



ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
COLLEGE OF LAW AND GOVERNANCE
CENTRE FOR HUMAN RIGHTS

**REGULATING DISINFORMATION IN ETHIOPIA:
A HUMAN RIGHTS-BASED APPROACH**

A Thesis Submitted in Partial Fulfillment of the requirement for the
Award of a Masters of Art (MA) Degree in Human Rights

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Declaration

I, Adonay Teweldeberehan, hereby declare that this research thesis on “Regulating Disinformation in Ethiopia: A Human Rights-based Approach” is an original work that has not been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged and cited.

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List of Acronyms

ACHPR	African Commission on Human and Peoples' Rights
AFP	Agence France-Presse
BBC	British Broadcasting Corporation
CNN	Cable News Network
CPJ	Committee to Protect Journalists
EHRC	Ethiopian Human Right Commission
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
EMA	Ethiopian Media Authority
EMC	Ethiopian Media Council
FDRE	Federal Democratic Republic of Ethiopia
HRC	Human Right committee
ICCPR	International Covenant on Civil and political Rights
JLARAC	The Justice and Legal Affairs Reform Advisory Council
OLF	Oromo Liberation Front
OMN	Oromo Media Network
RSF	Reporters Sans Frontiers/Reporters Without Borders
RTI	Right to Information
TBIJ	The Bureau of Investigative Journalism (TBIJ)
TPLF	Tigrayan Peoples Liberation Front
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review
USAID	United States Agency for International Development

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Abstract

Disinformation, or the spread of false or misleading information, can be a significant challenge to society as it can undermine trust in institutions and damage public discourse. Ethiopia is no exception to this and the spread of misleading information through the media as well as new forms of communications such as social media has brought about new challenges. While it may be tempting to address this challenge through criminal or restrictive measures, such approaches can have negative consequences for human rights, especially freedom of expression. Restrictive measures such as over criminalization of speech, prior restraints and blocking internet access, for example, can raise significant human right concerns. In Ethiopia, laws intended on regulating disinformation already exist in various spheres, but it is important to consider the potential negative impact on human rights when implementing these measures. The study's findings shed light on the patterns and trends in the regulation of disinformation in Ethiopia, and it presents evidence-based recommendations for tackling the problem in a manner that respects the country's human rights commitments. Specifically, the research puts forward an approach to combating disinformation that is grounded in human rights and prioritizes enhancing digital and media literacy, expanding access to trustworthy information, and encouraging self-regulation within the media and on social media platforms.

Key words: Disinformation, Misinformation, Freedom of Expression, Freedom of Information, Human Right Based Approach

Chapter One

General Introduction

1.1. Background to the Study

With the rapid growth of new forms of communication and social media, the spread of false and misleading information is said to have reached into heights never before seen. In the contemporary globalized world where social media has become an integral part of communication, distinguishing real news from one intended to mislead is becoming increasingly difficult. Ethiopia is not an exception to this phenomenon having its own problems in this respect. In response to this problem, and with the hope of preventing and suppressing the deliberate dissemination of disinformation the Ethiopian Legislator adopted the Hate Speech and Disinformation Prevention and Suppression Proclamation No.1185 /2020.

Misleading information that spreads rapidly and widely is usually seen from two perspectives i.e Misinformation and Disinformation. Both misinformation and disinformation involve the sharing of bad or debunked information, with varying intents and purposes. However, *Misinformation* is usually defined as “false information that is spread, regardless of intent to mislead.”¹ On the other hand *Disinformation* is a type of misinformation that is intentionally false and intended to deceive or mislead.² Thus the basic difference between the two is said to be intent.

A third term usually mentioned in relation to such erroneous information is “*fake news*” largely popularized by the former US President Donald Trump. Currently fake news is understood to refer to "purposefully crafted, sensational, emotionally charged, misleading or totally fabricated information that mimics the form of mainstream news"³ However the term fake news is routinely used in politically charged contexts sometimes to refer to unfavorable reports of one’s political side thus discussions in this thesis would mostly employ the terms disinformation and misinformation. And while the thesis will mainly focus on regulation of the intentional spread of

¹ “Misinformation” vs. “Disinformation”: Get Informed On The Difference available at <https://www.dictionary.com/e/misinformation-vs-disinformation-get-informed-on-the-difference/> (Last accessed January 2, 2023).

