that there has been a violation of Article 10 of the convention and it

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39 *Fayed v United Kingdom* (1994) 18 EHRR 393, Application No. 17101/90, judgment of 21 September 1994, Series A, No. 294 - B (1994); *Verlagsgruppe News Gmbh v Austria (No. 2)* (2006) Application No. 10520/02, judgment of 14 December 2006

40 *Nilsen and Johnsen v Norway* (1999) Application No. 23118/93, judgment of 25 November 1999; *Jerusalem v Austria* (2003) 37 EHRR 567, Application No. 26958/95, judgment of 27 February 2001

41 White and Ovey, p. 435

42 Lingens v Austria

further stated the importance of uninhibited criticism against politicians as being necessary in a democracy. The court stated:

> The pre-eminent role of the press in a state governed by the rule of law must not be forgotten…. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.[43]

White and Ovey observed that in a democratic system, the actions or omissions of the government must be subject to the scrutiny, not only of the legislative and judicial authorities, but also of the press and public opinion. Furthermore, as the government occupies a dominant position in a society and has a wide opportunity at its disposal for replying to even unjustified attacks and criticisms from its adversaries, it is incumbent upon it to exercise restraint from resorting to criminal proceedings. The limits of permissible criticism are, therefore, wider regarding government than in relation to private citizens.[44]

In many countries, criminal defamation laws and the threat of harsh criminal sanctions are abused by the authorities to limit criticism and to stifle public debate. White and Ovey observed that criminal law or the law of defamation surprisingly remains to be the means frequently used to control various forms of expression even among the contracting parties of the European Council. They noted that 'this seems to be the key battleground between applicants and the contracting parties in many applications made to the Strasbourg Court.'[45] But the Court equally remains the most important of the institutions in the continent protecting

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43 *Castells v. Spain* (1992) Judgment of 23 April 1992, Series A, No. 236, cited in, M Oetheimer, *Freedom of Expression in Europe : Case-Law Concerning Article 10 of the European Convention of Human Rights* (Human Rights Files, Council of Europe, Strasbourg 2007), p. 14

44 White and Ovey, p. 433 – 434

45 Ibid, p. 450

rights and freedoms guaranteed under the convention and giving guidance to contracting parties.

The Inter-American Special Rapporteur has noted that 'rather than protecting people's reputations, libel or slander laws are often used to attach or rather stifle, speech considered critical of authorities….Having such 'insult laws' to shield public officials unjustifiably grants a right to protection [for] public officials that is not available to other members of society…In contrast, fundamental to democracy is the individual and the public's right to criticise and scrutinize the officials' actions and attitudes in so far as they relate to public office.'[46]

A world-wide movement by the World Association of Newspapers and the World Editors Forum adopted a declaration in June 2007 calling for the abolition of insult laws and criminal defamation in Africa and setting a free press higher on the agenda.[47] The Annex to the Declaration of Table Mountain lists hundreds of African journalists who faced threats of all kinds including being harassed, assaulted, arrested, or imprisoned for an alleged insult, defamation or similar cases.

The UN Special Rapporteur on Freedom of Opinion and Expression has repeatedly stated in reports to the UN Commission of Human Rights that imprisonment is not a legitimate sanction for defamation and called on States to repeal all criminal defamation laws in favour of appropriate civil defamation laws.[48] ARTICLE 19, the Global Campaign for Freedom of Expression, also declared that 'all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States

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46 As cited in, Berger, p. 20

47 World Association of Newspapers and the World Editors Forum, 'Declaration of Table Mountain' (2007) <http://www.declarationoftablemountain.org/articles.php?id=50> accessed 28 October 2010

48 ARTICLE 19, p. 3 – 4

which still have criminal defamation laws in place, to progressively implement this Principle.'[49]

Considering these emerging progressive trends, Ethiopia's wholesale adoption of the imperial period criminal defamation laws into the new Criminal Code adopted in 2005, is retrogressive and contrary to the spirit of Ethiopia's constitution adopted in 1995. For nearly the past two decades, the Ethiopian government has become notorious as one of the leading jailers of journalists in Africa by using these criminal defamation laws to prosecute and imprison many of them. The Ethiopian Mass Media law provides for criminal prosecution for alleged defamation or false accusation of public officials, even when there is no private complaint. Ross observed that 'in essence, [under the Ethiopian Mass Media law], journalists and other members of the media can be criminally prosecuted, fined or jailed for defamation when there is no victim.'[50]

In light of the global trend about abolishing criminal defamation, and especially for criticism against politicians, Ross concludes the Ethiopian law 'seems retrogressive and draconian.'[51] Indeed the inevitable picture that emerges from a careful observation of the development of laws in Ethiopia is grand constitutional promises about the protection of fundamental human rights, but in practice, and through the instrumentality of subsidiary laws,

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49 ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputations.' (London 2000)

50 T Ross, 'A Test of Democracy: Ethiopia's Mass Media and Freedom of Information Proclamation' 114:3 Penn State Law Review 1047, 1060

51 Ibid, p. 1060

major step back from both the spirit and the clear legal guarantees of constitutionally protected fundamental human rights.

Defamation under the Ethiopian Civil Code

Under the title of Extra-Contractual Liability, one of the special cases which create civil liability arising from an offence is defamation. The general principle of liability arising from an offence under Ethiopian law is that 'whosoever causes damage to another by an offence shall make it good.'[52]

Under the Ethiopian Civil Code, defamation is defined as follows:

> A person commits an offence [of defamation] where by his words, his writing or by any other means he acts in such a way as to make another living person detestable, contemptible, or ridiculous and to jeopardize his credit, his reputation or his future.[53]

The Civil Code further provides the following elements: defamation is not committed where the defendant proves the truth of his allegations unless it is established that he has acted solely with intent to injure; but the intent to injure is not generally deemed to be an essential requirement for defamation; defamation is also not committed where the author of the utterances or writings had no intention of referring to any particular person unless in the circumstances of the case he ought reasonably to have foreseen that his words or writings would inflict injury on another; defamation is not committed where a person has confined himself to expressing his opinion on matters of public interest, notwithstanding that such opinion inflicts

52 Ibid., Article 2028

53 Ibid., Article 2044

injury on another by exposing him to public obloquy, unless the person acted with a certain knowledge about the falsity of his allegations.[54]

The Civil Code recognizes immunity for any utterances made in parliamentary debate or during legal proceedings. Furthermore, a person who repeats such protected utterances in their exact form shall also not be liable unless it is established that he acted solely with intent to injure. Finally, where defamation is committed by way of publication, there shall be no liability if the defendant has acted without intent to injure and without gross negligence, provided that he also immediately publishes a withdrawal and an apology at the request of the injured person.[55]

In some developed democracies, for example, Canada, the privilege of immunity is not limited to parliaments and court proceedings. Almost all public meetings called by public officials including parliament, legislature, municipal councils, education boards and courts are considered privileged forums. In the interest of ensuring free discussions, statements made in such privileged forums enjoy immunity even if the statements are considered harmful to others. The media also enjoys qualified privilege to report on statements made in such privileged forums, provided their reports are accurate, fair and done without malice.[56]

8.3 Protection of Sources

To the extent freedom of the press is guaranteed and the press is given a special legal recognition and protection as an institution, press needs legal protection for the confidentiality of sources and other information communicated in confidence to journalists. This protection is

54 Ibid., Articles 2045 – 2047

55 Ibid., Article 2048 & 2049

56 Howard, p. 192

premised on the assessment that society is better served by encouraging people to disclose matters of public interest to the press than by identifying and convicting a wrong-doer.[57]

The Ethiopian Criminal Code protects the anonymity of an author and source disclosure but in cases of a crime committed against the constitutional order, national defence force or security of the state constituting clear and imminent danger or in the case of proceedings of a serious crime, where such source does not have any alternative and it is decisive for the outcome of the case, a court may order the publisher or editor of a publication to disclose the source of information.[58]

Protection of sources is well established in several developed European democracies. In Austria, for example, journalists and other employees of a media enterprise who are called as a witness before a court have a right to refuse to answer questions referring to the author, contributor or source of information, or to the contents of information disclosed to them regarding their professional activities. In addition, the Media Act prohibits the surveillance of telecommunications facilities of media enterprises except by the order of a court for an investigation of a serious crime.[59] In Sweden, the Freedom of Press Act explicitly prohibits the

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57 S Coliver, P Merloe and A Naughton, *Press Law and Practice : A Comparative Study of Press Freedom in European and Other Democracies.* (ARTICLE 19, London 1993), p. 282

58 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 45

59 Berka, p. 35

investigation or disclosure of a journalist's source of information except for limited exceptions provided under the law (e.g. cases of treason, espionage or other similar crimes).[60]

In the UK, protection of sources has a statutory protection under the 1981 Contempt of Court Act which states that:

> No Court may require a person to disclose, nor is the person guilty of contempt of court for refusing to disclose the source of information contained in the publication for which he is responsible, unless it is established to the satisfaction of the court that disclosure is necessary in the interest of justice or national security or for the prevention of disorder or crime.[61]

The European Court of Human Rights has considered the issue on protection of source in the case of *Goodwin v United Kingdom* and held that:

> Protection of journalistic sources is one of the basic conditions for press freedom… Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.[62]

In conclusion, the provision of the Ethiopian Criminal Code on protection of sources, compares favourably with the comparative standards of the developed democracies.

8.4 Protection of Judicial Proceedings

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60 HG Axberger, 'Freedom of the Press in Sweeden' Ibid., p. 164

61 Contempt of Court Act 1981, Section 10, cited in, Mendel, p. 15

62 *Goodwin v United Kingdom* (1996) 22 EHRR 123. The Goodwin case involved an order given by the High Court in which the journalist was ordered to disclose the source of his information and refusing to do so he was held in contempt of court. The European Court considered the disclosure order was not

The blanket prohibition of the publication of 'information relating to a case pending before any court' imposed by the Press Law of 1992 is now repealed.[63] What remains in force however, are provisions of the Criminal Code of 2005 that impose certain restrictions in relation to court proceedings. The Criminal Code has various provisions aimed at the protection of judicial proceedings such as the general provisions on contempt of court.

The Criminal Code provides that insult, ridicule, or actions which threaten or disturb in any manner a court or a judge in the discharge of his or her duties in the course of a judicial inquiry or proceeding is punishable with simple imprisonment not exceeding one year or a fine not exceeding Ethiopian Birr 3,000 (about $ 200).[64] This provision is directly copied from the Dergue Special Penal Code of 1974, except that the maximum fine is raised from Ethiopian Birr 2,000 (about $ 132) to Ethiopian Birr 3,000 (about $ 200).[65]

The Dergue Special Penal Code was in turn copied from the Imperial Penal Code of 1957, except that the penalty was increased from a maximum of six months imprisonment to one year imprisonment and from a maximum fine of Ethiopian Birr 1,000 (about $ 66) to Ethiopian Birr 2,000 (about $ 132).[66] Where the offence is not committed in an open court, the punishment under the Imperial Penal Code of 1957 was a fine not exceeding Ethiopian Birr

proportional to the aim of protecting the interests of the company, and it decided in favour of the journalist.

63 Freedom of the Press Proclamation No 34 of 1992 (Negarit Gazeta 52nd Year No 8), Article 8 (3) (d). Now repealed by: Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 50.

64 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 449 (1)

65 Compare Article 449 (1) of the new Criminal Code (2005) with Article 28 (1) of the Dergue Special Penal Code of 1974. Special Penal Code, Proclamation No. 8 of 1974 (Negarit Gazeta 34th Year No. 8)

66 Compare with Article 443 (1) of the Imperial Penal Code of 1957. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

500 (about $ 33)[67], which the Dergue Special Penal Code raised to Ethiopian Birr 1,000 (about $ 66)[68], and the new Criminal Code of 2005 further increased the severity of the penalty by including a penalty of either a fine or simple imprisonment up to six months.[69]

The Criminal Code of 2005 further imposes restrictions specifically relating to publications with substantially increased penalties from that of the Imperial Penal Code of 1957. The Code provides that breach of the secrecy of proceedings by disclosing facts, whether secret or declared secret by the court hearing the case, is punishable with simple imprisonment up to six months or fine; publication of information, a note, a précis or a report which is inaccurate or distorted concerning pending judicial cases or judicial proceedings is punishable with fine, or in more serious cases with simple imprisonment up to six months; and a tendentious publication intended to pervert the court of justice is punishable with fine or simple imprisonment up to six months.[70] In a similar manner, all of these provisions are directly copied from the Imperial Penal Code of 1957, except that the penalty has been substantially increased.

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67 Ibid, Article 443 (2)

68 Special Penal Code, Proclamation No. 8 of 1974 (Negarit Gazeta 34th Year No. 8), Article 28 (1). The English version of this sub-article reads 'the punishment, except in more serious cases, shall be a fine not exceeding one hundred Dollars' but the binding Amharic version reads '…a fine not exceeding one thousand Ethiopian Birr.'

69 Compare Article 449 (2) of the Criminal Code of 2005 with Article 443 (2) of the Imperial Penal Code of 1957 and Article 28 (2) of the Dergue Special Penal Code. The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004); Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1); Special Penal Code, Proclamation No. 8 of 1974 (Negarit Gazeta 34th Year No. 8)

70 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Articles 450, 451 & 457.

The maximum penalty of three months is increased to six months and the maximum fine of Ethiopian Birr 500 ($ 33) is doubled to Ethiopian Birr 1,000 ($ 66).[71]

Furthermore, the criminal liability and penalty for breach of prohibition to publish official debates or documents is preserved in the new Criminal Code. This provision which imposes a penalty of imprisonment up to three years or fine for the publication of even parts of deeds, reports, instructions, deliberations or decisions of a public authority, the contents of which is required to be kept secret by law or by an express decision of the authorities, is also directly copied from the Imperial Penal Code of 1957.[72]

Some countries have laws that permit full or partial closed court hearings to protect the rights and interests of the litigants, the privacy interests of witnesses, national security, and the interests of juveniles. In some countries (e.g. France), special rules regulate the hearing of rape cases, the public may be excluded at the request of the victim, and publication of a victim's name can be banned. In the UK, certain types of cases are categorized as private and the public

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71 Compare Articles 451 (1) and 457 of the Criminal Code of 2005 with Articles 445 (1) and 451 of the Imperial Penal Code of 1957. Also compare with Article 32 of the Dergue Special Penal Code of 1974. Note that under the Dergue Special Penal Code, the punishment for 'Tendentious Publications intended to Pervert the course of Justice' was substantially increased to imprisonment from 1 to 5 years. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1); The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004); Special Penal Code, Proclamation No. 8 of 1974 (Negarit Gazeta 34th Year No. 8)

72 Compare Article 435 of the Criminal Code of 2005 with Article 429 of the Imperial Penal Code of 1957. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1); The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004)

may be excluded (e.g. cases involving confidential information or national security, mental patients, children, family matters, guardianship proceedings).[73]

Apart from the protection of such special interests, the traditional rationale for restrictions on reporting or commenting about pending court cases is the policy consideration to prevent 'trial by newspapers', and its presumed risk of prejudice to the course of justice. This risk was deemed particularly great in common law countries where trials of court cases are conducted by juries. Hence many countries enforced court contempt rules punishing the disclosure of information about an active case (a case *sub judice*). Over the years, this has been considerably revised to be consistent with the 'freedom to seek, receive and impart information' guaranteed under the international human rights instruments.

The European Court of Human Rights considered this issue in *The Sunday Times* case and held that:

> There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialised journals, in the general press or amongst the public at large. Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest.[74]

Further, the court disapproved a position taken by some members of the UK House of Lords regarding the formulation of an absolute rule to the effect that it was not permissible to

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73 S Coliver, P Merloe and A Naughton, *Press Law and Practice : A Comparative Study of Press Freedom in European and Other Democracies.* (ARTICLE 19, London 1993), p. 277

74 *Sunday Times v United Kingdom (No. 1)* (1979) Judgment of 26 April 1979, Series A, No. 30, 2 EHHR 245. The court held that an injunction based on English law of court contempt restraining publication of an article about a medical drug is not found to be 'necessary in a democratic society.' The case involved the publication of an article by the Sunday Times about a drug which was said to result in children born deformed. The injunction order by the national court was based on the grounds that the publication of the article might prejudice a pending court proceeding involving the drug manufacturer.

prejudge issues in pending cases. The court stressed the importance of evaluating the necessity of any restriction about a pending case based on the facts and prevailing circumstances, and hence the formulation of an absolute rule that imposes a blanket prohibition on disclosure of information concerning pending cases was disapproved.[75]

In the UK, the law on contempt of court has been liberalized since the above decision of the European Court of Human Rights in 1979.[76] The general rule is that public hearings may be reported in the media, but with some statutory qualifications to this general principle (e.g. national security considerations, privacy of victims, and confidential information). Media reporting of court cases, which are of general public interest, are not to be treated as contempt of court 'if the risk of impediment or prejudice is merely incidental to the discussion.'[77]

Section 5 of the Contempt of Court Act 1981 provides as follows:

> A publication made as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as contempt of court under the strict liability rule if the risk of impediment or prejudice is merely incidental to the discussion.[78]

Mendel observed that, in as much as there is a clear public interest in the fair functioning of the legal system from the perspective of the prosecutors, plaintiffs and defendants, there is also an important public interest in open criticism and media scrutiny of courts and judges. Thus, the rules in this area have considerably narrowed down in recent times. Regarding contempt in relation to ongoing cases, the restriction applies only to statements of a nature that materially affect the outcome of the case; i.e. if the publication 'creates a substantial risk that

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75 Ibid, paragraph 65

76 Coliver, Merloe and Naughton, p. 277

77 A Nicol and C Bowman, 'Press Law in the United Kingdom' in S Coliver (ed) *Press Law and Practice: A Comparative Study of Press Freedom in European and Other Democracies* (ARTICLE 19, London 1993), p. 181 – 183

78 Contempt of Court Act 1981 Section 5 cited in, Mendel, p. 33

the course of justice in the proceedings in question will be seriously impeded or prejudiced.'[79] If the risk can be avoided by taking any other measures, then such measures should be taken.[80]

The law regarding contempt of court is a considerably liberalized one in other developed European democracies as well. In Austria since the Media Act of 1981, criminal provisions that prohibited the publication of documents concerning confidential proceedings have been abolished. Some lawyers and journalists even observe that the press may have exceeded the limits by conducting a 'trial by the press.'[81] In France, the press can freely report on court proceedings except for closed (in camera) deliberations. Civil courts may also forbid the disclosure of proceedings in certain cases as provided by the law.[82] In The Netherlands, there is no general rule that prohibits the press from writing about pending trials. In summary proceedings, it is possible to request the court to ban a publication, but courts are generally reluctant to allow such prohibition.[83] In Sweden, the justice system is generally open to the media and there is no such offence as contempt of court for writing about court cases. The code of ethics adopted by the profession provides that defendants in criminal proceedings should not be identified.[84]

Considering the foregoing comparative and international human rights standards, Ethiopia's recent Criminal Code, which not only preserved the Imperial and the Dergue

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79 Contempt of Court Act 1981 Section 2 (2) cited in, Ibid, p. 33

80 Ibid, p. 32 - 34

81 W Berka, 'Press Law in Austria' in S Coliver (ed) *Press Law and Practice: A Comparative Study of Press Freedom in European and Other Democracies* (ARTICLE 19, London 1993), p. 33

82 R Errera, 'Press Law in France' in S Coliver (ed) *Press Law and Practice: A Comparative Study of Press Freedom in European and Other Democracies* (ARTICLE 19, London 1993), p. 57

83 F V Lenthe and I Boerefign, 'Press Law in the Netherlands' in S Coliver (ed) *Press Law and Practice: A Comparative Study of Press Freedom in European and Other Democracies* (ARTICLE 19, London 1993), p. 110

84 HG Axberger, 'Freedom of the Press in Sweeden' in S Coliver (ed) *Press Law and Practice: A Comparative Study of Press Freedom in European and Other Democracies* (ARTICLE 19, London 1993), p. 150

military time prohibitions but also substantially increased the penalty stands in contradiction to the constitutional guarantee of freedom of expression and press freedom.