² Meira Gebel, Misinformation vs. disinformation: What to know about each form of false information, and how to spot them online , available at <https://africa.businessinsider.com/tech-insider/misinformation-vs-disinformation-what-to-know-about-each-form-of-false-information/kqf6x55> (Last accessed January 2, 2023).

³ News: Fake News, Misinformation & Disinformation, available at <https://guides.lib.uw.edu/c.php?g=345925&p=7772376> (Last accessed January 2, 2023).

misleading and false information i.e. disinformation, it will also look into mitigating the impacts of misinformation where possible to address them together.

The Ethiopian legislator under proclamation 1185/2020 defined “Disinformation” as speech that is false, is disseminated by a person who knew or should reasonably have known the falsity of the information and is highly likely to cause a public disturbance, riot, violence or conflict;⁴

Thus in addition to the requirement of intent to mislead the shared false information should be one that is likely to cause disturbance or unrest. Notably this seems to be a narrower definition than what is perceived to be disinformation in the dictionary definition.

Furthermore, the proclamation does not provide a definition to other forms of spreading of misleading information such as misinformation and fake news. This research will attempt to examine different measures used in regulating the spread of such misleading expressions and analyze their merits in the Ethiopian context. In this respect, the thesis will look into those measures specifically tailored to the problem under the disinformation proclamation and other measures emanating from laws with wider scopes, such as the media proclamation and the criminal law of Ethiopia. Accordingly, the measures employed by the Ethiopian government will be seen in light of their effectiveness as well as their compatibility to international and national human rights standards.

1.2. Statement of the Problem

All forms of misleading information which may spread through social media or other traditional forms of media are said to have a negative impact on public beliefs about various social and political issues, which include health and vaccines; government and ethnicity; culture and religion, among many others.⁵ The Covid 19 pandemic which swept the world recently has brought about new worries to governments regarding the spread of misleading information on the effectiveness of prevention mechanisms such as masks and lockdowns in addition to creating vaccine hesitancy. In some instances, the false information even caused people to believe the disease was “fake” or “made up” leading them to refuse to abide by the necessary precautionary

⁴ The Hate Speech and Disinformation Prevention and Suppression Proclamation, 2020, Art. 2(3) Proclamation No. 1185 /2020, Neg. Gaz. Year 26, No. 26 (Hereinafter the Disinformation proclamation or Proclamation 1185/2020)

⁵ Besufkad Dawit, An Assessment of Users’ Response to Fake News on Social Media: The case of Popular Bloggers and Social Media Influencers, (2021, Unpublished, AAU Law Library), Pg 2

measures thus putting themselves and others at risk. The World Health Organization in fact described the rapid growth of Covid-19-related misinformation as an “infodemic.” which threatened the public’s health and safety by spreading false prevention measures and cures.⁶

In Ethiopia, the armed conflict between The Ethiopian Government and a rebel group in the northern part of the country which broke out on November 4, 2020 has only exasperated the problem with allegations of spread of false information by both sides. The shutting of internet and telecommunication services in conflict areas coupled with difficulty of reporting from the conflict zones has resulted in polarized reports accusing the opposing sides of serious atrocities. The Ethiopian government has accused western media outlets for taking the side of the rebel group and disseminating false information. The government even publicly asked the United States to stop spreading falsehoods against the country through its state minister of communication on November 25, 2021 after the U.S. State Department issued an alert about potential "terrorist attacks".⁷

An ongoing study done on online campaigns on twitter found that the information and access constraints caused by the conflict led to the emergence of competing information campaigns to frame the conflict. On one side, Tigrayans and their allies used social medias such as Twitter to engage in online activism and to share information about events taking place in the region. In reaction to this movement, the Ethiopian government and its supporters launched counter information campaigns to discredit Tigrayan activists, framing the violence as fabricated, exaggerated, or caused by the TPLF.⁸

In relation to armed conflicts the spread of false information can mean atrocities and serious war crimes go unpunished and unabated or place blame on an otherwise innocent party. In all cases, the victims of such atrocities can find themselves in a specially vulnerable position as their victimization will go on without redress. However, the damage caused by Disinformation and Misinformation may not be limited to armed conflicts. According to European Institute of Peace,

⁶ World Health Organization. Novel Coronavirus (2019-nCoV) Situation Report-13, 2020, available at <https://apps.who.int/iris/handle/10665/330778> (Last accessed January 2, 2023).

⁷ Reuters, Ethiopia asks U.S. to stop spreading false information on war, available at <https://www.reuters.com/world/africa/ethiopia-warns-us-against-spreading-false-information-war-2021-11-25/>

⁸ Claire Wilmot, Ellen Tveteraas, and Alexi Drew, Dueling Information Campaigns: The War Over the Narrative in Tigray | Media Manipulation Casebook, available at <https://mediamanipulation.org/case-studies/dueling-information-campaigns-war-over-narrative-tigray> (Last accessed January 2, 2023).

the societal impact of [disinformation] can be immense as it creates information pollution. In Ethiopia the long-term implications of dis-information movements are designed specifically to spread mistrust and confusion and to sharpen existing socio-cultural divisions using nationalistic, ethnic, racial and religious tensions.⁹

At the same time government's attempts to regulate the spread of false information can be abused in such a way as to silence unfavorable criticisms and suppress legitimate forms of freedom of expression. As freedom of expression is considered to be crucial for the proper functioning of a democratic society, restrictions on this right for the purposes of combating misinformation and disinformation will need to be properly drawn.

Research on disinformation regulation in Ethiopia is relatively scant. Most studies conducted on proclamation 1185/2020 tend to focus on regulation of hate speech with little input on the subject of disinformation. While Hate speech is undoubtedly a serious problem in Ethiopia exasperating social and ethnic divisions between different social, ethnic and religious groups, disinformation itself can be said to have its own negative consequences thereby making it deserving of further researches.

Appraisal of Ethiopian Hate Speech and Disinformation prevention and suppression Law in Light of Freedom of Expression Versus International standards by Tilahun Denu, *Defining 'Hate Speech' under the Hate Speech Suppression Proclamation in Ethiopia A Sisyphean exercise?* by Yohannes Eneyew Ayalew, *Adequacy of the prevailing regulatory Framework Relating to Hate Speech on Social Media in Ethiopia* by Rahwa Weldeghebriel and *The Implication of the Hate Speech Law on Freedom of Expression in Ethiopia* by Degsew Tadesse are just a few examples of studies which made Proclamation 1185 their primary focus yet avoided the subject of disinformation regulation.

Where disinformation regulation is made a central focus of researches conducted in Ethiopia there has been a tendency to make the study purely legal thus limiting itself to a reporting of what the law says along with a comparison with international rules applicable in the area. Comments and reports on proclamation 1185 by various human right organizations tend to fall into this category. For instance Human Rights Watch conducted a review of the draft anti hate

⁹ Besufkad Dawit, supra note at 5, pg 3

speech and disinformation proclamation and criticized it for its lack of clear definitions and for its vague and overly broad provisions.¹⁰

The article “On Disinformation, Elections and Ethiopian Law”¹¹ by Kinfe Micheal Yilma has thus far gone the furthest in attempting to tackle the issue of regulation of disinformation in Ethiopia by taking due consideration of both legal and extra-legal measures being employed by the government. However, the study was framed with the objective of investigating the challenges disinformation might have on the integrity and credibility of the electoral process thus does not consider the other wide area of challenges resulting from its spread.

This research will attempt to look at the evolving challenge of disinformation to Ethiopian society, consider the various legal regulatory measures being employed by the government questioning their merits and providing recommendations. It will propose a human rights based approach to combating disinformation identifying the rationales for adopting such an approach along with possible measures that could fall within the scope.