8.5 Obscene or Indecent Publications

The Criminal Code of 2005 provides that making, importing or exporting, transporting, receiving, possessing, displaying in public, offering for sale or hire, distributing or circulating writings, images, posters, films or other objects which are obscene or grossly indecent is punishable with fine and simple imprisonment up to one year. Indecent publicity and advertisements are also punishable with fine or simple imprisonment. These provisions are directly copied from the Imperial Penal Code of 1957 except that the penalty is substantially increased in the new Criminal Code.[85]

The Mass Media Proclamation adopted in 2008 states that 'it shall not be applicable to pornographic printed matters, whether they are offered for sale or free of charge,' which shall be governed by laws to be enacted in the future.[86] Given that no such law has so far been enacted, the provisions of the Criminal Code remain in force.

The pattern of keeping the imperial penal code provisions with an increased penalty provisions speaks to the legislative intent of the new Criminal Code to regulate and control speech related offences with the same imperial time rules but with more severe penalty. Given that the Mass Media proclamation provides this matter to be governed by a separate future legislation, it is important to make sure that any such future law is fully consistent with the

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85 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Articles 640 and 643. Compare with Articles 609 and 612 respectively of the Imperial Penal Code of 1957. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

86 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 47 (4)

constitution and the international human rights standards. In the experience of several countries including developed democracies, the application of free speech principles to pornographic materials has been one of thorny issues in free speech debate and it is found to be difficult to reconcile the suppression of pornographic materials with the value of freedom of speech. One of the key issues is how far pornographic material should be immune from legal restrictions. To the extent it is considered as a form of speech, the rules and principles of freedom of speech is believed to apply for some sexually explicit materials but there are pornographic materials which fall outside of freedom of speech protections.

8.6 Special Protection of the State, foreign States and Inter-State Institutions

The Criminal Code provides that whoever, by word or by deed or in any other way, abuses, insults, defames or slanders the State in public is punishable with fine or simple imprisonment for not less than three months. It is also a crime to maliciously or with contempt or any other similar intent, to publicly tear down, set on fire, destroy, injure, deface, insult or in any other way abuse the officially recognized national emblem such as the flag or insignia of both the federal and regional governments.[87]

The Code further criminalizes insult, defamation, slander or abuse against a foreign State, either directly or in the person of its Head, or one of its constituted authorities, or one of its official representatives or delegates in Ethiopia's territory; insult or abuse or destroying the official emblems of foreign States and insult to Inter-State institutions, its representatives or its official emblems. However, the special protection for foreign States shall apply only on

[87] The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 244

condition of reciprocal protective treatment to Ethiopia and prosecution can be instituted only upon complaint by the concerned State or organization and approval of the Federal Ministry of Justice.[88]

These provisions are also adopted from the Imperial Penal Code of 1957. The Imperial Penal Code gave special protection both to the Emperor including his family and the State. The new Criminal Code reserved all the provisions giving special protection for the State, foreign States and Inter-State institutions.[89]

These restrictions relating to freedom of expression which are out of kilter with the demands of modern-day democracy should be abolished to allow press freedom to investigate and report on State institutions including foreign states and inter-governmental institutions. A verbal or printed attack on the State and its institutions cannot legitimately be proscribed in any democracy respecting freedom of expression except in rare situations where freedom of expression can be limited for legitimate purposes in accordance with the law.

But the act of flag desecration is a controversial issue. Some have argued that the concept of freedom of expression should apply to 'expressive conduct' which is meant to express and communicate ideas in one form or another (e.g. wearing badges, uniforms, making gestures or holding a symbol). Barendt noted that 'although some forms of conduct can be characterized as expressive or symbolic speech, it would be wrong to equate action or behaviour with speech.'[90] Barendt further discusses how these points on distinction between

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88 Ibid., Articles 264 – 268

89 Compare with Articles 256 – 257 and 276 – 280 of the Imperial Penal Code of 1957. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

90 E Barendt, *Freedom of Speech* (2nd edn OUP, Oxford 2005), p. 79

speech and conduct is nicely illustrated by the controversial flag-desecration case which have arisen in the US, UK and Germany. In the US, State laws protecting the flag against desecration and mutilation have been held incompatible with the First Amendment, since they proscribe expressive conduct.[91] A German Constitutional Court took a different approach in seeking to balance provisions of the constitution concerned to ensure respect for the fundamental values of the State, against freedom of expression in different forms.[92]

8.7 Petty Offences

Apart from the cases that are punishable under the Criminal Code, the Code of Petty Offences[93] also provides for the punishment of certain contraventions. The penalty for petty offences includes warning and reproof, fine, home arrest, compulsory labour and ordinary arrest, which can be from one day up to three months at most. Although such ordinary arrests are supposed to be in special premises and not the regular prisons, there are no such special premises for ordinary arrest in Ethiopia.[94] Contravention of laws or regulations or directives concerning the printing, publication, deposit, sale, distribution, or control of printed documents, public

91 *Texas v Johnston* (1989) 491 U.S. 397

92 E Barendt, *Freedom of Speech* (2nd edn OUP, Oxford 2005), p. 85

93 The Code of Petty Offences is an integral part of the Criminal Code under Part III of the Code. A petty offence is committed when a person infringes the mandatory or prohibitive provisions of a law or a regulation or when he commits a minor offence which is not punishable under the main part of the Criminal Code. The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 735.

94 Ibid., Articles 746 – 757

advertisements, posters, or notices transmitted through the radio, television, the internet or other public media is punishable with fine or arrest under the Code of Petty Offences.[95]

Apart from the cases punishable under Articles 485 and 486 of the Criminal Code, whoever announces, spreads, publishes or reports to the authorities false, exaggerated or biased news intended to perturb or capable of perturbing public tranquillity is punishable with fine or arrest; in a similar manner, apart from the cases punishable under Articles 492 and 493 of the Criminal Code, whoever in a public place, by gesture or words scoffs at religion or expresses himself in a manner which is blasphemous, scandalous or grossly offensive to the feelings or convictions of others or towards the Divine Being or the religious symbols, rites or religious personages is punishable with fine or arrest not exceeding one month.[96]

A slight petty offence against honour which is committed in cases of slight insult or offensive behaviour not deserving to be punished under Article 615 of the Criminal Code, particularly in the absence of publicity or when the significance of the insult or offensive behaviour was not understood by third parties or by the aggrieved party, it is punishable with a fine or arrest not exceeding eight days.[97]

All the above provisions on petty offences are also directly copied from the Imperial Penal Code of 1957[98], except that in the case of Blasphemous or Scandalous Utterances, the maximum penalty is increased from eight days to one month.[99] In light of recent developments

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95 Ibid., Article 812

96 Ibid., Articles 813 & 816

97 Ibid., Article 844

98 Compare with Articles 767 – 768, & 798 of the Imperial Penal Code of 1957. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

99 Compare Article 816 of the Criminal Code of 2005 with Article 771 of the Imperial Penal Code of 1957. The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004); Penal

and emerging trends about freedom of expression, blasphemy is being decriminalized. It is rather perplexing that the drafters of the Ethiopian Criminal Code 2005 increased the penalty even for the minor contravention.

Once again, the pattern of adopting the imperial penal code provisions and increasing the severity of the penalty is inconsistent with the constitutional guarantees and international obligation for the protection of press freedom which should be abolished.

Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

CHAPTER 9

FREEDOM OF EXPRESSION UNDER THE MASS MEDIA AND ANTI-TERRORISM PROCLAMATIONS

The Freedom of the Mass Media and Access to Information Proclamation (Mass Media Law)[1] is one of the important subsidiary legislation forming part of Ethiopia's national legal framework governing press activity. The Mass Media Law adopted in 2008 repealed and replaced the Press Proclamation which was in force since 1992.[2]

The following sub-sections of this chapter introduces and analyses the basic elements of the Mass Media Law, but it is preceded by a discussion about the legal status of the Mass Media Law under Ethiopia's constitutional framework.

9.1 The Mass Media and Access to Information Proclamation (2008)

With the new constitution, Ethiopia has adopted a federal system of government and as such there is a division of power between the federal and the regional (state) governments. The federal constitution clearly delimits matters that are under the legislative, judicial and executive powers of the federal and the regional governments.[3] The Mass Media Law was issued as a

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1 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64)

2 Freedom of the Press Proclamation No 34 of 1992 (Negarit Gazeta 52nd Year No 8). The Press Law of 1992, which predates the federal constitution, was the principal statutory framework governing press activity in Ethiopia. It is now repealed and replaced by: Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), See: Article 50.

3 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Chapter 5 on 'Structure and Division of Power'; Declaration of the

federal level legislation by the Federal House of Peoples' Representatives in accordance with Article 55(1) of the federal constitution.[4] However, the Mass Media Law was arguably issued by the federal government and the House of Peoples' Representatives in violation of the federal constitution, which confers no power to enact a law concerning press.

Articles 51 and 55 of the federal constitution give an exhaustive list of the powers and functions of the federal government. Article 55(1) clearly states that the House of Peoples' Representatives shall have legislative power only on matters that are assigned by the constitution to the federal jurisdiction. The power to enact press law or mass media law is not given to the federal jurisdiction. While the federal government is specifically given power in areas such as enacting labour code, commercial code, penal code and patent and copyright laws, it is nowhere vested with any power in relation to the enactment of laws governing press and other mass media institutions.

On the other hand, although regional governments are not vested with specific power in relation to enactment of laws concerning press or mass media institutions, they have power to enact regional constitutions and other laws in accordance with Article 52 of the federal constitution.[5] The constitution provides that 'all powers not given expressly to the federal government alone, or concurrently to the federal government and the states [regions] are reserved to the states [regions].'[6] Therefore, the regional governments can legitimately claim

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Establishment of the Federal Democratic Republic of Ethiopia, Proclamation No. 2 of 1995 (Federal Negarit Gazeta, 1st Year No. 2)

4 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), See paragraph 11 of the preamble; Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 55 (1).

5 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 51 (2)

6 Ibid., Article 52 (1).

the power to enact laws governing mass media institutions within their jurisdiction, to the extent that any law they may enact is consistent with the constitutional guarantees for freedom of expression, constitutional protection of press as an institution and Ethiopia's international obligations under the relevant human rights covenants.

The Ethiopian constitutional framework in this regard resembles that of the German federal constitutional framework. The German constitution provides that apart from the legislative powers expressly given to the federal government, all other legislative power is reserved for the member states. Accordingly, there being no specific power given to the federal government in relation to press law, it is left for the member states to adopt their own press laws. Member states of the federation have adopted press laws which are largely very similar both in form and content.[7]

Under the German constitutional framework, a federal press law would have simply been unconstitutional. In 1952, for example, the Federal Ministry of Interior sought to establish a regulatory body for the press operating under public law and submitted a draft Federal Press Act. This draft law generated a huge opposition due to the proposed unwarranted government control of the press. Following strong opposition to the draft law, it was subsequently withdrawn and the German journalists and publisher's association formed their own independent German Press Council in November of 1956. As a result, there is no general

[7] T Mendel, Comparative Study of Laws Governing the Media: [a Study for the Ethiopian Parliament]' (2006), p. 137

registration requirement for press in Germany, but the contents of press publication are governed by the states' press laws.[8]

The Ethiopian Mass Media proclamation of 2008 which established a federal level controlling and regulatory regime on press in Ethiopia is arguably unconstitutional but no one having challenged the constitutionality of the law it remains in force.

9.1.1 Mass Media Rules

The Mass Media Law defines mass media as printed matter (including musical works, plays, pictures, cartoons, books, pamphlets, posters and commercial advertising as well as audio, visual and audio-visual recordings, motion pictures and the likes) that includes periodicals and broadcasters.[9]

The law restates the constitutional guarantee of press freedom and that restrictions on press freedom shall only be made by laws issued in accordance with the constitution,[10] but it reserves the right to establish a mass media institution only for Ethiopian nationals.[11] In a similar way, the Broadcasting proclamation also excludes aliens from undertaking broadcasting services.[12] These prohibitions against aliens working and living in Ethiopia are

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8 The German Press Council was established following the example of the British Press Council established in 1953. The German Press Council is now registered as an independent not-for-profit legal entity in accordance with the German Civil Code. It is a self-regulating body governed by its own statutes and covers all types of print media outlets including media available only on the Internet. Ibid., p. 140.

9 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 2

10 Ibid., Article 4 (1) & (2)

11 Ibid., Article 5 (1)

12 Broadcasting Proclamation No. 178 of 1999 (Federal Negarit Gazeta, 5th Year No. 62), Article 19. Also excluded are political parties and religious organizations. In the liberal democracies of the west, it is not conventional for political parties to own and operate their own broadcast media but religious groups and aliens are not specifically excluded in most developed democracies.

constitutionally suspect because the constitution guarantees the right to freedom of expression and press freedom which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether in writing or through any other media applies to everyone and not specifically only to Ethiopian nationals.

The Mass Media law makes further provisions with regard to the powers and responsibilities of the editor-in-chief, mass media ownership rules and structures, the responsibilities of distributors and the requirements and processes of registration.[13] According to these new mass media ownership rules, only legally incorporated companies can own a periodical press and they are subjected to a new regime governing source of capital, cross-ownership of press and shareholding structures. In the interest of ensuring pluralism and diversity, regulating concentration of media ownership more particularly in the electronic media sector is a relevant issue but at the current infant stage of the press industry in Ethiopia, the purpose and significance of these rules is open to doubt.

9.1.2 Access to Information

Part III of the Mass Media Law is devoted to Access to Information.[14] The objectives of these detailed provisions on access to information is stated to be giving effect to the rights of citizens

[13] Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 6 about Editor-in-chief, Article 7 about Mass Media Ownership, Article 8 about Distributors and Article 9 about Certificate of Registration.

[14] Ibid., Articles 11 – 39

to access information held by public bodies and to establish the mechanisms and procedures which enable citizens to access information most effectively.[15]

Accordingly, the law restates the constitutionally guaranteed right to seek, receive and impart information held by public bodies subject to the limitations provided for by the proclamation; the duty of public bodies to pro-actively publish necessary information to the public (such as its organizational structure, powers and responsibilities of its officials, description of a public complaint hearing mechanism, its directives, regulations and policies); the process of requesting and obtaining information from public bodies; protection of commercial and third party interests; protection of legal proceedings and protection of records in relation to defence, security and international relations.[16]

Appeals against refusal of information can be taken on three stages. First to the Head of the concerned public body, then to the Office of the Ombudsman and finally to the Federal First Instance Court in the case of federal bodies or to the Regional High Court in the case of regional public bodies.[17] However, neither the Ombudsman nor any court has power to review a decision of high level government officials refusing the disclosure or confirmation of information on the basis of national security, national defence or international relations.[18]

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

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15 Ibid., Article 11

16 Ibid., Article 12 about Right of Access to Information, Article 13 about Duty to Publish, Article 14 about Requests and process to obtain information from public bodies, Articles 16 – 23 about protection of commercial, third party, legal proceedings and state security interests.

17 Ibid., Articles 31 (1), 31 (4) and 34.

18 Ibid., Article 23 cum 35.

freedom of information was recognised during the first session of the United Nations General Assembly in 1946, which adopted Resolution No. 59(1) stating that 'freedom of information is a fundamental human right and… the touchstone of all the freedoms to which the UN is consecrated.'[19]

The *Declaration of Principles on Freedom of Expression in Africa* also affirms the principle that everyone has a right to access information held by public bodies, subject only to clearly defined rules established by law. The Declaration 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

[19] United Nations General Assembly, 14 December 1946

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[20]

The extent to which the various provisions of the Ethiopian Mass Media proclamation relating to access to information held by public bodies are consistent with international standards is open to doubt, but it is beyond the scope of this thesis and merits a separate study.