The lack of comprehensive research on disinformation regulation in Ethiopia and its negative effects on society highlights the need for further inquiry into this subject matter. Disinformation poses a significant challenge to the country's social, political, and economic stability, and it is imperative to investigate the legal and extra-legal measures implemented by the government to address this problem. Furthermore, the absence of a human rights-based approach to disinformation regulation undermines freedom of expression and the right to information, and as such, a comprehensive study is necessary to identify a suitable approach for addressing this issue in Ethiopia. Therefore, this research seeks to fill the existing gap in knowledge by critically analyzing the legal and policy frameworks regulating disinformation in Ethiopia, identifying gaps and challenges, and proposing a human rights-based approach to combat disinformation in the country.

With this in mind, this research will try to assess the possible negative effects of disinformation, the principal mechanisms currently in use to regulate it, and their effectiveness. In this regard, attempts to regulate disinformation will be analyzed in light of human right law and freedom of expression values. By assessing responses to disinformation adopted in Ethiopia in light of

¹⁰ Ethiopia: Bill Threatens Free Expression, December 19, 2019, available at <https://www.hrw.org/news/2019/12/19/ethiopia-bill-threatens-free-expression>

¹¹ Kinfe Micheal Yilma, On Disinformation, Elections and Ethiopian Law, *Journal of African Law*, Volume 65, Issue 3, 2021, pp. 351–375.

constitutional and international human right law, the thesis will propose employing a human right based approach to rein in the problem

1.3. Research Objectives

The research aims to review and assess Ethiopia's prevailing regulatory legal framework on disinformation from the perspective of international human rights protection of freedom of expression.

Apart from this general objective the following specific objectives will be addressed: -

- a) To scrutinize the concept of disinformation in Ethiopia in light of constitutional and international human right law protections applicable to freedom of expression.
- b) To analyze the merits or gaps of the current legal landscape on regulation of disinformation by taking into consideration practical instances of disinformation.
- c) To Identify measures capable of addressing the problem of disinformation which are compatible with human right obligations of the country
- d) To recommend supplementary measures to regulate disinformation.

1.4. Research Questions

Research question: How adequate is Ethiopia's prevailing legal framework to regulate disinformation in compliance with international human right standards?

In order to answer the research questions, the study will address the following specific questions:

- How is disinformation conceptualized under international human right law and how does this legal regime regulate or mitigate its impacts?
- How does the Ethiopian legal regime regulate disinformation and what gaps exist in its approach in light of the International human rights law regime?
- How is disinformation currently affecting Ethiopian society and what are the legal and non-legal measures being employed by the government to combat it?
- What measures and best practices exist to fight disinformation through a human right based approach?

1.5. Scope and Limitation

The research focuses on examining the nature of Ethiopia's disinformation and misinformation regulatory regime. This will be done by going over provisions in proclamation 1185/2020 specifically applicable to the spread of false information but will also be complimented by other laws which may apply in the same vein. Additionally, the need for such regulation will also be researched by taking into consideration the various approaches to regulation being implemented. Furthermore, as a multidisciplinary research, the study will also examine extra-legal measures employed by the Ethiopian government in curbing the spread of acts of disinformation which may not necessarily owe their origin or application to a particular set of Ethiopian laws but are nonetheless applied by the government.

Owing to the fact that the principal proclamation aimed at regulating disinformation is rarely used in criminal cases, the research would not be overly reliant on court cases. However, an attempt will be made to look into cases involving the spread of misleading information and how the criminal justice system responds to such actions. While measuring the proper extent of disinformation and its impacts on Ethiopian society is outside the scope of this thesis, findings from other researches as well as notable events have been used to draw assumptions and conclusions on the various impacts of the spread of misleading information and laws enacted to combat it.

1.6. Research Methodology

The research employs a multi-disciplinary methodology, combining both a doctrinal and empirical approach to address the research questions. The primary aim is to provide evidence-based recommendations of countering disinformation that comply with human rights obligations of Ethiopia.

1.6.1. Data Collection

To address the research questions, both primary and secondary sources were consulted. Primary sources included the FDRE Constitution, domestic laws, and international and regional instruments ratified by Ethiopia. Secondary sources included policy documents, books, articles, journal entries, news reports, online sources, and databases. An attempt was made to draw lessons from international and regional experiences as evidenced through international law jurisprudence and/or other best practices.

In-depth interviews were conducted using non-probability sampling techniques to identify professionals most exposed to the area of study. Legal and media professionals, government officials working in media regulatory organs, fact-checkers, and members of NGOs working in the area were interviewed for the thesis employing a semi-structured interview methodology. These interviews were conducted in Addis Ababa, the capital city of Ethiopia.

Five interviews were conducted due to the limited resources and time available. However, every effort was made to ensure that the interviewees represented a diverse range of perspectives. The number of interviews was deemed sufficient as they were chosen based on their expertise and experience in the area of study, and to ensure data saturation was achieved.

Additionally, criminal cases brought in Federal courts for transmission of misleading information were also selected purposefully to examine how the legal system has dealt with the problem of disinformation in practice. The researcher attempted to look for cases related to the research area by searching in all 10 federal criminal benches in Addis Ababa and asking relevant professionals.

Qualitative analysis was the chosen method to analyze the data gathered from both primary and secondary sources. The data was then analyzed manually to identify patterns and themes that emerged from the interviews and examined criminal cases.

1.6.2. Data Analysis

The findings of the legal literature review, expert interviews, and the examination of criminal cases were analyzed to answer the research questions and to identify any trends or patterns in the data. Thematic analysis was then used to analyze the data from the interviews and criminal cases. This involved identifying recurring themes and patterns in the data, and categorizing these into meaningful groups. The data was then compared and contrasted to identify any similarities or differences between the interviewees' perspectives and the legal framework in place.

Overall, the multi-faceted approach followed in this research has allowed for a comprehensive analysis of the topic, taking into account both legal and practical aspects. The methodology employed has provided a robust basis for the development of evidence-based recommendations to mitigate the effects of disinformation in Ethiopia, while also complying with human rights obligations.

1.7. Organization of the Thesis

The research is organized into five chapters; the first chapter consists of an introductory overview providing the background, statement of the problem, research objective, scope and limitation of the research, and the research methodology. The second chapter consists of literature review with a focus on exploring the conceptual and legal framework of disinformation and freedom of expression as a human right. The third chapter explores Ethiopian practices and legislative measures aimed at regulating disinformation along with constitutional protections applicable to freedom of expression in the country. Fourth chapter is devoted to analyzing the prevailing criminal and non-criminal regulatory practices being applied in Ethiopia to combat the dangers of disinformation focusing on subsidiary legislations applicable in the regulation of disinformation. The fifth chapter focuses on exploring a human right based approach to regulating disinformation, analyzing the merits of such an approach and enumerating the type of measures that could be included within it. The last and sixth chapter summarizes the main findings of this study along with recommending best practices to be applied in the regulation of disinformation in Ethiopia.

Chapter Two

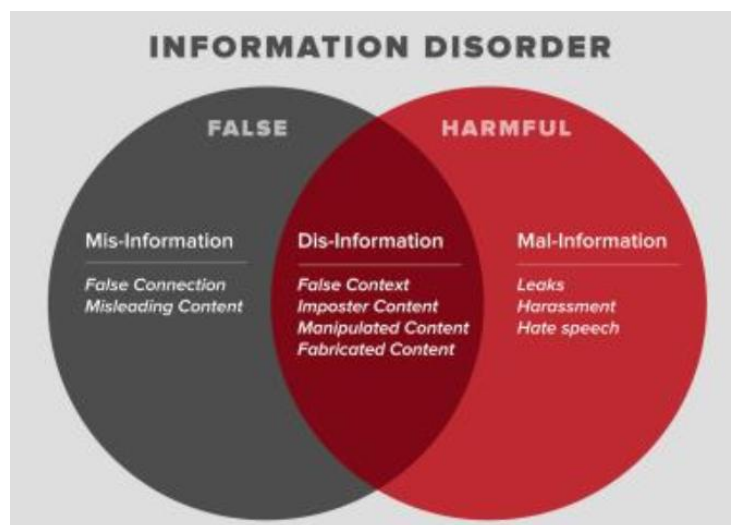
2.1. Conceptual framework: Disinformation and misinformation