9.1.3 Right of Reply or Correction

Where the honour or reputation of any person is claimed to have been injured by a Mass Media, the editor has a duty to publish free of charge a right of reply or correction in the same publication in which the report giving rise to the grievance appeared.[21]

If a right of reply is refused, the editor can be compelled by a court decision to publish the reply and may also be subjected to a fine up to Ethiopian Birr 15,000 (about $500).[22] Right of reply can only be requested within three months from the day the report giving rise to the grievance was published.[23]

A right of reply aims to protect the rights of persons affected by the press. The laws and practices of different countries appear to vary on the issue of right of reply. In some countries, there is a statutory rule which provides for right of reply as a legally binding obligation of editors whereas in others it is an issue to be covered by the professions' code of conduct. Under

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20 Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002); D Bekele, The Legal Framework for Freedom of Expression in Ethiopia' (Article 19: Global Campaign for Freedom of Expression, London 2003), p. 10 - 11

21 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 40 (1)

22 Ibid., Article 40 (2 – 4) and Article 45 (3).

23 Ibid., Article 40 (6)

the German law, for example, there is a statutory right of reply provided in the press law and it can be enforced under the jurisdiction of civil courts.[24]

In the UK, there is no statutory rule imposing a right of reply on editors as a matter of legal obligation. But the Press Complaints Commission (PCC)[25] Editors' Code of Practice provides that 'a fair opportunity for reply to inaccuracies must be given when reasonably called for.'[26] It is the same in India where there is no statutory rule about right of reply, but it is covered by the Norms for Journalistic Conduct. According to this professional norm, the editor is required to publish with due prominence a reply or clarification or rejoinder.[27]

In the US, a statute providing for a mandatory right of reply was struck down as being unconstitutional. The Supreme Court held that a mandatory right of reply is an intrusion on to the functions of editors.[28] The Court cautioned on the risk of government seeking to regulate the press by quoting from the report of Zechariah Chafee saying 'Liberty of the press is in peril as soon as the government tries to compel what is to go in to a newspaper.'[29] A mandatory right of reply is disfavoured because it is considered as 'compelled speech.' In the Harper & Row Publishers case, the court held that the First Amendment protects and promotes the voluntary

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24 J Staudenmayer, 'Laws Governing the Media in Germany' in T Mendel (ed) *A Comparative Study of Laws Governing the Media (Study Report for the Ethiopian Parliament)* (USAID/PACT, Addis Ababa 2006), p. 148

25 The Press Complaints Commission is an independent self-regulatory body which deals with complaints about the editorial content of newspapers and magazines (including their websites).

26 Press Complaints Commission, 'Newspapers and Magazines Publishing in the U.K. - Editors' Code of Practice' <http://www.pcc.org.uk/assets/111/Code_A4_version_2009.pdf> accessed 20 October 2010, Article 2

27 J Rai, 'Laws Governing the Media in India' in T Mendel (ed) *A Comparative Study of Laws Governing the Media (Study Report for the Ethiopian Parliament)* (USAID/PACT, Addis Ababa 2006), p. 57

28 Miami Herald Publishing Co v Tornillo (1974) 418 U.S. 241

29 Z Chafee, *Government and Mass Communications : A Report from the Commission on Freedom of the Press* (University of Chicago Press, Chicago 1947), cited in, J Tomain, 'Laws Governing the Media in the United States' in T Mendel (ed) *A Comparative Study of Laws Governing the Media (Study Report for the Ethiopian Parliament)* (USAID/PACT, Addis Ababa 2006), p. 98

public expression of ideas. In as much as there is a right to speak, there is necessarily a concomitant freedom not to speak publicly, which serves the same ultimate end as freedom of speech in its affirmative aspect.[30]

In Canada as well, the attempt for a legally binding right of reply was rejected by the Supreme Court. A Press Act introduced by the province of Alberta which sought to impose a mandatory right of reply was declared *ultra vires*.[31] Press Councils, however, have developed similar code of practice as in Europe. For example, the British Columbia Press Council[32] Code of Practice adopted the UK PCC policy and it provides that 'newspapers should give individuals and organizations a fair and timely opportunity of reply to inaccuracies when the issue is significant or when reasonably called for.'[33]

The Inter-American Convention on Human Rights is the only instrument which specifically provides for 'right of reply.' It states:

> 1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has

30 *Harper & Row Publishers Inc. v Nation Enterprise* (1985) 471 U.S. 539, 559 , cited in, Tomain, p. 98

31 *Ref. Re Alberta Legislation* (1938) 2 D.L.R. 81 S.C.C , cited in, R Howard, 'Laws Governing the Media in Canada' in T Mendel (ed) *A Comparative Study of Laws Governing the Media (Study Report for the Ethiopian Parliament)* (USAID/PACT, Addis Ababa 2006), p. 170

32 The British Columbia Press Council is an independent self-regulatory body governing the newspaper industry in British Columbia, Canada.

33 British Columbia Press Council, 'Code of Practice' <http://www.bcpresscouncil.org/code.html> accessed 20 October 2010, Article 2.

> the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
> 2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
> 3. For the effective protection of honour and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.[34]

Berger observed that international jurisprudence does not clearly specify 'right of reply' as part of the right to freedom of expression or press freedom. However, he noted, one can consider it as a sub-component of the general principles of freedom of expression and media pluralism.[35] In conclusion, the Ethiopian mass media rule which imposes a mandatory right of reply is not necessarily inconsistent with an international norm, but it is desirable if this was left to be governed by future media professionals code of ethics.

9.1.4 Prior Restraint or Impounding

The phrase 'prior restraint' as used here refers to the seizure and prevention of distribution or prevention of publishing of a press product by the authorities or an injunction by the order of a court preventing the publishing or distribution of a press. The Mass Media Law provides that where the federal or regional public prosecutor has sufficient reason to believe that a periodical or a book which is about to be disseminated contains illegal matter which would, if disseminated, lead to a clear and present grave danger to the national security which could not

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34 American Convention on Human Rights (Adopted at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969), Article 14

35 Berger, p. 11

otherwise be averted through a subsequent imposition of sanctions, they may request a court order to stop its dissemination.[36]

The law further provides that in cases of extreme emergency where it is not possible to obtain a court order in time to prevent the harm, the public prosecutor may order the periodical or the book to be impounded and shall notify a court of the order within 48 hours.[37] The court shall determine whether to upheld or rescind the prosecutor's order. Once criminal proceedings have been instituted, the court may further order the seizure and confiscation of the publication or barring subsequent publication or dissemination.[38]

If the court deems that the content of the publication is lawful and not likely to cause any damage, it may revoke the impounding order, release the publication (which shall be executed after the lapse of 72 hours unless a stay of execution is issued by an appellate court) and the prosecutor may be liable for a malicious exercise of his powers.[39]

In developed democracies, prior restraint is commonly held to be a violation of freedom of expression which includes the 'freedom to seek, receive and impart information and ideas of all kinds.' In Austria, prior restraints are unconstitutional and case-law has established that

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36 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 42 (2). There is a discrepancy between the Amharic and the English version of Article 42 (2). The English version does not refer to a court and instead it states the federal or regional prosecutor 'may issue an order to impound the periodical.' It appears to be a drafting or printing error because the cases under which the prosecutors are given such a direct power is provided under Article 40 (3) as clearly stated both in the Amharic and the English version. As a matter of general rule about publication of laws in Ethiopia, whenever there is a discrepancy between the Amharic and the English version, the Amharic version shall be the officially binding version having the final legal authority because all laws are deliberated upon and approved by the official Amharic language. See, for example, Article 106 of the federal constitution. Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1)

37 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 42 (3)

38 Ibid., Article 42 (4) & (5)

39 Ibid., Article 42 (4) (b) and 42 (10).

the media is protected against preventive measures.[40] In Sweden, the Freedom of the Press Act, which has a constitutional status, provides for a strong prohibition against prior restraint.[41] In the UK, there are no prior restraints specifically aimed at the press but pursuant to rules of general application courts may issue injunctions against any form of publication where it is established that it would cause irreparable harm to the plaintiff.[42]

In the US, prior restraint on the press is unconstitutional. The Supreme Court held that prior restraints are 'the most serious and the least tolerable infringement on First Amendment rights.'[43] The US Supreme Court allowed only a very narrow exception in the interest of national security which involved the publication of technical information and data on the design of the hydrogen bomb by *Progressive Inc*. It concluded, *Progressive* can publish the article but without the technical information because national security and human life was at stake. Even in such an extremely rare instance, the court was in pain. It stated:

> The destruction of various human rights can come about in differing ways and at varying speeds. Freedom of the press can be obliterated overnight by some dictator's imposition of censorship or by the slow nibbling away at a free press through successive bits of repressive legislation enacted by a nation's lawmakers. Yet, even in the most drastic situations, it is always possible for a dictator to be overthrown, for a bad law to be repealed or for a judge's error to be subsequently rectified. Only when human life is at stake are such corrections impossible.[44]

The extremely narrow nature of this exception was demonstrated with the case of *New York Times*, more commonly known as the 'Pentagon Papers' case. Based on national security, the US government sought to stop the *New York Times* and the *Washington Post* from

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40 W Berka, 'Press Law in Austria' in S Coliver (ed) *Press Law and Practice: A Comparative Study of Press Freedom in European and Other Democracies* (ARTICLE 19, London 1993), p. 35

41 HG Axberger, 'Freedom of the Press in Sweeden'Ibid., p. 163

42 Mendel, p. 13 – 14

43 *Nebraska Press Association v Stuart* (1976) 427 US 539, 559 , cited in, Tomain, p. 99

44 *United States v Progressive Inc.* (1979) 467 F Supp 990, 992, cited in, Tomain, p. 99

publishing a classified document entitled 'History of the US Decision-Making Process on Viet Nam Policy.' The court cautioned that the claim of national security should not be invoked to cover up embarrassing government information. It stated:

> The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information. It is common knowledge that the First Amendment was adopted against the widespread use of the common law of seditious libel to punish the dissemination of material that is embarrassing to the powers-to-be.[45]

The European Court of Human Rights has considered the issue of prior restraint in the *Spycatcher* case of the *Sunday Times* and the *Observer and Guardian*.[46] The court stated that:

> The dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.[47]

The European Court of Human Rights takes a broad view of what constitutes an interference with freedom of expression and press freedom. At its most obvious level, this includes executive orders preventing publication (such as in the *Spycatcher* case mentioned

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45 *New York Times v U.S.* (1971) 403 U.S. 713, cited in, Tomain, p. 100 – 101

46 *The Observer and the Guardian v United Kingdom* (1991) 14 EHRR 153; *The Sunday Times v United Kingdom (No. 2)* (1991) 14 EHRR 229. The UK government sought to suppress the publication of the book called *Spycatcher*, a memoir by Peter Wright, who was a former member of the British secret services. UK courts issued an injunction restraining the two newspapers from publishing or disclosing extracts from Spycatcher in England but the book was subsequently published in Scotland and the US.

47 *The Observer and the Guardian v United Kingdom* , p. 191. However, the court has made a rather controversial distinction of the time before and after the book was published in the US. In the first case it held by a narrow margin that the British courts injunction was justified on the grounds of protecting security interests of the British secret service. In the second case, after the publication of the book outside of England, the court unanimously held that continuing the restriction on the publication of the book is a violation of Article 10 of the convention because the book has already entered the public domain.

above) or confiscation (such as in the *Vereniging Weekblad Bluf* case)[48] of a published material.[49]

Considering the foregoing comparative standards and Ethiopia's own constitutional guarantees for freedom of expression and press freedom in particular, the impounding measures specifically aimed at the press under the Mass Media proclamation are contrary to the spirit of the constitution. Such a power in the hands of government officials is the most serious form of interference, next to censorship, on freedom of expression and press freedom

9.1.5 Liability and Legal Proceedings

The Mass Media Law provides that the media establishment may incur a joint civil or criminal liability along with the responsible person under Article 43 of the Criminal Code for a criminal offence or a civil damage caused by the media.[50]

Even if a criminal prosecution under this law is barred by the period of limitation[51] or the criminal prosecution is defeated in a court, it does not prevent a civil claim for damage

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48 *Vereniging Weekblad Bluf v Netherlands* (1995) 20 EHRR 189, Application No. 16616/90, judgment of 9 February 1995, Series A, No. 306-A

49 RCA White and C Ovey, *Jacobs, White & Ovey : The European Convention on Human Rights* (5th ednOUP, Oxford 2010), p. 427

50 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 41 (1). The English version of the proclamation wrongly refers to Article 41 of the Penal Code, in an apparent drafting or printing error. The Amharic version correctly refers to Article 43 of the Criminal Code.

51 Subject to Article 28 (1) of the Constitution, no criminal proceeding for an offence committed through a periodical may be instituted after the lapse of one year from the date when the alleged offending matter was published. Ibid., Article 46 (1); Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 28 (1).

caused by the media, and in cases of defamation through the mass media the court may award compensation up to Ethiopian Birr 100,000 (about $ 6,000).[52]

The attorney general is vested with power to decide whether a person suspected of committing an offence through the mass media shall be remanded for further investigation in accordance with Article 59 (2) & (3) of the Criminal Procedure Code or shall be brought before court without being remanded. According to Articles 59 (2) & (3) of the Criminal Procedure Code, 'where the police investigation is not completed, the investigating police officer may apply for a remand for a sufficient time to enable the investigation to be completed.' A remand granted by the court on each occasion may be up to fourteen days.[53]

Pre-trial detention of journalists using the remand provisions of the Criminal Procedure Code was one of the most problematic aspects of Ethiopia's criminal justice administration. The new Mass Media Law introduces a positive step to limit pre-trial detention of journalists as a matter of routine practice, but it fails to give full guarantee against pre-trial detention as the attorney general may still decide on remand procedure. To this extent, the law continues to create a chilling effect on press freedom. The law further provides that false accusation and defamation against the authorities or public officials of the constitutionally established legislative, executive or judicial organs of the State shall be criminally prosecuted with no private complaints; whereas in the case of defamation or false accusation against individuals

52 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 41 (2) & (4)

53 Ibid., Article 43 (1); Ethiopian Criminal Procedure Code, Proclamation No. 185 of 1961 (Negarit Gazeta 21st Year Extraordinary Issue No. 7), Article 59. For more discussion about Remand under Ethiopian Criminal Procedure Code, See: S Fisher, *Ethiopian Criminal Procedure: A Source Book* (Haile Sellasie I University, Addis Ababa 1969), p. 140 – 146

or private organizations the criminal proceedings must be instituted and conducted by the private complainants.[54]

In addition to the criminal liability and sanctions provided under the Criminal Code, the Mass Media Law also imposes fines up to an amount of Ethiopian Birr 200,000 (about $ 12,000) for various contraventions of the law (such as contravening the mass media ownership rules, failure to deposit gratuitous copies and failure to notify changes about the particulars of editors and address of the publisher).[55]

9.1.6 Press Licensing

The Mass Media law imposes a registration and certificate requirement as a mandatory pre-condition for anyone who wishes to engage in periodical press publication.[56] Even though it is referred to as 'certificate of registration', the system arguably qualifies as a licensing regime, rather than a mere technical registration, just in the same way as similar previous laws controlling the press in Ethiopia.[57]

The Mass Media law provides that only Ethiopian nationals are allowed to establish a mass media[58] and they can only do so by juridical incorporation because the same law allows

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54 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 43 (7)

55 Ibid., Article 45.

56 Article 9, Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64)

57 Freedom of the Press Proclamation No 34 of 1992 (Negarit Gazeta 52nd Year No 8), Articles 6 and 7. [Now repealed and replaced by: Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64)]

58 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 5(1). This requirement in itself is questionable because the constitutional guarantee of fundamental human rights is applicable for everyone in the territory of the country,

only juridical persons to own a broadcasting service, news agency service or periodicals.[59] The application for registration shall state: the name and addresses of the publisher or the news agency organization as well as of any branch offices if any; the name of the periodical or the news service agency; and the names and address of any person holding more than 2% of the shares of the publishing company or the news agency and the amount of their share.[60]

The power to register and issue certificates is vested with the Federal Broadcasting Agency for periodicals whose proposed distribution is beyond one regional state[61], and for the respective regional Information Bureaus when the proposed distribution of the periodical is limited to one specific regional state.[62] If the registering authority fails to issue a certificate of registration or to notify in writing the grounds for refusal within 30 days from the date of submission of the application, the periodical shall be deemed to have been registered.[63]

The Broadcasting Agency is established as a federal administrative agency directly accountable to the Prime Minister.[64] The Agency is primarily responsible for broadcasting matters including issue license and regulate broadcasting services. However, following the dissolution of the Federal Ministry of Information, the regulatory power with respect to press including

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59 Ibid, Article 7(6)

60 Ibid, Article 9 (3). Any subsequent changes on these particulars shall also be reported by the publisher company to the registering authority within fifteen days, otherwise it may entail a fine up to 15,000 Ethiopian Birr ($ 1,000). Articles 9(6) and 45(2) of the same proclamation.

61 This power of registration was originally vested with the Federal Ministry of Information but with the dissolution of the Ministry, the regulatory power with respect to press including registration is vested with the Federal Broadcasting Agency which is directly accountable to the Prime Minister. Government Communication Affairs Office Establishment Regulation (Council of Ministers Regulation No 158 of 2008, Federal Negarit Gazeta 15th Year No 13, 1 January 2009), Article 11.

62 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 9(1).

63 Ibid, Article 9(5).

64 Broadcasting Proclamation No. 178 of 1999 (Federal Negarit Gazeta, 5th Year No. 62), Article 4 (1) & (2)

registration of press is vested with the Broadcasting Agency.[65] The Broadcasting Proclamation establishing the Agency is also constitutionally suspect for the same reasons described herein above in relation to the Mass Media Proclamation.[66]

The law does not state the grounds and conditions under which the registering authority may refuse registration, nor does it provide if an appeal can be taken against a decision refusing registration. The registering authority is left with complete discretionary power, thereby creating a press system directly dependent on the government.

The federal constitution of Ethiopia guarantees freedom of thought and freedom of expression 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

65 Government Communication Affairs Office Establishment Regulation (Council of Ministers Regulation No 158 of 2008, Federal Negarit Gazeta 15th Year No 13, 1 January 2009), Article 11.

66 See the discussion about the Legal Status of the Mass Media Proclamation under the section 9.1

> all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.[67]

The constitution further provides special legal protection for the press as an institution in the following terms:

> 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.
>
> 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, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.[68]

Ethiopia's constitutional protection for freedom of expression and press freedom compares favourably well with that of the developed democracies.[69] The terms of the constitution are generally similar to the international human rights covenants. It is particularly noteworthy that the Ethiopian constitution provides special protection for press as an institution. This constitutional guarantee both for freedom of expression and press freedom

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67 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 29 (1) and (2).

68 Ibid, Articles 29 (3) and (4).

69 Several developed democracies have clear guarantee of freedom of expression and the press entrenched in their respective constitutions or laws having a comparable status. The First Amendment of the US Constitution; the UK Bill of Rights (1689) and the Human Rights Act (2000); section 2(b) of the Canadian Charter of Rights and Freedoms (1982); and Article 11 of the 1789 French Declaration of the Rights of Man and the Citizen which is also incorporated into the preamble of the 1958 French Constitution are some examples centuries old and recent national foundations for the legal protection of freedom of expression and press freedom.

implies the freedom to publish and disseminate free from prior governmental approval or any other encumbrances.