2.1.1. Definition: Meaning of Disinformation

The challenge of misleading information being spread within a population encompasses a number of different concepts within its umbrella. While it is difficult to come up with a single definition applicable everywhere, we will try to look into the most notable and accepted definitions put forward by various authorities and writers with respect to the different types of information manipulation practices.

Wardle and Derakhshan, authors of “Information Disorder” a report quoted by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in its own report on disinformation identify three different types of manipulated information. The first one is Misinformation, where false information is shared, but no harm is meant. Second, is Disinformation, which is when false information is knowingly shared to cause harm. Third, Malinformation is when genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere.¹²

Accordingly, the authors use the dimensions of harm and falseness to distinguish between the different types of information disorder and use the following graphic to explain the difference between the three.



¹² Claire Wardle and Hossein Derakhshan, Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making, Strasbourg Cedex: Council of Europe (2017), pg 5

The concept of ‘Malinformation’ as identified by the authors indicates that even accurate information can also be framed and presented in such a way as to make its recipients likely to draw certain (false) conclusions. By engaging in reporting that caters to the audience’s preconceptions and reinforcing their ideals the agents behind the intended information pollution can steer their audiences to draw the conclusions they want. For example, consider a news outlet that reports exclusively on crimes committed by foreigners.¹³, such an outlet can build on negative perceptions towards perceived outsiders by making use of truthful but selective reporting. Similarly leaks of personal information or that which was not intended for the public’s view might be released by actors seeking to discredit other parties.

Hendricks and Vestergaard claim that “misinformation is rarely all false” and provide a recipe for success: If the misinformation is to have effect, it should not too easily reveal its fraudulence. Misinformation must seem reliable in order to effectively mislead people. Misinformation is therefore often a mixture of something allegedly true; something doubtful, twisted, and undocumented; and downright false information”.¹⁴

Irene Khan, The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, distinguished between disinformation understood as false information that is disseminated intentionally to cause serious social harm and misinformation identified as the dissemination of false information unknowingly.¹⁵

In the European continent two documents are considered as key starting positions for any discussion on misleading information.

The European action plan on democracies provides the following definitions

Misinformation is false or misleading content shared without harmful intent though the effects can still be harmful, e.g. when people share false information with friends and family in good faith;

¹³ Björnstjern Baade, “Fake news and International Law” European Journal of International Law, Volume 29, Issue 4, November 2018, pg 1359

¹⁴ Lejla Turcilo and Mladen Obrenovic, Misinformation, Disinformation, Malinformation: Causes, Trends, and Their Influence on Democracy , pg 10, available at https://www.boell.de/sites/default/files/2020-08/200825_E-Paper3_ENG.pdf (Last accessed January 2, 2023).

¹⁵ Report of the Special Rapporteur on the Promotion and Protection of the right to Freedom of opinion and expression, Irene Khan, Disinformation and freedom of opinion and expression A/HRC/47/25, para 15 page 4

*Disinformation is false or misleading content that is spread with an intention to deceive or secure economic or political gain and which may cause public harm;*¹⁶

The European Action Plan against Disinformation on the other hand provides:

*Disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm.*¹⁷

Within the European context (EU) , Public harm is understood to include threats to democratic processes as well as to public goods such as Union citizens' health, environment or security. However, disinformation does not include inadvertent errors, satire and parody, or clearly identified partisan news and commentary.¹⁸

A code of practice signed by online platforms such as Facebook, Google and Twitter, Mozilla, as well as by advertisers and parts of the advertising industry in 2018, and later revised in 2022 to be applied within the European continent employs an identical definition.¹⁹

As can be seen from the above, the European conception of disinformation recognizes that the practice might have commercial motives. Generally speaking, agents of disinformation might have political, ideological or commercial motives and disinformation could be conducted by multiple actors, including states, political parties, politicians and other powerful individuals or businesses

supported by troll armies or public relations companies.²⁰ The actors behind disinformation may indeed be state(government) sponsored or non-state(private), moreover, they can emanate domestically or from abroad thus are not limited to the geographical borders of any given state.