In developed democracies, the government has a positive duty to promote press freedom and pluralism, in addition to the traditional liberal duty of refraining from interference. In some countries this is ensured by an explicit legal guarantee (e.g. Netherlands and Sweden)[70], whereas in others it is also established by a body of well-developed jurisprudence (e.g. France, India and Germany).[71] Such special rights and protections for the press arise from the special role of the press in contributing to the formation of public opinion and serving as public watchdog.[72] In the US, the First Amendment rule and a body of jurisprudence has established a strong protection for free and independent press, which is sometimes described as the unofficial fourth branch of the government, a branch which serves as a check on the other three and provides the information necessary for a democracy to function.[73]

Although the terms of the Ethiopian constitution clearly provide for freedom of expression and press freedom, the registration (licensing) requirement of the Mass Media law creates a contradiction with the concept of freedom and independence. Ross observed that

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70 The Netherlands Constitution, Adopted 17 February 1983, Article 7; Chapter 2 Article 1 of the Swedish 1974 Instrument of Government, the 1949 Freedom of the Press Act and the 1991 Freedom of Speech Act, adopted by the Swedish parliament as a constitutional document, see The Constitution of Sweden 1989 (Stockholm, 1990) published by the Swedish *Riksdag*

71 The German Constitutional Court has ruled that the guarantee of freedom of the press is one of the most important elements underpinning the functioning of a democratic society. See: *1 B v R 9/57 Bundesverfassungsgericht* (B VerfG - Federal Constitutional Court), *Neue Juristische Wochenschrift* (NJW) ruling of 25 January 1961; the Indian Supreme Court has ruled that freedom of the press is implicit in the guarantee of freedom of expression and as such it includes the liberty of publication and circulation. See: *Express Newspapers v Union of India* (1959) Supreme Court Reportsand *Romesh Thappar v State of Madras* (1950) Supreme Court Reports

72 S Coliver, P Merloe and A Naughton, *Press Law and Practice : A Comparative Study of Press Freedom in European and Other Democracies.* (ARTICLE 19, London 1993), p. 256

73 JA Smith, *Printers and Press Freedom : The Ideology of Early American Journalism* (Oxford University Press, Oxford 1988). For more on the legal and historical implications regarding the press as an institution functioning as part of the American political system, See: D Anderson, 'The Origins of the Press Clause' 30 UCLA Law Review 455

where freedom of the press is in any way linked to the whims of the government, then the word 'freedom' is contradicted. In the Ethiopian Mass Media law, the licensing requirement creates not just a link between the two but a relationship in which the press cannot operate without prior approval of the government. As this leaves the press subject to possible retributive measures, press freedom can be muzzled. In this sense, Ross concludes, 'the limits on free expression could lead to even greater expansion of government power and control in areas beyond media rights and create significant challenges for the new democracy.'[74]

The registration and certificate requirement imposed by Ethiopia's Mass Media law is onerous and a substantive restriction which potentially can be used to unfairly restrict any press activity, including operating print media. A simple technical registration requirement per se does not breach the guarantee of press freedom as long as there is no discretionary power to refuse registration, there are no substantive or excessively onerous conditions, and the system is administered by a body that is independent of direct governmental control. Indeed, it is now generally recognized that registration is not required or is rarely practised in most established democracies, albeit some countries have rather old statutes which provide for a technical registration requirement.[75]

In the United Kingdom, for example, the Newspaper Libel and Registration Act of 1881 required newspapers published at intervals not exceeding 26 days to register with the Registrar of Companies.[76] However, this does not apply to the legally incorporated newspapers because the company that owns the newspapers is already registered under the Companies Act 1985.

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74 T Ross, 'A Test of Democracy: Ethiopia's Mass Media and Freedom of Information Proclamation' 114:3 Penn State Law Review 1047, 1062

75 D Bekele, The Legal Framework for Freedom of Expression in Ethiopia' (Article 19: Global Campaign for Freedom of Expression, London 2003), p. 19 – 20.

76 Newspaper Libel and Registration Act 1881

Also, it does not apply to publications for free distribution. The rationale of the registration was to ensure that plaintiffs in a libel suit would be able to identify and name the owner in a legal action, which is why incorporated newspapers need not register because they are already registered as a juridical entity and their information is publicly available. In practice, however, this is entirely a technical process of filing a registration form, and not in any way a formal pre-requisite for publication. In the US, print media are not subject to any such registration requirements, but incorporated media organizations would be registered under the same laws applicable to all other business entities.[77]

The Ethiopian Mass Media law imposes several substantive restrictions: the mandatory requirement of legal incorporation to engage in press activity (even small-scale publications with small print runs and publications at intervals of twice a year are subject to the same requirements of registration);[78] the registering authority has unlimited discretionary power to refuse registration; the law does not state the right of appeal against such refusal; and the registering authority is a governmental agency (in the case of the Federal Broadcasting Agency, directly accountable to the Prime Minister), which opens a door for potential abuse and unfair restriction. Berger, in his survey of media legislation across Africa including Ethiopia, observed the bureaucratic mind-set about the registration and licensing requirement for private newspapers. He noted that while the purpose of registration or licensing is typically not spelled out and the system not administered by independent bodies, the reason why governments maintain the system is 'because it gives them direct power over print media, should they decide

77 In the same manner, print media is not subject to any prior registration requirement in Canada and some European countries such as Austria and Germany.

78 The Mass Media law defines 'Periodical Publication' as any printed material which appears in regular intervals of at least twice a year. Article 2(3), Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64)

to use it. Again, political will and respect for media freedom in a democracy are not at the level at which they could or should be.'[79]

The UN Special Rapporteur for freedom of expression along with the Special Rapporteur for the Organization for Security and Co-operation in Europe (OSCE) and the Organization of American States have stated that imposing special registration requirements on the print media is unnecessary and may be abused and therefore it should be avoided. They noted that registration systems that allow for discretion to refuse registration or impose substantive conditions on print media are unacceptable. This also concurs with the *Declaration of Principles for Freedom of Expression in Africa* which states that, 'any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.'[80] Berger observed that the exclusionary power of a registration system violates the general right to freedom of expression. He noted that the converse of a registration process is de-registration and refusal of registration which can provide a legal cover for authorities to make politically-motivated decisions to ban critical individuals from practising as journalists.[81]

The UN Human Rights Committee has held that the registration requirement for 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

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79 G Berger, Media Legislation in Africa: A Comparative Legal Survey' (UNESCO, Grahamstown 2007), p. 149

80 Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002), Article 8 (1).

81 Berger, p. 139.

requirement that an author register his leaflet, which had a circulation of just 200 copies, constitutes an obstacle as to restrict the author's freedom to impart information.[82]

The Ethiopian Mass Media law is more onerous, and it continues the same tradition of past regimes which imposed prior governmental approval as a condition to engage in any form of press activity. In all three successive regimes, there were short lived periods in the early beginnings of their coming to power where the press was free to operate without any pre-condition or prior governmental approval. However, as each regime began to consolidate its power, they issued laws and regulations requiring prior governmental approval for any press activity. The licensing regime imposed by all the regimes stand in contradiction to the rhetorical claims for a free and independent press and causes a substantial impediment for countries in transition to democracy. The global freedom of expression campaign, ARTICLE 19, observed that such a requirement does not pursue a legitimate aim in a democracy.[83]

As indicated above, the regulatory authority for the press is now the Federal Broadcasting Agency which is directly accountable to the Prime Minister.[84] The Broadcasting proclamation further provides that its board members shall be appointed by the government.[85] In the spirit of the special constitutional protection of the press as an institution, the independence of regulatory bodies is a vital condition for the promotion and protection of the right to freedom of expression. In order to ensure press freedom and its special protection as envisaged under the constitution, regulatory bodies need enough protection against

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82 *Laptsevitch v Belarus* UN Human Rights Committee: Communication No. 780/1997: paragraphs 8.1 – 8.5

83 Coliver, Merloe and Naughton, p. 262

84 Broadcasting Proclamation No. 178 of 1999 (Federal Negarit Gazeta, 5th Year No. 62), Article 4 (2)

85 Ibid, Article 9

governmental interference, particularly of a political nature. Ensuring the independence of such regulatory bodies is a well-established principle and practice in the developed democracies.[86]

It is now recognised under comparative international standards 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.[87]

Under international law, State parties to an international human rights covenant have a duty to respect and ensure to all individuals within their territory all the rights recognized in the covenant. The International Covenant on Civil and Political Rights, to which Ethiopia is a party, provides the duty of each party State to 'adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the covenant' when such provisions do

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86 Bekele, p. 9

87 Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002)

not already exist in the domestic law.[88] In order to give effect to freedom of expression and press freedom, Ethiopia needs to adopt legislative measures scrapping the licensing regime and ensuring that the right to freedom of expression and press freedom can be exercised by everyone within its territory.

9.2 The Anti-Terrorism Proclamation (2009)

The Anti-Terrorism Proclamation adopted in 2009[89] imposed by far the greatest and the most severe restriction on freedom of expression and press freedom in Ethiopia and arguably a culmination of chilling laws on the exercise of freedom of expression and media freedom. According to the Anti-Terrorism law, a terrorist act is defined as causing death or serious bodily injury; creating serious risk to public safety or disruption of public services; kidnapping; serious damage to property or natural resources or cultural heritage; or threats to commit any such acts intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or economic or social institutions of the country.[90]

The UN Human Rights Committee has considered the human rights implications of such an excessively broad definition of 'terrorism', as it can potentially be used by authorities to stifle legitimate expressions of political and/or social protest. The Committee examined similar broad definition of 'terrorism' in the Canadian and Australian Anti-Terrorism Act of 2001 and 2005 respectively, and noted that States should adopt a more precise definition of

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88 United Nations, *International Covenant on Civil and Political Rights* (1966), Article 2(2). Each state party further undertakes to ensure that there is an effective remedy whenever rights are violated, that a claim for such a remedy shall be determined by a competent authority and that the competent authorities shall enforce such remedies. [Article 2(3) a – c.]

89 Anti-Terrorism Proclamation (Proclamation No. 652 of 2009 Negarit Gazeta 15th Year No. 57)

90 Ibid, Article 3

terrorists offences so as to ensure that individuals will not be targeted on political, religious or ideological grounds in connection with measures to prevent or investigate alleged terrorist offences, and to ensure that the application of such laws is limited only to offences that are indisputably terrorist ones.[91]

The Ethiopian Anti-Terrorism Law introduced a new offence called 'Encouragement of Terrorism', copied from the UK Terrorism Act.[92] Article 6 of the Anti-Terrorism Law entitled 'Encouragement of Terrorism', states that:

> Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3 of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years.[93]

The Anti-Terrorism Law further provides that if a criminal prosecution is filed under the Anti-Terrorism Law, the accused will remain in prison and not be entitled to bail until the final decision of the case.[94] Intelligence reports prepared in relation to terrorism, even if they do not disclose the source or the methods by which was obtained, and hearsay or indirect evidence, including the confession of a suspect, are admissible.[95]

The prohibition imposed by this law is excessively broad and not sufficiently clear to the extent that any critical political statement can easily be construed as being 'likely to be

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91 Concluding observations of the Human Rights Committee, Canada, UN Doc. CPR/C/CAN/CO/5, 2 November 2005 and Australia, CCPR/C/AUS/CO/5/CRP/1, 2 April 2009. As cited in, ARTICLE 19, Comment on Anti-Terrorism Proclamation 2009 of Ethiopia' (ARTICLE 19, London 2010), p. 5

92 Terrorism Act 2006 (U.K.)

93 Anti-Terrorism Proclamation (Proclamation No. 652 of 2009 Negarit Gazeta 15th Year No. 57), Article 6

94 Ibid, Article 20 (5)

95 Ibid, Article 23

understood by some members of the public as a direct or indirect encouragement or inducement or instigation.' This can be particularly alarming when looked at in the context of Ethiopia's political crisis, including armed resistance of some political groups. Political statements can easily be deemed supportive of armed opposition activity and as a result liable to be interpreted as a direct or indirect encouragement of violence. The law is completely silent on what constitutes as a direct or indirect encouragement or inducement which is left to a wide breadth of interpretation and application.

ARTICLE 19 observed that the phrases 'direct or indirect encouragement or other inducement' are extraordinarily broad and create vague offences that do not meet the limitations for restrictions on rights required under international human rights law. It noted that while the words 'encouragement' and 'inducement' are already vague terms, 'indirect encouragement or other inducement' is so vague as to be without meaning. 'They create a subjective standard based on what 'some…members of the public' may understand which can be applied (or misapplied) to nearly any statement made in the media as being supporting of terrorism'.[96]

The constitutional requirement that any restriction on freedom of expression and press freedom needs to be 'prescribed by law' does not mean a mere enactment of a law. It is rather an important legal requirement which implies that not only a law should exist but also it must be adequately accessible. The European Court of Human Rights in this regard held that a law restricting freedom of expression and press freedom should be 'formulated with sufficient precision to enable the citizen to regulate his conduct.'[97] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information recommends that any

[96] ARTICLE 19, Comment on Anti-Terrorism Proclamation 2009 of Ethiopia' , p. 9

[97] The Sunday Times v United Kingdom (No. 2)

restriction on freedom of expression must not only be prescribed by law, but also 'the law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.'[98]

The restriction imposed by the Anti-Terrorism Law is constitutionally suspect on other grounds as well, namely, the requirements of 'legitimate aim' and 'being necessary in a democratic society.' The supposed 'legitimate aim' of the Anti-Terrorism law is the protection of peace and security as explained in the preamble of the proclamation. However, it is not just enough to state 'national security' as an excuse of a restriction unless it can be shown that the restriction is genuinely proportionate to the legitimate aim pursued. The European Court of Human Rights in this regard stressed the need for a strict application of the 'three-part test' and held that although freedom of expression is subject to a number of exceptions '[it] must be narrowly interpreted and the necessity for any restrictions must be convincingly established.'[99] As Schauer noted, a limitation of speech requires a stronger justification or it should establish a higher threshold than for limitation of other forms of conduct.[100]

The Anti-Terrorism Law in general and its provisions in relation to restricting freedom of expression and press freedom in particular have been strongly criticised by rights groups globally. Human Rights Watch observed that because the law is premised on an extremely broad and ambiguous definition of terrorist acts, it could permit the government to repress a

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98 The Johannesburg Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by the Global Campaign on Freedom of Expression - ARTICLE 19 and the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg. It has since been widely used as guiding principles by appropriate bodies both nationally and internationally.

99 Thorgeirson v Iceland , 843

100 F Schauer, 'Free Speech in a World of Private Power' in TD Campbell and W Saduriki (eds), Freedom of Communication (Dartmouth, Aldershot 1994)

wide range of internationally protected freedoms, including freedom of expression. Human Rights Watch warned that the Anti-Terrorism Law provides the Ethiopian government with a potent instrument to crack down on political dissent and public criticism of government policy. It was seriously concerned, for example, that according to the Anti-Terrorism Law, a newspaper interview with members or leaders of armed resistance groups or reports about such groups which the government deems as terrorist groups can conveniently be criminalised.[101] Indeed within two years of the Anti-Terrorism Law being adopted, CPJ reported in November 2011 that the Ethiopian government has charged ten journalists with 'terrorism'.[102]

ARTICLE 19, the Global Campaign for Freedom of Expression, in a report about Ethiopia's Anti-Terrorism proclamation, observed that several provisions in the law undermine the international protection of freedom of expression as guaranteed by International Human Rights Covenants. In particular, it expressed concern about the broad definition of 'terrorism', which would appear to apply to many legitimate acts of expression; the undermining of protection of journalist's sources, including by surveillance and vaguely defined offences about 'encouraging' terrorism which appear to criminalize the legitimate exercise of freedom of expression and have a real alarming effect on debate on matters of public interest.[103]

Indeed, the excessively broad prohibition of the Anti-Terrorism law creates a substantial chilling effect on press freedom. The European Court of Human Rights held that 'the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of

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101 Human Rights Watch, One Hundred Ways of Putting Pressure: Violations of Freedom of Expression and Association in Ethiopia' (New York 2010)

102 CPJ, 'Ethiopia Charges Six Journalists with Terrorism' (2011) <http://www.cpj.org/2011/11/ethiopia-charges-six-journalists-with-terrorism.php> accessed 13 November 2011

103 ARTICLE 19, Comment on Anti-Terrorism Proclamation 2009 of Ethiopia'

matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.'[104] The court considered this issue in a case where a Danish TV journalist was accused of assisting the dissemination of racist remarks made by extremist groups he interviewed for his program.

As explained under Chapter 7 (section 7.4), the court acknowledged the racist remarks do not enjoy protection under the European Convention of Human Rights, but it held that there had been a violation of Article 10 because of the penalties imposed on the media. On the role and function of the media, the court stated:

> …the methods of objective and balanced reporting may vary considerably depending among other things on the media in question. It is not for this court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists.[105]

Most cases that come before the European Court of Human Rights are filed by people who have been convicted for alleged defamation or insult and subjected to a criminal penalty by the national courts of the member states. When the European court considers whether such penalty constitutes a violation of Article 10, it will consider a number of factors, including the functions fulfilled by the author of the statement and the subject, whether the impugned expression consists of a statement of fact or a value judgment, and the severity of the penalty in the circumstances of the case.[106]

As indicated above, some provisions of the Ant-Terrorism Law are copied from the British Terrorism Act which has more detailed sections defining the nature of the crime and

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104 *Jersild v Denmark* (1994) 19 EHRR 1, paragraph 35

105 Ibid

106 White and Ovey, p. 426 – 427

imposes a penalty ranging from a fine to a maximum of 7 years imprisonment.[107] (Note that the Ethiopian Anti-Terrorism Law imposes a penalty ranging from 10 to 20 years rigorous imprisonment). Section 1 of the British Terrorism Act states as follows:

> Encouragement of terrorism
>
> (1) This section applies to a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences.[108]
>
> (2) A person commits an offence if—
>
> (a) he publishes a statement to which this section applies or causes another to publish such a statement; and
>
> (b) at the time he publishes it or causes it to be published, he—
>
> (i) intends members of the public to be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or Convention offences; or
>
> (ii) is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences.[109]

This law was introduced in the UK following the 7 July 2005 terrorist attack in London and the British government at the time argued that there was the need for such a law based on

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107 Terrorism Act 2006 (U.K.), Section 1 (7)

108 The phrase 'Convention Offences' refers to the provisions of the Council of Europe's Convention on the Prevention of Terrorism. The Act seems to draw a distinction between 'acts of terrorism' as defined under the statute and 'convention offences' as provided under the Convention. Council of Europe Convention on the Prevention of Terrorism, Adopted 16 May 2005 in Warsaw, Entered into Force 1 June 2007. (C.E.T.S. No. 196).

109 Terrorism Act 2006 (U.K.), Section 1

perceived threats of 'radicalization, grooming and indoctrination' by terrorists. In proposing this law, the then Home Secretary said the following about the threat of radicalization:

> [The 7 July 2005 terrorist attacks in London] indicate that there are people in this country who are susceptible to the preaching – and I do not use that in the religious sense – of an argument or a message that terrorism is a worthy things, a thing to be admired, a thing to be celebrate and then act on the basis of that … what this Bill is about is trying to make that more difficult, that transition from people encouraging, glorifying to then an act being undertaken.[110]

During the parliamentary debate of the proposed Bill, the Labour government emphasized the need for such a law based on the ideological nature of the serious terrorist threat the UK faced both from 'home grown' and international sources; the government further drew particular attention to the role of free speech in giving oxygen to ideas that lead to violent radicalization;[111] and therefore the need to create new offences relating to the encouragement of terrorism to 'deal with those who … contribute to the creating of a climate in which impressionable people might believe that terrorism was acceptable.'[112]

However, this provision which proscribes free speech came under severe criticism because of its specific prohibition, the possibility of prosecutions, and its wider chilling effect on freedom of expression and press freedom. The Joint Committee of the House of Lords and the House of Commons on Human Rights concluded that the new offence called

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110 Home Secretary, Charles Clarke, MP, giving oral testimony on the draft Terrorism Bill 2005 before the House of Commons on 11 October 2005, cited in, T Choudhury, 'The Terrorism Act 2006: Discouraging Terrorism' in Ivan Hare and J Weinstein (eds), *Extreme Speech and Democracy* (OUP, New York 2009), p. 463

111 Ibid, p. 464

112 House of Lords, (26 October 2005) Handard H.L. , Vol. 438 Col. 334 ' (2005), cited in, Choudhury (n. 67) 464

'encouragement of terrorism' created by the Terrorism Act did not satisfy the safeguards for freedom of expression implicit in the European Terrorism Convention.[113]

Choudhury observed that the centrality of free speech to liberal democratic society requires that less restrictive responses are exhausted before restrictions on free speech are introduced. He argued that the provisions of the law are drafted with a degree of breadth and vagueness that increase the risks of the legislation becoming counterproductive. He noted that 'the uncertainty surrounding the scope of the new offences and the discretion needed to enforce the legislation in a climate of distrust and fear between parts of the Muslim community and public institutions will reinforce perceptions of discrimination and unjust enforcement of counter-terrorism laws, which in turn will undermine the broader counterterrorism strategy.'[114]

The UN Human Rights Committee has examined and called for a revision of the UK Terrorism Act particularly in relation to the definition of the offence of 'encouragement of terrorism'. The Committee noted:

> A person can commit the offence even when he or she did not intend members of the public to be directly or indirectly encouraged by his or her statement to commit acts of terrorism, but where his or her statement was understood by some members of the public as encouragement to commit such acts. [UK] should consider amending that part of section 1 of the Terrorism Act 2006

113 E Barendt, 'Incitement to, and Glorification of, Terrorism' in Ivan Hare and J Weinstein (eds), *Extreme Speech and Democracy* (OUP, New York 2009), p. 446. For more details of the report of the Joint Committee, see: 'Counter-Terrorism Policy and Human Rights: Terrorism Bill and Related Matters', 3rd report of Joint Committee on Human Rights, 2005 – 06, (HL Paper, 75 – I, HC 561 – I), cited in, Barendt, 'Incitement to, and Glorification of, Terrorism', p. 445.

114 Choudhury (n. 67) 464

> dealing with 'encouragement of terrorism' so that its application does not lead to a disproportionate interference with freedom of expression.[115]

Unlike the Ethiopian provision, the UK Terrorism Act now gives a much more detailed description of what may constitute as an act of direct or indirect encouragement or inducement of acts of terrorism. It states that:

> For the purposes of this section, the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which—
>
> (a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and
>
> (b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.[116]

It further provides guidance on the most difficult terms of when a statement is likely to be understood by some or all members of the public as a direct or indirect encouragement and the circumstances under which such an inference can be made, having regard to both the contents and the circumstances of its publication. Barendt noted that how a statement is likely to be understood, and what members of the public could reasonably be expected to infer from

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115 Concluding Observations of the Human Rights Committee, United Kingdom, UN Doc. CCPR/C/GBR/CO/6, 21 July 2008. As cited in, ARTICLE 19, Comment on Anti-Terrorism Proclamation 2009 of Ethiopia' p. 10

116 Terrorism Act 2006 (U.K.) Section 1 sub-section 3

it, are as it is determined by having regard to its contents and the circumstances in which it is published.[117] The relevant section of the Act states:

> For the purposes of this section the questions how a statement is likely to be understood and what members of the public could reasonably be expected to infer from it must be determined having regard both—
>
> (a) to the contents of the statement as a whole; and
>
> (b) to the circumstances and manner of its publication.
>
> It also provides that it is irrelevant for the purposes of subsections (1) to (3):
>
> (a) whether anything mentioned in those subsections relates to the commission, preparation or instigation of one or more acts of terrorism or Convention offences, of acts of terrorism or Convention offences of a particular description or of acts of terrorism or Convention offences generally; and,
>
> (b) whether any person is in fact encouraged or induced by the statement to commit, prepare or instigate any such act or offence.[118]

The law further provides the conditions of legitimate defense in criminal proceedings for such an offence by clearly stating that:

> In proceedings for an offence under this section against a person in whose case it is not proved that he intended the statement directly or indirectly to encourage or otherwise induce the commission, preparation or instigation of acts of terrorism or Convention offences, it is a defense for him to show—
>
> (a) that the statement neither expressed his views nor had his endorsement (whether by virtue of section 3 or otherwise); and
>
> (b) that it was clear, in all the circumstances of the statement's publication, that it did not express his views and (apart from the possibility of his having been

117 Barendt, 'Incitement to, and Glorification of, Terrorism', p. 446

118 Terrorism Act 2006 (U.K.), Section 1 sub-sections 4 & 5

given and failed to comply with a notice under subsection (3) of that section) did not have his endorsement.[119]

The Ethiopian Anti-Terrorism Law, which adopted the provision under consideration from the British Terrorism Act, creates a serious concern in this legal transplant. First, it simply copied a small section of the law, having no regard to the socio-political and cultural background and circumstances that led to its adoption in the UK, and irrespective of the relevance of these considerations for the type and nature of terrorist threats in Ethiopia.

Second, the Ethiopian drafters copied only the first few phrases of the UK Terrorism Act and completely omitted the circumstances that define what constitutes the new offence, the legitimate legal defense's that should be considered by the courts, thereby introducing a new crime with a wide scope creating the most chilling effect on freedom of expression and press freedom. Even though the British Terrorism Act provides a detailed section to define the contours of the new offence, it was severely criticized including, by the Joint Committee of the House of Lords and the House of Commons on Human Rights, on the ground that 'encouragement of terrorism' was unacceptably vague.[120] The Ethiopian version is even more disturbing and extremely vague.

Arguably, given the fact that the Ethiopian Criminal Code already has several provisions relating to inciting, encouraging and supporting others to engage in crime and violence, the adoption of these new provisions in the Anti-Terrorism Law appears to purposefully target free speech and press freedom contrary to the constitutional commitments. Indeed, this became evident when the editors of a popular independent newspaper were threatened with prosecution under the Anti-Terrorism law, leading all the editors and reporters

119 Ibid, Section 1 sub-section 6.

120 Barendt, 'Incitement to, and Glorification of, Terrorism', p. 445

of the newspaper to flee the country.[121] The editors along with several other journalists have been charged and convicted for 'supporting and encouraging terrorism.'

Barendt examined whether the new offence about 'encouragement of terrorism' created by the Terrorism Act is compatible with the freedom of political speech required by a commitment to liberal democracy. He further examined how the new offence might fare in the United States, where the Supreme Court in the *Brandenburg* case[122] formulated a strong protective rule to immunize even extremist political speech from criminal prosecution. He observed that the new encouragement offence is suspect on free speech grounds.[123]

Finally, another noteworthy comparison is with provisions of the Dergue Special Penal Code of 1974 adopted by the military leaders on 16 November 1974. The Dergue Special Penal Code was perhaps the most feared law of the military regime. As clearly stated in its preamble, one of its purposes was to create new offences and to increase the penalties for certain offences specified in the code. In relation to speech or press, the most severe criminal liability and penalty were the offences of 'Provocation and Preparation' and 'Offences Against the Motto *Ethiopia Tikdem* (Ethiopia First)', as provided under Article 10 and 35 respectively of the Dergue Special Penal Code.

Ethiopia Tikdem (Ethiopia First) having been declared the motto of the military leaders, the Dergue Special Penal Code provided that 'whosoever fails to comply with Proclamations,

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121 The editors and reporters of a prominent Amharic newspaper *Addis Neger*, announced the closing down of the newspaper following harassment and intimidation by the authorities. Reporters without Borders, 'Weekly Forced to Stop Publishing, Its Journalists Flee Abroad' (2009) <<http://en.rsf.org/ethiopia-weekly-forced-to-stop-publishing-04-12-2009,35258.html>> accessed 24 May 2010

122 *Brandenburg v Ohio* (1969) 395 US 444, cited in, Barendt, 'Incitement to, and Glorification of, Terrorism', p. 446

123 Barendt, 'Incitement to, and Glorification of, Terrorism', p. 445 – 462

Decrees, Orders or Regulations promulgated to implement the popular motto *Ethiopia Tikdem* or hinders compliance therewith by publicly inciting or instigating by word of mouth, in writing or by any other means, in punishable with rigorous imprisonment from 5 to 10 years.'[124]

'Provocation and Preparation' involves 'publicly provoking by word of mouth, image or writing, or systematically and with premeditation launching or disseminating inaccurate or subversive information or insinuations calculated to demoralize the public and to undermine its confidence or its will to resist…with the objective of permitting or supporting the commission of any of the crimes provided under Articles 2, 3, 5, and 7 – 9.'[125] This provision was copied from the Imperial Penal Code of 1957 and expanded with the addition of three sub-articles, and the penalty was increased from a maximum of 5 years to a maximum penalty of rigorous imprisonment not exceeding 10 years.[126]

The EPRDF regime, not only directly copied and incorporated this disconcerting provision of the Dergue Special Penal Code into the new Criminal Code adopted in 2005[127], but also adopted a new law creating new offences with even more severe penalties. The new

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124 Special Penal Code, Proclamation No. 8 of 1974 (Negarit Gazeta 34th Year No. 8), Article 35

125 Ibid, Article 10. (The offences provided under the said Articles were: offence against the political or territorial integrity of the State; armed uprising and civil war; impairment of the defense power of the State; offences against the Head of State and his families; offences against members of the Provisional Military Administrative Council, sub-council, officials of the Special Military Courts; and outrages against the State.)

126 The maximum penalty is applicable 'where the foreseeable consequences of the offence are particularly grave' as provided under Article 10. Compare Article 10 of the Dergue Special Penal Code with Article 286 of the Imperial Penal Code of 1957. Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1)

127 Compare Article 10 of the Dergue Special Penal Code with Article 257 of the new Criminal Code (2005). The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004)

offence called ‘Encouragement of Terrorism’, created under the Anti-Terrorism Law is punishable with rigorous imprisonment from 10 to 20 years.

The Imperial regime adopted the Criminal Code of 1957 as part of the modern legislative reform of laws, albeit with number of its provisions having a chilling effect on freedom of expression and press freedom, which is perhaps not surprising for an Imperial Criminal Code adopted. The military regime increased both the scope of offences and the severity of the penalties with the Special Penal Code adopted in 1974; this is also perhaps not surprising for a military dictatorship. The EPRDF regime further increased both the scope and the severity of the penalties with the new Criminal Code and the Anti-Terrorism Law.

Considering the constitutional guarantee for freedom of expression and press freedom and the spirit in which the constitution was adopted, the recent transformation of laws is a major step backwards. The Special Penal Code of the Dergue regime was severe. The new Criminal Code and the Anti-Terrorism Law, both adopted by the EPRDF regime, are yet more severe and repressive.

9.3 Transformation of State Controlled Press

All the three successive regimes in Ethiopia have created legal and institutional structures to ensure that the publicly financed press outlets largely serve as propaganda instruments for

consolidation of power as opposed to independent public mediums genuinely serving a public interest.

When the EPRDF came to power in 1991, it pledged to 'provide the mechanism to ascertain the fair and impartial application of the mass media'[128], and to ensure that all State-owned mass media outlets shall be used by the government, the newly emerged organizations at the time (political or otherwise), and the public at large in a fair and democratic manner.[129]

When the federal constitution was adopted in 1995, it provided that '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 opinion.'[130] These pledges remain unfulfilled for nearly two decades now. Instead, the regime has continued in the same tradition of the previous ones whereby laws, regulations and institutions have been used to completely control both the organizational and operational activities of the publicly financed press outlets, thereby ensuring they remain propaganda tools of the government. As a result, the State controlled media outlets are perceived simply as part and parcel of the incumbent government. Amanda C. Quick and others, observed that Ethiopians do not generally view the State controlled media as a watch dog of the government.[131]

As the historical trajectory discussed in Part I of this thesis showed, the Imperial government owned and strictly controlled all the State financed press outlets. During the

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128 Transitional Period Charter of Ethiopia (Negarit Gazeta 50th Year No. 1, Adopted 22 July 1991), Article 9(J).

129 Proclamation to Provide for the Determination of the Application of State Owned Mass Media (Negarit Gazeta 51st Year No 1)

130 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 29 (5)

131 Amanda C Quick, World Press Encyclopaedia: A Survey of Press Systems Worldwide, (2003) p. 297, cited in: Ross, 1063.

Dergue's military leadership, the private press was suppressed as a deliberate policy and the government enhanced its control over all State financed press outlets. When EPRDF came to power, it initially allowed participation of private press, but it retained and maintained strict control of the State financed press outlets.

In a bid to institutionalise the organisational and operational autonomy of government-owned mass media, the Ethiopian Press Agency, along with the Ethiopian News Agency and the Ethiopian Radio and Television Agency, were legally established as autonomous public agencies having their own juridical personality and governing boards appointed by the legislature. However, the Proclamations for all the three Agencies provided that the general managers shall be appointed by the government and the members of the governing boards shall be appointed by the legislature, upon government nomination.[132] As a result, the government enjoys quite an extensive power to control the entire leadership of these agencies. Berger observed that this practice 'clearly fails to follow the positions outlined by the *Declaration of Principles for Freedom of Expression in Africa*[133] and international jurisprudence.'[134]

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 as Chair and Vice-Chair for each of the three bodies respectively. The proposal ignited perhaps the first heated debate in the history of the EPRDF Parliament. Many MPs argued that the proposal, and in

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132 Ethiopian Press Agency Proclamation No. 113 of 1995, (Negarit Gazeta 54th Year No.11); Ethiopian Radio and Television Agency Proclamation No. 114 of 1995, (Negarit Gazeta 54th Year No. 12); Ethiopian News Agency Proclamation No. 115 of 1995, (Negarit Gazeta 54th Year No. 13)

133 Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002)

134 Berger, p. 140

particular the provisions relating to the appointment of the Information Minister and his deputy, would defeat the principal objective of institutionalising the autonomy and independence of these agencies. After a heated debate, the Parliament rejected the proposal and instructed the Committee to prepare and submit a new proposal.

A few days later, the Parliament was reconvened to consider an 'amended proposal', but it was hardly that. The 'amended proposal' simply provided for the Information Minister to be the Chair of the two boards, namely, the Radio and TV Agency and the Ethiopia Press Agency, and for the State Minister of Information to be the Chair of the board of the Ethiopian News Agency. This time the parliament simply approved the same proposal it rejected few days before, with no discussion and just five opposing votes and three abstentions. It was no brainer that the party muscles were at work behind the scenes to ensure MP's toe their lines.

The objective of ensuring the organizational and operational autonomy of the state-controlled press and broadcasting was quashed and it was not difficult to see that considerable amount of arm twisting had occurred prior to the parliament being reconvened to approve the same proposal it had just rejected. This sequence of events demonstrated the lack of genuine political commitment to transform the State controlled print and broadcast media outlets into genuinely public media agencies.[135]

Berger, in his review of media legislation in several African countries including Ethiopia, noted that state-owned media (television, radio, newspapers and news-agencies) is a contested matter, as even governments that claim to have been democratically elected 'have maintained the subservient character of these media so that they continue to serve as low-credibility government-mouthpieces.' He observed that the legal regimes that could guarantee

[135] Bekele, p. 31 – 32

independent and impartial public service communication through these media are absent, and the result is either abuse or perceptions of abuse. This situation results in part from a lack of thorough-going transformation in several respects: historical appointment procedures, journalistic culture in these organisations, accountability processes and funding models[136]

Tiruneh observed that the interests of ensuring operational independence and accommodating diversity of opinion by public service media as envisaged by the constitution can be ensured in three ways: (1) the financial independence of the media from the government, (2) equitable access to the media by the government, citizens, civil society and the public at large, and (3) the managerial autonomy of the media outlets. However, he concludes, the subsidiary press laws of the country do not go along with these constitutionally protected interests.[137]

Particularly in relation to state-owned print media, Berger argued that 'the existence of a large state-owned newspaper sector is at best an archaic hangover of a bygone era.' He observed that the rationale for state involvement in newspapers needs to be questioned, because state newspapers do not generally meet the "market failure" argument. They are already mainly urban, commercial, and advertising-funded, and charge a cover price akin to that of the private newspapers; moreover, the resource scarcity argument as in the case of limited frequency for broadcasting is not applicable for the print industry. Furthermore, the 'ownership of (what turns out to become low-credibility) newspapers (or broadcasters) is not the effective way' to carry across the messages of the government to the public. Instead, he noted, a 'good coverage by an

136 Berger

137 A Tiruneh, Legal and Political Context of Media (Unpublished) (2007)

independent watchdog press is worth far more in terms of credibility than the same content published in media that is seen by the public as being under the government's own control.'[138]

The general principles about the transformation of state-owned broadcasters into independent public service broadcasters with a mandate to serve the public interest, arguably applies to state-owned print press outlets as well, with equal force. The underlying principle about ensuring the independence of publicly financed media, particularly making it free from political and economic influences by the government, is equally applicable for all forms of

[138] Berger, p. 149

media. The African Commission *Declaration of Principles on Freedom of Expression in Africa,* provides the below basic principles.

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.[139]

The Ethiopian private press has substantial financial and organisational limitations. The national level newspapers with the financial and organization wherewithal for a wide circulation remain the State controlled press. Therefore, one of the measures to ensure press freedom and freedom of information with the spirit of the constitutional framework is

[139] Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002)

transforming the State controlled press outlets into an independent public service press ensuring both organizational and operational autonomy.

CHAPTER 10

SUMMARY, CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

10.1 Summary of Major Developments

The genesis of printing in Ethiopia is traced back to the history of scripture printing by European missionaries, which laid the foundations for secular printing at the beginning of the 20th century. But even before the print machines were introduced into the country, Ethiopia had a long and rich tradition of written scripts and manuscripts which dates back to the 13th century.[1] Although the contents of these manuscripts are mainly religious in nature, they also included a variety of subjects including chronicles of rulers, law, literature, philosophy, astronomy and traditional medicines.[2] These vast collections of Ethiopian manuscripts that

[1] The National Library of Ethiopia and the Institute of Ethiopian Studies at the Addis Ababa University maintain a vast collection. The most extensive documentation of Ethiopian manuscripts was done by the project of Ethiopian Manuscript Microfilm Library, which microfilmed thousands of manuscripts in the various churches, monasteries and libraries. The catalogue of this project was first written by William Macomber and later more extensively by Getachew Haile. See: W Macomber, *A Catalogue of Ethiopian Manuscripts Microfilmed for the Ethiopian Manuscript Microfilm Library and for the Hill Monastic Manuscript Microfilm Library Vol. I* (Hill Monastic Manuscript Microfilm Library, Collegeville, Minnesota 1975); H Getatchew, *A Catalogue of Ethiopian Manuscripts Microfilmed for the Ethiopian Manuscript Microfilm Library and for the Hill Monastic Manuscript Microfilm Library Vol. X* (Hill Monastic Manuscript Microfilm Library, Collegeville, Minnesota 1993). William Macomber also wrote Volumes 2 and 3 and he co-authored Volumes 5 to 7 with Getachew Haile who also wrote Volumes 4, 8 and 9. For the collections in the National Library of Ethiopia and the Institute of Ethiopian Studies, See: Institute of Ethiopian Studies., *Exhibition of Ethiopian Manuscripts from the Collection of the Institute of Ethiopian Studies, Museum of the Institute of Ethiopian Studies, University of Addis Ababa, February 16-March 16, 1988* (Institute of Ethiopian Studies Addis Ababa 1988); National Library and Archives of Ethiopia., *Catalogue of Ethiopian Manuscripts in the National Library of Ethiopia* (National Archives and Library of Ethiopia, Addis Ababa 1962)

[2] S Strelcyn, 'Catalogue of Ethiopian Manuscripts of the Wellcome Institute of the History of Medicine in London' (1972) Bulletin of the School of Oriental and African Studies ; R Pankhurst, 'Secular Themes in Ethiopian Ecclesiastical Manuscripts: A Catalogue of Illustrations of Historical and Ethnographic Interest in the British Library' 22 Journal of Ethiopian Studies

survived to our times are not merely hagiography but arguably one of the earliest traditional foundations of learning and printing in modern day Ethiopia.

Missionary printing in the Ethiopian script goes back as early as the 16th century when a section of the Bible was first printed in Rome.[3] Gradually, Ethiopian texts were printed in several places in Europe: in Switzerland since 1527; in Germany since 1583; in the Netherlands since 1598; and in England since 1655. [4] The British and Foreign Bible society pursued an active policy of scripture printing for Ethiopia in early 19th century printing several thousand Bibles.[5] In the second half of the 19th century, printing machines were brought to Ethiopia by European missionaries and continued mainly with printing prayer books and other religious works but gradually laying the foundation for non-religious printing. [6]

Italian military press was established in Mits'iwa soon after their occupation of the port in February 1885, but its production was entirely Italian, and it mainly printed regulations and circulars of the Italian military authorities. [7] In 1890, *Tipographia e Libertia Italiana*, established a commercial printing press in Mits'iwa which since November of the following year began publishing a weekly administrative newspaper called *L'Eritreo*. Around the same

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3 J Potken, *The Psalms, Canticles &C. In Aethiopic, Ed. By J.Potken* (Romæ 1513). I consulted two original copies of this work which are available at the Bodleian Library in Oxford.

4 J Janas, 'History of the Mass Media in Ethiopia' (1991) Studies of the Department of African Languages and Cultures p. 11; G Metaferia and HJ Donald, 'Ethiopia, Status of Media In '*Encyclopedia of International Media and Communications* (Elsevier, New York 2003) p. 563

5 R Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' (1962) 6 Ethiopia Observer p. 247;

6 AD Roberts, 'Documentation on Ethiopia and Eritrea' 1 Journal of Documentation p. 186; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 249; Metaferia and Donald p. 563; S Gupta, 'The Development of Education, Printing and Publishing in Ethiopia' 26 International Information & Library Review p. 175; M Ourgay, 'Printing, Publishing and Book Development in Ethiopia up to the Era of Menelik 2nd' 24 International Information & Library Review 221p. 222; Janas, p. 11; C Prouty and E Rosenfeld, *Historical Dictionary of Ethiopia and Eritrea* (2nd ed edn African Historical Dictionaries, Scarecrow Press, London 1994), p. 259 - 260

7 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 249

time the printing press called *Corriere Eritreo,* was also established in Mits'iwa and began to issue a weekly politico-commercial newspaper under the same name as the press.[8] From about 1900, French Franciscan missionaries who established the St. Anthony leprosy hospital in Harar, had begun printing their mission bulletin called *Bulletin du Leprosarium de Harar* with a roneograph duplicator.[9] The mission bulletin was later replaced by a French journal called *Le Semeur D'Ethiopie* which began to publish in September 1906.[10] *Le Semeur D'Ethiopie* and *Aymero*[11] (the first fully Amharic newspaper) are credited as the first newspapers in Ethiopia.[12]

The first Ethiopian government printing press called *Ye-Ityop'ya Mengist Mahtamiya* (Ethiopian Government Printing Press) and later renamed *Merha Tebeb* (The Beginning of Wisdom) was also established in 1908 when Emperor Menelik had a printing machine imported to Ethiopia.[13] When Emperor Menelik established the first Ministerial framework and defined

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8 Ibid, p. 249

9 Ibid, p. 262; Gupta, p. 176; Roberts, p. 187

10 R Pankhurst, 'Two Early Periodical Publications Djibouti and Le Semeur D'éthiopie as Sources for Late 19th Century and Early 20th Century Ethiopian History.' 19 *Annales d'Ethiopie* p. 241 (Pankhurst gives a detailed annotated chronology of the most important political and other events recorded in the two newspapers. According to the chronology of events, *Le Semeuer d'Ethiopie* did not begin publication until September 1906)

11 The name of the newspaper which refers to knowledge or intelligence of the mind or conscience was chosen by Emperor Menelik. See a reproduction of the front page of the journal in Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262

12 Ibid, p. 262; Gupta, p. 176; Roberts, p. 187; Janas, p. 12; Metaferia and Donald p. 564; HW Lockot, *The Mission : The Life, Reign and Character of Haile Sellassie I* (Hurst, London 1989) p. 36

13 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262; Gupta, p. 177; Janas, p. 12.

Emperor Menelik was instrumental for the beginning of modernising initiatives at the turn of the 20th century. Postal and telegraph services; railroad from Djibouti to Dire Dawa; secular education and printing made modest beginnings under his rule from 1896 – 1910. See: Z Bahru, *A History of Modern Ethiopia: 1855-1974* (James Currey, Oxford 1991); Prouty and Rosenfeld, p. 227. For a brief history of Posts and Telegraph in Ethiopia, See: A Eshete, 'A Page in the History of Posts and Telepgraphs in Ethiopia: 1899 - 1903' 13 Journal of Ethiopian Studies p. 1 – 16. The development of the first formal institutions of government was also accomplished under Emperor Menelik when he created the first ministerial framework in 1908. See: J Paul and C Clapham, *Ethiopian Constitutional Development : A Sourcebook* (Faculty of Law, Haile Sellassie I University, Addis Ababa 1967) p. 320 – 323; S Bekele and J Vanderlinden, 'Introducing the Ethiopian Law Archives: Some Documents on the First Ethiopian

the powers and responsibilities of the first nine Ministers appointed in January of 1908, the Minister of the Pen is declared to be the head of all government presses.[14]

In the second decade of the 20th century, conditions became more auspicious for the development of the press.[15] In 1913, a weekly French journal called *Le Courrier d'Ethiopie* was started. It had a small section and notices in Amharic. In 1922, it included a supplement called *Le petit Courrier d'Ethiopie* giving radio news/information. During the First World War, an Amharic news bulletin called *Yetor Wore* (War News) was issued from the Italian legation in Addis Ababa, which included reports from the war front. [16]

The first biggest homologous printing press and an Amharic weekly newspaper called *Berhanena Selam* were established in 1923. The printing press was first founded in 1921 by Ras Teferi (later Emperor Haile Selassie), as *Ya-Ityop'ya Mengist Alga Warash ya-Leul Ras Teferi Mekonnen Mahatamiya* (The Ethiopian Government Heir to the Throne, Crown Prince Ras Teferi Printing Press) and later renamed *Berhanenna Selam* (Light and Peace) printing press when it was moved into its present location.[17] The Amharic weekly by the same name of

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Cabinet' 4 Journal of Ethiopian Law 411. Emperor Menelik was left moribund by a stroke in October 1910 and died in 1913.

14 Bekele and Vanderlinden, p. 424. (The first nine Ministers and their respective Ministries were: Afe Negus Nesibu for Justice; Negadras Ras Haile Ghiorghis for Foreign Relation and Commerce; Bajironde Mulugeta for Finance; Kentiba Wolde-Tsadik for Agriculture; Fitawrari Habte-Ghiorghis for War; Likemekuas Katema for Interior and Alaka Gebre-Selassie for Minister of the Pen.)

15 Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262

16 S Pankhurst, *Ethiopia: A Cultural History* (Lalibela House, Essex 1955) p. 524; See also S Zanutto, *La Stampa Periodica Etiopica, Rivista Delle Colonie* (Roma 1935) cited by Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 262.

17 Lockot noted Ras Teferi, who was then still the heir to the throne, could not obtain access to government funds for this end and therefore used his own money to acquire the printing machines. But soon he succeeded in raising the funds from the government to import another printing machine. Lockot observed, introducing printing into Ethiopia on a much larger scale was an urgent necessity for Ras Teferi to publish government laws and decrees as well as books and periodicals. Lockot, p. 35 – 36. See also: CF Rey, *In the Country of the Blue Nile* (Duckworth, London 1927) p. 29. Rey observed, the establishment of this printing press was a 'remarkable achievement on the part of the Regent [Ras Teferi later Emperor Haile-Selassie], and one due entirely to his own initiative.'

the printing press emerged as a semi-official newspaper where government notices and decrees were published but at the same time it also rose to prominence as a forum for intellectuals to share and debate their views on modernisation initiatives.

The following ten years saw a gradual rise of more printing houses and press products. The period from the early 20th century until the Italian occupation of Ethiopia in 1936 is the inception period for press in Ethiopia. This is the first phase of evolution of press and press law in Ethiopia spanning a period of one century which can be categorized into four phases. In this first phase of the inception period, the missionary printing laid the foundation for the gradual growth of printing industry in the early 20th century and the Ethiopian freely born press was steadily growing until the Italian aggression in 1936. Up to that point, there were no fewer than ten periodical press products in Amharic and foreign languages. The Amharic periodicals: *Aymero, Berhanena Selam, Atbiya Kokeb*[18] and *Kesate Berhan*[19] were emerging as remarkable free presses entertaining a lively debate and different views. The foreign language press products consisted of French periodicals *L'Ethiopie Commerciale, Le courrier d'Ethiopie, and*

[18] *Atbiya Kokeb* was overseen by Herouy Woldeselassie but it was managed by Andreas kavadia, the founding editor of *Aymero*. See: Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 283; Metaferia and Donald p. 564;

[19] *Kesate Berhan* was an Amharic monthly bulletin started in late 1920's. See: Lockot, p. 36. A publishing house by the same name was also founded in Addis Ababa, Harar and Jima town. See: Metaferia and Donald p. 564. *Kesate Berhan* is probably one of the earliest attempts to establish a publishing house. We do not have a detailed documentation of its work or publications, except the monthly magazine published under the same name. Publishing houses did not come into existence until late in the 1950s and 1960s. Until then, authors were their own publishers. As Marcel Cohen points out, most of the early publications had a very limited circulation and it was not until 1925 that books were first sold. M Cohen, 'La Naissance D'tune Litterature Imprimee En Amharique' Journal Asiatique 348cited in Roberts, p. 186. See also: Gupta, p. 178 – 179. Just before the Italian invasion, Gupta noted, there were few printing presses but no single publishing house. But Janas on the other hand noted a publishing firm called *Goha Atse'bha* was established in 1926. One of the founders, according to Janas, was Herouy Woldeselllasie who had earlier established a journal by the same name. But Janas refers to the printing presses as 'publishing houses' and as such it is not clear if she made a distinction between printers and publishing houses. See: Janas, p. 12 - 13

La Revue Radionationale;[20] Greek periodicals *Aithiopicos Kosmos* (Ethiopian World) and *Aithiopicos Nea* (Ethiopian News);[21] and an Italian fortnightly called *Il Notizario.*

This first phase of the inception period is also the time when the first written laws and institutions relevant to press came into existence. When the first newspaper appeared from about 1900, the administration of justice in Ethiopia was still based on customary laws and institutions. The Ethiopian customary law did not develop as a defined body of law and it varied considerably from place to place. But one of the most authoritative historical sources of law in the legal literature of Ethiopia was a venerable book known as the *Fetha Nagast* or the *Law of the Kings*, a collection of religious and secular laws originally written in Arabic by a Coptic churchman in Egypt and introduced to Ethiopia in the 17th century.[22] It was the earliest edict with a set of provisions imposing restrictions on freedom of expression. It stipulated sanctions against blasphemy and apostasy; obscenity; incitement; spreading falsehood and false accusation.[23] However, there is only very little documentation about the functioning of early

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20 *La Revue Radionationale* giving radio news from Europe to Ethiopia was started in 1935. See: B Franco, *Storia Del Giornalismo in Etiopia* (Rome 1963), as cited by Janas; p. 19

21 The Greek periodicals were edited by P.K. Vryennios from 1927 to 1931. See: Metaferia and Donald p. 564; Pankhurst, 'The Foundations of Education, Printing, Newspapers, Book Production, Libraries and Literacy in Ethiopia' p. 283

22 Ethiopian tradition holds that the *Fetha Nagast* was introduced into Ethiopia during the reign of *Zar'a Ya'qob* (1434 – 1468) but the first record of use of the *Fetha Nagast* dates from the reign of *Sartse Dengel* (1563 – 1597). See: P Tzadua and P Strauss, *The Fetha Nagast: The Law of the Kings* (Faculty of Law, Haile Sellassie I University, Addis Ababa 1968) p. xvii. The *Fetha Nagast* was first written in the 13th century drawing from a number of sources including the Old and New Testament; the proceedings of the early religious councils such as Nicaea and Antioch; books of Roman-Byzantine laws; Syro-Roman law and Canons. p. xv – xvi

23 Ibid p. 286, 287 and 305

traditional institutions and barely any documentation about the interpretation and application of the *Fetha Nagast* edicts on the various restrictions it imposed on freedom of expression.

The promulgation of the first Penal Code in 1930 is the first legal codification in Ethiopia which introduced broad based areas of legal restriction on freedom of expression. It was proclaimed on the occasion of the coronation of Emperor Haile-Selassie in November 1930. It codified the already existing restrictions of the *Fetha Nagast* and customary laws, and furthermore introduced a broader array of restrictions including defamation, sedition and special protection for the king and his family, the monarchy, and the government.[24] The imperial monarchy subsequently issued the first written constitution in 1931 which was modelled after the Japanese imperial constitution of 1889. The constitution provided for such rights as prohibition of arrest, search, deprivation of property and violation of secrecy of correspondence except in accordance with the law, but provisions on freedom of speech, religion and association contained in the Japanese model were conspicuously left out.

The first Penal Code and the first written constitution were efforts towards modern codification of laws in Ethiopia, but Emperor Haile-Selassie was evidently keen not only on his modernisation initiatives but also on consolidation of his power by suppressing dissent. The new legal and political order of Emperor Haile-Selassie had an immediate effect as editors soon began to self-censor their publications. An editorial note of Berhanena Selam in May 1931 explained why it had had to reject articles that 'were not fit for the time,' and added that contributors would have refrained from blaming the editor for such measures had they

[24] Ethiopian Penal Code of 1930; Part II: Chapter 1 Article 168; Chapter 2 Articles 172, 173 & 180; Chapter 16 Article 268; Chapter 17 Article 270 & 271; Part III: Chapter 1 Article 273; Chapter 2 Article 291; Chapter 10 Article 386; Part V: Chapter 2 Article 484.

consulted someone conversant with the law.[25] The role of an independent press was beginning to diminish with consolidation of power by Emperor Haile-Selassie.

In March 1935, the imperial government issued elaborate legislation investing the Ministry of Interior with authority to censor all publications. [26] On the eve of the Italian aggression, a Press Bureau was established which issued press statements and press permits for foreign correspondents. The Press Bureau also introduced certain censorship rules for telegraphic transmission by foreign correspondents as the government appeared to be concerned about military information being passed on; however, it was never an effective system.

The budding Ethiopian press was soon halted with the Italian aggression in 1936. The Italian occupying forces introduced their own colonial publications and imposed censorship rules on foreign correspondents. But the rather short period of occupation by the Italians also saw the emergence of underground and overseas periodical publications to support the patriots' struggle for liberation.

When the Italian occupation ended in 1941, reviving the Ethiopian press was one of the earliest but daunting tasks in severely war damaged Ethiopia. The retreating Italian forces either dismantled or burnt industrial structures, including radio stations and printing presses.[27] The official Amharic newspaper called *Addis Zemen* (New Era) was founded in the same year

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25 , 'Editorial Note' *Berhanenna Selam* (Addis Ababa 14 May 1931) Editorial, as cited in Z Bahru, *Pioneers of Change in Ethiopia: The Reformist Intellectuals of the Early Twentieth Century* (Eastern African Studies, James Currey, Oxford 2002), p. 193

26 Bahru, Pioneers of Change in Ethiopia , p. 193

27 Bahru, *A History of Modern Ethiopia: 1855-1974* ; Prouty and Rosenfeld, p. 262; J Abbink, 'Transformation of Violence in Twentieth-Century Ethiopia: Cultural Roots, Political Conjunctures' 25 Focaal: Journal of Global and Historical Anthropology 57 p. 63

in 1941.[28] An English weekly called *The Ethiopian Star* was also started in 1941 and remained in circulation until 1943 when it was replaced by the *Ethiopian Herald*.[29] In the same year, the Ethiopian News Agency was established and laid the foundation for a nationwide information system.[30]

In the first decade after Liberation, the press was able to revive, albeit very slowly and in a much more controlled environment than in the pre-war period. There were less than ten periodical press products, including a small monthly church publication.[31] From the 1950s up to the early 1970s, there was a further gradual development of press products. The number, types, coverage and the overall appearance and quality of periodical press products grew over the two decades[32], with a proliferation of newspapers, magazines, bulletins, academic journals and other kindred press products. By the early 1970s, several printing presses had been

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28 According to Janas, the name *Addis Zemen* was probably inspired by the *New Times* of Sylvia Pankhurst published in Britain during the Italian occupation. Janas, p. 23 and 64

29 Since December 1958, *Addis Zemen* and *Ethiopian Herald* have become official dailies and remain to be in circulation to date as the official newspapers of the successive governments.

30 Janas, p. 64 - 66

31 According to a booklet published by the Press and Information Department of the government at the time, as cited by Seed, there were nine newspapers but the report erroneously refers to *Negarit Gazeta* (the official gazette for the publication of laws) as a periodical newspaper. Seed sarcastically remarks 'it shows how the authorities were anxious to make the list appear as long as possible.' See: WH Seed, *Ethiopia's Iron Curtain* (W. H. Seed, Chicago 1955), p. 8. *Negarit Gazeta* was established in 1942 as the official gazette: (Proclamation No. 1 of 1942, known as 'The Establishment of the *Negarit Gazeta* Proclamation). See also: N Marein, *The Judicial System and the Laws of Ethiopia* (Rev. ednRoyal Netherlands Printing and Lithographing Co., Rotterdam 1951), p. 19

According to another report entitled 'Continental Daily Mail Survey of the Empire of Ethiopia 1941 – 1951' – also published by the Press and Information Department in 1951 as cited by Seed, there were eleven periodical press products. But this report also erroneously lists the *Negarit Gazeta* as a periodical press. See: Seed, p. 9 - 10

32 Janas gives a listing of the most notable press products of this period. Janas, p. 28 – 38.

established and there were about ten dailies, several weeklies and other periodicals, although some were published at rather irregular intervals.

The growth in periodical press in this period was accompanied by the expansion of radio and television services as well as progress towards a system of modern mass communication and the development of modern laws and institutions governing and regulating press activity. In November 1955, the Revised Constitution of the Imperial government provided that 'freedom of speech and of the press is guaranteed throughout the Empire in accordance with the law'[33] but it also further provided that 'respect for the rights and freedoms of others and the requirements of public order and the general welfare, shall alone justify any limitations upon the rights guaranteed [in the same chapter.]'[34] In July 1957, a new Penal Code was adopted and it introduced an extensive set of provisions outlining the principles of criminal liability for participation in offences relating to publications[35] and various types of restrictions on freedom of expression aimed at protection of honour;[36] public order;[37] public morals;[38] and judicial proceedings.[39] It further provided special protection for the monarchy, the government and foreign states as well as their representatives against insult, abuses or defamation.[40] The

33 Revised Constitution of Ethiopia (Negarit Gazeta 15th Year No. 2), Article 41.

34 Ibid, Article 65.

35 Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1) Articles 41 - 47

36 Ibid, Articles 574 - 588

37 Ibid, Articles 479 – 481, 767, 768

38 Ibid, Articles 486, 608 – 613, 771

39 Ibid, Articles 443, 445, 451

40 Ibid, Articles 256, 276 - 278

Civil Code adopted in 1960 provided several provisions governing civil liability of defamation;[41] publishing contracts;[42] and literary and artistic ownership.[43]

After an attempted *coup d'état* against the imperial monarchy in December 1960, the Emperor issued a Decree in 1961 which amended the Penal Code and imposed a corporal punishment of flogging for such offences as 'disturbance of the public opinion, defamation, slander against the Emperor or the government, publication of inaccurate reports, false rumours and alarming the public.' [44] The Imperial period had a mixture of modern legislative reforms as well as laws and systems designed to ensure consolidation of power by the monarchy. It allowed a controlled growth of press to the extent press products served the purposes of the Imperial regime. From the inception stage, press was born free in Ethiopia and remained free for a period of time but not too long after its birth, press freedom gave way to 'Imperial Press.'

From February 1974, a wave of strikes, student demonstration and army mutinies began to demand political reform, including the lifting of press censorship. Emperor Haile-Selassie was deposed in a military coup d'état in September 1974 but in the last few months of the imperial rule and particularly after the political unrest in February 1974, the combined effects of workers strikes, student movements and army mutinies has already wrested control of the media from the establishment and left them free to be used by the forces opposed to the imperial regime.[45] The lifting of censorship from the state controlled press was quite remarkable and exciting. The press began to report fairly accurate accounts of the current political events and

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41 Ethiopian Civil Code of 1960, Proclamation No. 165 of 1960 (Negarit Gazeta 19th Year Extraordinary Issue No. 2), Articles 2044 - 2049

42 Ibid, Articles 2672 - 2697

43 Ibid Articles 1647 - 1674

44 The Penal Code Penalties Decree of 1961 (Negarit Gazeta 20th Year No. 15); S Lowenstein, 'The Penal System of Ethiopia' 2 Journal of Ethiopian Law 383 p. 389

45 B Thomson, *Ethiopia : The Country That Cut Off Its Head : A Diary of the Revolution* (Robson Books, London 1975) p. 46

to issue critical reportages. More space was given to an increasing number of critical letters from citizens. There was a torrent of political writings both through the official press as well as through various leaflets.[46]

The military government which came to be known as the Dergue officially assumed full governmental powers from September 1974 and proclaimed that opposing the aims of the military motto *Ethiopia Tikdem* (Ethiopia First) was prohibited. In November 1974, the Dergue adopted a Special Penal Code, which among other things, imposed severe penalties on a wide array of offences including incitement, provocation, publication of false or tendentious information, punishable with up to fifteen years of imprisonment.[47] In spite of these proclamations, the military leaders initially appeared to allow a degree of press freedom. There was a sudden press boom as well as mushrooming underground publications by the different political groupings of the mid-1970s. The columns of the official newspapers *Addis Zemen* and the *Ethiopian Herald* entertained free political debate, news and views. But the newly reborn press freedom was soon to disappear as the military leaders began to consolidate power.

The military authorities declared 'Ethiopian Socialism' as the new ideology of the new political order. Marxist-Leninist ideology came to define the entire socio-economic and political life of the country. In 1975, all the major printing presses were already nationalized and by late 1976, censorship rules and institutions were re-established, and the military authorities made it clear that any form of expression contrary to the spirit of the revolution was not only prohibited but even the slightest infraction was severely punished. Foreign

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46 J Markakis and N Ayele, *Class and Revolution in Ethiopia* (1st ednSpokesman, Nottingham 1978) p. 94 - 95

47 Special Penal Code, Proclamation No. 8 of 1974 (Negarit Gazeta 34th Year No. 8), Article 10 about 'Provocation and Preparation' punishable up to ten years; Article 35 about 'Offences against the motto of *Ethiopia Tikdem*' punishable up to ten years and Article 37 about 'False or Tendentious Information' punishable up to fifteen years rigorous imprisonment.

correspondents were expelled, and foreign publications disappeared. All media outlets became instruments of propagating the new Marxist-Leninist ideology and a great number of socialist publications were introduced. The press assumed all the characteristics of a controlled and owned propaganda arm of the communist government. Not too long after its rebirth, press freedom gave way to 'Revolutionary Press.' In September 1984, the military leaders and their civilian partners founded the Marxist-Leninist Workers Party of Ethiopia (WPE), and in 1987 a new constitution which was modelled on the socialist countries 'people's democratic republics' was adopted and entered into force. The new constitution stipulated that 'Ethiopians are guaranteed freedom of speech, press, assembly, peaceful demonstration and association.'[48] However, nothing substantial changed with the new constitution and Ethiopia simply remained under the autocratic rule of the military leaders.

In 1991, the military leaders were in turn overthrown by the rebel movement called the Ethiopian People's Revolutionary Democratic Forces (EPRDF). The EPRDF was a Marxist – Leninist guerrilla movement for nearly two decades but once the military leadership was defeated in 1991 and in a bid to win both national and international support at the time of global democratic reform movement, it dropped the Marxist-Leninist ideology and pledged for a democratic reform process based on a multiparty system, democratic freedoms, and respect for human rights. Press freedom was once again reborn in Ethiopia and it was afforded legal protection by the transitional period Charter which proclaimed the sanctity of human rights in accordance with the Universal Declaration of Human Rights.[49] It was soon followed by euphoric exercise of press freedom and proliferation of newspapers and magazines. However, when the EPRDF soon began to dominate the political landscape, opposition forces and the

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48 Constitution of the People's Democratic Republic of Ethiopia (Negarit Gazetta 47th Year No. 1) , Article 47

49 Transitional Period Charter of Ethiopia (Negarit Gazeta 50th Year No. 1, Adopted 22 July 1991)

press could only participate in the political space within the limits and controls defined by the new rulers, often referred to as 'within the limits of the red line.'

In October 1992, the transitional government enacted a Press Proclamation which among other things provided for registration and licensing requirements for any kind of press activity,[50] restrictions on media content,[51] and penalties for violation of the law.[52] The content restrictions included the responsibility of the press to ensure that it is free from 'any criminal offence against the safety of the state, any defamation or false accusation against any individual/nation/nationality/people or organization, any criminal instigation of one nationality against another or incitement of conflict between people,' and the penalties included imprisonment even for a mere administrative infraction, such as, breach of registration requirements or failure to submit a copy of press to the relevant government office.[53] In 1993, the transitional government acceded to the International Covenant on Civil and Political Rights and in 1995 a new constitution was adopted and entered into force. The new constitution re-confirmed the legal guarantee for freedom of expression and press freedom but also laid down the legal limitations. [54]

Although the 1992 Press proclamation was a restrictive law, the federal constitution and the international covenants should have been a powerful foundation for the legal protection of freedom of expression and press freedom. However, the political will and commitment of

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50 Freedom of the Press Proclamation No 34 of 1992 (Negarit Gazeta 52nd Year No 8), Article 6(1)

51 Ibid, Article 10

52 Ibid, Article 20

53 For a detailed analysis of the Press Law of 1992, see: D Bekele, The Legal Framework for Freedom of Expression in Ethiopia' (Article 19: Global Campaign for Freedom of Expression, London 2003)

54 Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1 of 1995, Federal Negarit Gazeta 1st Year No. 1), Article 29.

the new leaders was already on the wane as they began to consolidate power. The discrepancy between rhetoric and practice began to unravel when scores of journalists were arrested and Ethiopia earned herself an infamous reputation as one of the worst jailers of journalists in Africa. [55] The government accused the private press of being politically motivated and lacking in professional responsibility; whereas the private press, political opposition forces and international media watch groups accused the government of maliciously attacking the private press. The polarised political dynamics of Ethiopia came to be reflected in a polarised press, but a more troubling trend emerged when members of the private press began to be systematically harassed and persecuted.

The persecution of journalists and political repression generally escalated to the highest level after a disputed parliamentary election in 2005. Just one week before the election, the government adopted a new Criminal Code, but almost all of the provisions are directly adopted from the Imperial Penal Code of 1957 which in turn was adopted from the draft Swiss Penal Code of 1937.[56] The Swiss Penal Code has since been amended several times with substantial changes[57] but the Ethiopian drafters of the 2005 Criminal Code appear to have simply adopted the provisions from the 1957 Imperial Penal Code without having regard to the development of law over the past nearly half a century and despite the inconsistency of the Imperial Penal

55 Committee to Protect Journalists, 'Editor Released after 9 Months in Prison' (Report, CPJ 2002) <http://cpj.org/2002/03/editor-released-after-nine-months-in-prison.php> accessed 25 August 2010

56 The Swiss Penal Code which was submitted to a referendum and passed by a narrow majority decision in December of 1937 has entered into force on 1 January 1942. The Ethiopian Imperial Penal Code of 1957 was first drafted by the Swiss legal scholar Jean Graven who modelled it after the Swiss Penal Code. For a brief historical background and introduction of the Imperial Penal Code of 1957, See: J Graven, 'The Penal Code of the Empire of Ethiopia' 1 Journal of Ethiopian Law 267 ; Lowenstein,

57 F Dessemontet and T Ansay, *Introduction to Swiss Law* (3rd ednKluwer Law International, The Hague 2004), p. 246 – 247

Code provisions with constitutional guarantees for freedom of expression, constitutional protection for press as an institution and the demands of modern day democracy.

Arguably, the new Criminal Code is a step backwards from the Imperial Penal Code, not only in its wholesale adoption of constitutionally suspect provisions, but also in certain cases, for example the defamation rules, which expand the scope of criminal liability and increase the severity of the penalty. Article 613 (4) of the new Criminal Code is a new addition which clearly expands the scope of defamation to include cases 'where the imputation or allegation is false and made negligently, it is punishable, upon complaint by up to one year imprisonment.'[58] In a similar retrogressive way, the new Mass Media law adopted in 2008 accorded special protection both for elected and appointed public officials by providing that false accusation and defamation against public officials of the legislative, executive or judicial authorities shall be prosecuted without private complaint.[59] This is a sharp step backwards both from the Imperial Penal Code (1957) and the new Criminal Code (2005) which provided that criminal proceedings shall be taken only upon complaint by the individual or body corporate claiming to have been injured.[60]

Following the disputed parliamentary election in 2005, two dozen journalists along with almost the entire upper echelon of the opposition leadership and human rights activists were arrested and charged with crimes of conspiracy. All but few of the defendants refused to defend themselves, questioning the independence of the court and rejecting the charges as being

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58 The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 613 (4)

59 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64), Article 43 (7).

60 Penal Code of the Empire of Ethiopia, Proclamation No. 158 of 1957 (Negarit Gazeta Extraordinary Issue 16th Year No. 1), Article 587 and The Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No 414/2004), Article 618.

politically motivated and trumped-up with false evidences. However, the authorities pressed on with the criminal charges and several of the defendants were convicted and sentenced to life imprisonment, although they were subsequently 'pardoned' and released in a political deal. International human rights groups described it as a sham trial. Since then, international human rights groups have documented a downward trajectory in the overall human rights situation and on freedom of expression and press freedom until April 2018 when the EPRDF reformist leadership led by Prime Minister Abiy Ahmed took over power. But during the EPRDF rule until April 2018, scores of private presses were shut down and journalists have either fled the country or remained subject to harassment and arrest.

The new Criminal Code adopted by EPRDF government in 2005 was followed by a new Mass Media Law in 2008,[61] the Charities and Societies Proclamation in 2009[62] and the Anti-Terrorism Law in the same year[63]. These laws have since been used to systematically restrict civil and political freedom in general and freedom of expression and press freedom in particular. The Anti-Terrorism law has introduced by far the greatest and the most chilling restriction on freedom of expression and press freedom in Ethiopia. International human rights groups warned that the Anti-Terrorism law provides the authorities a potent instrument to crack down on political dissent and to stifle freedom of expression and press freedom. Indeed, within two years of this law being adopted, CPJ reported that the authorities have charged ten

61 Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590 of 2008 Negarit Gazeta 14th Year No. 64)

62 Charities and Societies Proclamation (Proclamation No. 621 of 2009 Negarit Gazeta 15th Year No. 25)

63 Anti-Terrorism Proclamation (Proclamation No. 652 of 2009 Negarit Gazeta 15th Year No. 57)

journalists under the Anti-Terrorism law.[64] Many of them were convicted and sentenced to various terms of imprisonment.

The election crisis of 2005 and its aftermath has led to a repressive political environment and closing of the entire political space culminating in the April 2008 local elections in which the ruling EPRDF was declared to have won 99.9 % of the seats[65] and in the May 2010 parliamentary elections, it was declared to have won 99.6 % of the seats, thereby cementing a complete hegemony of the ruling party. Restrictions on freedom of expression are not limited to the traditional private press. International media watch groups documented patterns of media repression including the blocking of websites. In March 2008, RSF included Ethiopia in the list of 'Internet Enemies.'[66] In 2009, Open Net Initiative (ONI) reported Ethiopia was the only country in Sub-Saharan Africa that engaged in a politically motivated internet filtering, targeting independent media, political blogs and human rights websites.[67] In 2009, CPJ reported that the Ethiopian government was the second worst jailer of the press in Sub-Saharan Africa.[68] In November 2011, ten prominent journalists and critics of the government were charged with 'terrorism.'

After the 2005 election crisis, the EPRDF government introduced a discourse about the role of the press in the economic development process of the country. It is referred to as

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64 CPJ, 'Ethiopia Charges Six Journalists with Terrorism' (2011) <http://www.cpj.org/2011/11/ethiopia-charges-six-journalists-with-terrorism.php> accessed 13 November 2011

65 L Aalen and K Tronvoll, 'The 2008 Ethiopian Local Elections: The Return of Electoral Authoritarianism' 108 African Affairs 111

66 Reporters without Borders, 'The New List of Internet Enemies' (Report, RSF 2008) <http://en.rsf.org/first-online-free-expression-day-12-03-2008,26086.html> accessed 26 August 2010; J Crawford, Ethiopia: Poison, Politics, and the Press' (CPJ Special Report, New York 2006)

67 Open Net Initiative, 'Internet Filtering in Sub-Saharan Africa' (2009) <<http://opennet.net/research/regions/ssafrica>,> accessed 19 May 2010

68 CPJ, 'C.P.J. Urges Ethiopia to Pursue Press Reform' (2010) <http://www.cpj.org/2010/02/cpj-urges-ethiopias-zenawi-to-pursue-press-reforms.php> accessed 28 May 2010

'developmental journalism'[69], which is an extension of the new government discourse about 'developmental state.' The government narrative on this subject looks in to the experiences of China and South East Asia where economic progress was allowed to override and subordinate democracy and human rights. The underlying assumption, although not explicitly stated, is that Ethiopia needs more economic growth rather than more freedom and that the western liberal conception of democracy and press freedom is not relevant for Ethiopia. Press freedom which was once again re-born in 1991 gave way to the notion of 'Developmental Journalism.'

The Criminal Code (2005), the Mass Media proclamation (2008) and the Anti-Terrorism proclamation (2009) became effective instruments of silencing, punishing and repressing freedom of expression and media freedom in Ethiopia leading to the arrest of scores of journalists and many more were forced to flee from their country. The Anti-Terrorism law was arguably the culmination of repressive and chilling laws against freedom of expression and press freedom in Ethiopia. As the Dergue era Special Penal Code was the chilling law of the military regime, the Anti-Terrorism law was an even more chilling law of the EPRDF

69 Nebiyou Yonas in his Master's Thesis noted journalists he interviewed at the state-owned media outlets, most notably the state-owned newspapers practice 'developmental journalism' and furthermore several journalists confirmed they practice self-censorship. N Yonas, *Self-Censorship among Print Journalists in Ethiopian Government Media* (Addis Ababa University, Addis Ababa 2008), p. 20, 24

regime until April 2018 when the reformist leader Prime Minister Abiy Ahmed took over power.

By way of recapping the summary section of this chapter, below is the chronological list of major laws and regulations enacted by the three successive regimes impacting on freedom of expression and press freedom:

- The first Penal Code and the first Constitution (1930 & 1931)
- The first censorship rules (1935)
- Public Security and Printing Control Proclamation (1942)
- Censorship Rules (1943)
- Revised Constitution of the Imperial Government (1955)
- The Civil and Penal Codes (1955 & 1960)
- The Decree to Amend the Penal Code (1961)
- The Special Penal Code (1974)
- The PDRE Constitution (1987)
- The Charter of the Transitional Government (1991)
- The Press Proclamation (1992)
- The FDRE Constitution (1995)
- The FDRE Criminal Code (2005)
- Mass Media Proclamation (2008) and
- Anti-Terrorism Proclamation (2009).

10.2 Conclusion and Recommendations

The international human rights instruments establish that freedom of expression is valued as a universal human right. Freedom of expression and press freedom are among the essential foundations of a democratic society and are basic conditions for the progress of a democratic society and for the development of every human being. Ethiopia needs an independent and pluralistic press freedom to promote citizens participation for economic development, to foster accountability, to build democracy and reconciliation. Respect for freedom of expression and press freedom is central to the attainment of other constitutionally protected rights.

As the historical analysis in this thesis showed, the vast collections of Ethiopian scripts and manuscripts; the Ethiopian oral traditions of speaking in Wax & Gold; the introduction of printing machines and the emergence of free press from the beginning of the 20th century are tangible evidences demonstrating freedom of expression arguably existed in Ethiopia's historical tradition as kind of an indigenous concept long before the modern day international covenants and constitutions were adopted.

At the beginning of the 20th century when the first newspapers appeared, and press freedom was thriving, the legal environment of that period is arguably comparable to the common law concept of the liberty being residual; i.e. the concept of freedom of expression and press freedom simply existed where there is no common law rule or statutory rule restricting its existence. At the time the first newspapers appeared in Ethiopia, there was neither statutory nor customary prohibition on press freedom. To the contrary, the cultural and traditional foundations discussed in the first part of this thesis showed how the concept of freedom of speech simply existed in the Ethiopian cultural life for a long time. The only exception to this liberty was a specific set of limitations imposed by customary rules which

is discussed in chapter 3.2 of the thesis but there are no evidences of how the specific set of limitations provided under customary law were enforced.

The history of press and press law during the past 100 years of Ethiopia's dramatic political history shows an established tradition of press work and popular demand to reclaim press freedom when successive regimes begun taking measures to restrict press freedom. Since the introduction of printing machines and start of newspapers at the beginning of the 20th century, the demand for freedom of expression and press freedom was at front and centre of every turn of Ethiopia's political chapter from the monarchy to the fascist occupation; from the revolution to the armed insurrection and it remains high on the political agenda. The demand for press freedom is initially heeded but as the successive regimes consolidate political power, they introduce a more restrictive and more punitive laws negatively affecting freedom of expression and press freedom.

Ethiopia is yet to develop and deepen a liberal and democratic political culture to foster the growth of an independent and effective press. An enabling legal environment consistent with international human rights standards will be an important step in fostering press freedom. Ethiopia's recent accession to both the regional and international bill of human rights and the constitutional guarantee for freedom of expression and press freedom was a major step forward to create the necessary legal framework and it lays a powerful foundation to ensure freedom of expression and press freedom.

State control of the press also remained a structural impediment for press freedom in two important ways. First, the requirement of press registration certificate, which effectively qualifies as press licensing, is fully under the government discretion. For newspapers that have a circulation beyond one region, the authority to register or refuse

starting a newspaper is vested with a federal level government agency directly accountable to the Prime Minister. Second, all the publicly financed press outlets remained mouthpieces of the EPRDF government under the strict control of a federal level governmental agency at least until April 2018.

Despite the constitutional guarantees and international obligations, this thesis has uncovered how the current legal framework for press in Ethiopia remains restrictive, repressive and overly punitive having a chilling effect on freedom of expression and press freedom. As the historical analysis and the comparative analysis on the current legal framework shows, many of the restrictive, repressive and punitive laws are inherited from the past imperial and military rule period penal codes and regulations. In some instances, for example as discussed in chapter 8, the current Criminal Code not only retained rather archaic principles of criminal liability and imprisonment for speech and press offences inherited from the imperial penal code but also substantially increased the severity of the penalties for speech and press offences. In the same vein, the current Criminal Code also inherited constitutionally inconsistent provisions from the Dergue Special Penal Code of 1974 which was one of the most repressive and extremely chilling pieces of legislation adopted by the military regime. Furthermore, the Anti-Terrorism Law adopted in 2009 has created a new offence with an extremely severe penalty which has the utmost chilling effect so far on freedom of expression and press freedom. The adoption of subsidiary laws which not only maintain the old laws limiting freedom of expression and press freedom, but also increase the severity of the penalties is contrary to the spirit of the constitutional framework and Ethiopia's international obligations. It will be necessary to replace them with new

provisions that balance freedom of expression and legal limitations in accordance with contemporary international standards.

Creating an enabling legal framework for freedom of expression and press freedom in Ethiopia requires a comprehensive law reform particularly on the Criminal Code, the Mass Media proclamation and the Anti-Terrorism proclamation to bring relevant provisions in conformity with the constitutional guarantees and the international human rights standards. Passing a nicely written law is not enough unless it is accompanied by a genuine political will and commitment to implement it in accordance with the spirit in which they were written. The political will and commitment of the new administration led by Prime Minister Abiy Ahmed offers an opportunity to implement such reforms as indicated in the recommendations here below.

Recommendations relating to international covenants and the constitution:

As discussed in this thesis[70], Ethiopia has still not published the ratification proclamation of its accession to the ICCPR in accordance with the constitutional requirements. This legal gap should urgently be rectified by adopting the ratification proclamation and publishing same in the official Federal Negarit Gazeta.

In order to ensure full protection of the rights to freedom of expression and press freedom, Ethiopia should further adopt the regional and international human rights

[70] See in particular the discussion in Chapter 7 relating to the status of international covenants under Ethiopia's law.

mechanisms including the optional protocols to the ICCPR and the optional protocol to the ACHPR on the establishment of the African Court on Human and Peoples' Rights.

The judicial review gap in Ethiopia's constitutional framework[71] should be rectified by an amendment of the constitution and establishing an independent constitutional court fully empowered to decide on all constitutional matters including interpretations of the constitution and constitutionality of subsidiary laws.

Recommendations relating to the Criminal Code:

The archaic rules of criminal liability relating to mass media[72] which were directly inherited from the imperial penal code and included in the Criminal Code (2005) stipulating punishment without guilt on publishers, printers and distributors should be abolished.

The rules on criminal defamation[73] which were not only directly inherited from the imperial penal code but also made even worse by the Criminal Code (2005) stipulation expanding the scope of criminal defamation and increasing the severity of the punishment should be abolished. In the same vein, retrogressive provisions of the Mass Media proclamation (discussed in chapter 8.2) stipulating special protection for public officials from alleged 'criminal defamation or false accusation' should be abolished. The rules on extra-contractual liability provided under the Ethiopia Civil Code are enough to protect the rights, reputations and honour of others in civil defamation cases. But even in such cases, civil defamation suits should not be used to stifle press freedom and the Civil Code provisions on defamation should be amended to recognize immunity for any utterances

71 See Chapter 6.3

72 See Chapter 8.2

73 See Chapter 8.3

made not only in parliamentary debate or in the course of legal proceedings but also other official public meetings should be recognized as privileged forums in the interest of free and transparent discussions as well as to allow the media to report on statements made in such privileged forums.

The Criminal code rules on protection of judicial proceedings and contempt of court[74] which are directly inherited from the imperial penal code and the Dergue special penal code with more severe penalties are contrary to comparative international standards and should be amended to allow the freedom of seek, receive and impart information guaranteed under international human rights covenants. The law should allow that public hearings of a general public interest can be reported in the media with only narrowly defined limitations to protect interests of proper administration of justice.

The Criminal Code rules creating special protection for the State, foreign states and inter-state institutions or their officials[75] are also directly inherited from the imperial penal code which gave special protection to the Emperor, his family and his government.

The petty offences section of the Criminal Code (2005)[76] also directly inherited the imperial penal code provisions on speech related offences including slight insult or offensive behaviour; reporting or spreading false or biased news; and blasphemy (in the case of blasphemy increasing the maximum penalty which was 8 days imprisonment under the imperial penal code to one-month imprisonment in the new Criminal Code). All this speech related petty offence provisions with criminal sanctions should be abolished or

74 See Chapter 8.4

75 See Chapter 8.6

76 See Chapter 8.7

appropriately amended because they are inconsistent with the constitutional guarantees and international obligations for the protection of press freedom.

The speech related criminal code provisions on 'provocation and preparation'[77] which is directly inherited from the imperial penal code and the Dergue Special penal code with an even more severe penalty should be abolished and only the legitimate criminal code provisions should be amended in conformity with international standards.

Recommendations relating to the Mass Media Proclamation:

The constitutionality of the Mass Media proclamation and the federal level regulatory agency it has established is open to doubt[78] because the federal parliament has no such power to enact laws on regulation of mass media institutions. This power is reserved to the states (regional governments) but given the Ethiopian political context and capacity of regional governments, it is desirable if this power is vested with the federal government and the federal parliament. It therefore requires a constitutional amendment to give the federal government power to enact press laws.

The mass media rules which reserves the right to establish a mass media institution only for Ethiopian nationals[79] thereby excluding foreign nationals residing in Ethiopia from establishing a mass media institution should be amended to allow this right to everyone

77 See Chapter 9.2

78 See Chapter 9.1

79 See Chapter 9.1.1

because the constitutional guarantee for freedom of expression and press freedom is for everyone in the country.

The mass media rule which empowers the authorities to impose prior restraint or impounding on press products in the name of national security[80] should be abolished and any such restriction for legitimate purposes of national security and only with authorization of a court, should be defined very narrowly to protect the freedom to seek, receive and impart information.

The mass media rules empowering the attorney general to decide on remand custody of journalists and the heavy fines imposed for minor contraventions[81] such as failure to deposit gratuitous copies of press products creates a chilling effect on press freedom. It should be amended in line with the constitutional guarantees for press freedom.

The mass media licensing regime and the requirements of a mandatory juridical personality to own a broadcasting service, news agency or periodicals[82] which is imposed by the Mass Media proclamation should be abolished. The Mass Media proclamation which gives a sweeping and discretionary power to the government agency in this regard should be amended in line with the constitutional guarantee for press as an institution and clearly stipulating that any administrative decision by regulatory bodies is subject to appeal to courts of law. Depending on the type of media institution, legal incorporation may be an option and in terms of registration, only a simple technical registration for qualifying media institutions and unregistered businesses may be compatible with international standards but

80 See Chapter 9.1.4

81 See Chapter 9.1.5

82 See Chapter 9.1.6

any form of registration requirement which gives a governmental agency discretionary power to refuse registration should be abolished.

Recommendations relating to the Anti-Terrorism Proclamation:

The Anti-Terrorism law provisions creating a speech related vague offence called 'encouragement of terrorism'[83] and related provisions denying basic constitutional rights of an accused person should be abolished.

Furthermore, the Anti-Terrorism law overbroad definition of acts of terrorism is inconsistent with the international standards and should either be fully abolished or substantially amended.

Recommendations relating to State control of the press:

The State-financed and controlled press outlets should be transformed into a genuinely independent public service press ensuring both organizational and operational autonomy.[84]

Public service press should be governed by an independent board which is protected against interference and the public service press should be granted full editorial

[83] See Chapter 9.2

[84] See Chapter 9.3

independence and adequate funding to ensure that their transmission system covers the whole territory of the country.

Implementation of Policy Recommendations

The implementation of the various recommendations in this thesis might lead to a strategic question about priorities and rational sequencing of the proposed legislative and policy reforms. While a comprehensive legislative and policy reform in all the proposed areas is needed to create an enabling legal environment for freedom of expression and press freedom, it may not be realistic to expect such a major legislative reform agenda to be designed and implemented simultaneously in a short period of time.

Therefore, the author of this thesis submits the following sequenced approach which can help to guide a strategic advocacy or legislative reform initiative in Ethiopia:

- In the context of Ethiopia's ongoing legislative reform initiative since the new administration came to office in April 2018, it is imperative to ensure that

amendments or reform of the Anti-Terrorism proclamation should address the recommendations outlined above as an urgent priority (page 269)

- The second priority focus should be amendment of Ethiopia's media laws with particular emphasis on the Mass Media proclamation as per the recommendations outlined above (page 267)

- The third priority is amendment of the various provisions in the Criminal Code of Ethiopia as outlined in the recommendations above (page 265)

- The fourth priority should be an amendment of the Federal Constitution to allow the establishment of an independent constitutional court and the publication of the ratification proclamation about Ethiopia's accession to the ICCPR (page 264).

The priority sequence listed above does not necessarily imply that the fourth priority is less important than the others but in terms of practicality and ease of the legal processes involved in the various legislative reform initiatives, the above order of sequential approach is a more feasible direction.

Observations on the potential development of an international media law:

Although not within the scope of this thesis work, I would like to include the following observation on the potential development of an international media law as a distinct body of international law which I gathered in my analysis of comparative international standards on freedom of expression and media freedom. In the field of international law, certain thematic areas of law have evolved as a distinct branch of international law such as international criminal

law and international human rights law. To date, there is no international body of law that is recognised as international media law, but the author of this thesis wishes to make the below observation, albeit outside the scope of this thesis, on the potential emergence of international media law as a distinct body of international law.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights were the earliest of the multilateral instruments to have established legal protection for freedom of expression and media freedom. The UDHR in 1948 proclaimed that everyone has the right to freedom of opinion and expression, including the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.[85]

In 1966, the ICCPR guaranteed the right to freedom of expression and media freedom in the same way as the UDHR but in more elaborate terms, with greater juridical specificity and listing more rights than the UDHR. It provided for the right to freedom of opinion, the contents of the right to freedom of expression, and the conditions under which the exercise of the right to freedom of expression may be subject to certain limitations. In particular, it specifically provided that the right to freedom of expression can be exercised either orally, in writing or in print, in the form of art or through any other media. [86]

The legal guarantee for freedom of expression and media freedom is further strengthened by regional level conventions in Europe, Africa and the Americas which is instructive of the global trend. The European Convention, adopted in 1950, provides that

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85 Universal Declaration of Human Rights, (Adopted 10 December 1948) U.N.G.A. Resolution No 217. A (I I I), Article 19

86 International Covenant on Civil and Political Rights (U.N. General Assembly Resolution 2200a(X X I), Adopted 16 December 1966, Entered in to Force 23 March 1976), Article 19 (1 – 3)

everyone has the right to freedom of expression including freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It also laid down the conditions under which the exercise of the right might be subject to certain formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society.[87] In 1969, the Inter-American Convention on Human Rights guaranteed the right to freedom of expression in terms that are generally similar to the ICCPR.[88] In 1981, the African Charter on Human and Peoples' Rights provided that every individual shall have the right to express and disseminate his [her] opinions within the law. [89]

The rights to freedom of expression and media freedom guaranteed in these international and regional instruments have further been developed with juridical specificity in both national and international jurisprudence as well as the development of basic principles guiding the interpretation and application of the right to freedom of expression and media freedom as stipulated under the various instruments. As discussed in the previous chapters, the jurisprudence of the European Court of Human Rights, as well as the jurisprudence of the US, Canada, UK, India and South Africa have influenced the development and interpretation of both the international and regional instruments.

Although not having a binding legal effect, the decisions and general commentaries of the UN Human Rights Committee and the African Commission as well as the adoption of basic

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87 The European Convention for the Protection of Human Rights and Fundamental Freedoms (Entered in to Force 3 September 1953)European Convention for the Protection of Human Rights and Fundamental Freedoms (Adopted 4 November 1950, Entered in to Force 3 September 1953), Article 10 (1) & (2)

88 American Convention on Human Rights (Adopted 22 November 1969 Entered in to Force 18 July 1978), Article 13 (1 & 2).

89 African Charter on Human and Peoples' Rights (Adopted 26 June 1981, Entered in to Force 21 October 1986), Article 9

principles such as the *Declaration of Principles on Freedom of expression in Africa*[90] by the African Commission of Human and Peoples' Rights are authoritative instruments that have contributed in expounding the contents, characteristics and limitations of the rights to freedom of expression and media freedom as provided under both the regional and international conventions.

The foregoing developments since the adoption of the UDHR in 1948 not only confirm the consensus of the international community in recognizing and ensuring the legal guarantee for freedom of expression and media freedom, but also collectively point to the gradual emergence of international media law as a distinct body of international law. Perhaps the initial suggestion about the emergence of an international media law was in the early 1980s with the UNESCO publication written by the International Commission for the Study of Communication Problems, also known as the MacBride report after the Chair of the Commission, the Irish Nobel Laureate Sean MacBride. But deliberations on the development of international media law did not progress as the commission's report became rather controversial on issues of, among other things, unequal access to information, media concentration and media commercialization.

However, over the past several decades since the adoption of the UDHR, the international community has seen the development of a body of international rules and principles relating to the basic legal guarantee of freedom of expression and media freedom by several global and regional treaties. As we have seen in the previous chapters, the formulation of the legal guarantee for freedom of expression and media freedom is largely similar in the different instruments which points to the development of an international standard. Although

[90] Declaration of Principles on Freedom of Expression in Africa, Banjul Principles (Adopted 23 October 2002)

the process of harmonising global media law has a long way to go, the emergence of internationally accepted standards on the core contents of freedom of expression and media freedom is arguably a marked indicator of an emerging body of law to be recognised as international media law.

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