¹⁶European Commission , Action Plan on Democracies, COM(2020) 790 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423> (Last accessed January 2, 2023).

¹⁷ European Commission, Action Plan against Disinformation, JOIN(2018) 36 final, pg 1, available at https://eeas.europa.eu/sites/default/files/action_plan_against_disinformation.pdf (Last accessed January 2, 2023).

¹⁸ ibid

¹⁹ EU Code of Practice on Disinformation, available at <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation> (Last accessed January 2, 2023).

²⁰ Special Rapporteur, supra note at 15, para 18, page 4

Large scale disinformation campaigns are certainly often linked with governments, political parties and the military, and/or with consultancy firms working for those bodies.²¹ In this regard the Chinese and Russian governments are often accused of conducting large scale disinformation campaigns using online medias.²² For instance, The armed conflict between Russia and Ukraine was said to have been accompanied by information warfare on the cyber warfront in addition to usual armed conflict being held on land.²³ It should however be noted that in today's polarized world the reverse will be held true in Russia and China where the accusation will be that it is the western nations that are engaged in ideologically driven propaganda.²⁴ Such coordinated efforts to influence a targeted audience by a foreign state actor or its agents is usually referred to as *foreign interference in the information space*. Disinformation campaigns can also be employed by ideologically driven non-State actors, including extremist or terrorist groups, which engage in the dissemination of false news and narratives as part of their propaganda to radicalize and recruit members.²⁵

Despite the existence of disinformation campaigns by foreign actors, a great majority of misleading content is produced by domestic agents for political and economic motives. The proliferation of social media and improvements in communication technology have made the internet the premier mechanism for distributing conspiracy theories, propaganda and other false information.

The internet has incentivized disinformation by turning it into a lucrative business. Disinformation is cheap to produce because its producers do not have to engage in time-consuming cross-referencing or fact-checking. Disinformation also has nominal overhead costs to disseminate because posting on social media platforms is generally free. With the costs of

²¹ CNN, The Fake News Machine: Inside a Town Gearing Up for 2020 available at <https://money.cnn.com/interactive/media/the-macedonia-story/> (Last accessed January 2, 2023).

²², The Center for European Policy Analysis (CEPA), Jabbed in the Back: Mapping Russian and Chinese Information Operations During COVID-19, available at <https://cepa.org/jabbed-in-the-back-mapping-russian-and-chinese-information-operations-during-covid-19/> (Last accessed January 2, 2023).

²³Chris Stokel-Walker, Is Russia winning the disinformation war in Ukraine? Available at <https://www.newscientist.com/article/2309713-is-russia-winning-the-disinformation-war-in-ukraine/> (Last accessed January 2, 2023).

²⁴ CNN, Russia accuses the West of spreading disinformation on Ukraine as Kyiv fortifies evacuation plans , available at <https://edition.cnn.com/2022/02/11/politics/ukraine-russia-latest-news-friday-intl/index.html> (Last accessed January 2, 2023).

²⁵ Special Rapporteur, supra note at 15, para 19, page 4

production and distribution almost insignificant, a website dedicated to spreading disinformation can use online advertising to make a profit without the costs associated with investigation and verification that burden professional news agencies.²⁶ For instance, according to an interview conducted by CNN, a 24 year old college dropout website operator from Macedonia who was behind some of the disinformation preceding the presidential election of 2016 claimed to have earned as much as \$2500 daily from his online activities.²⁷

Modern communication technologies in addition to facilitating dissemination of misleading content through social medias and online messaging services have provided new ways of producing convincing false content at lower costs that is increasingly hard to verify. Use of internet automated software (bots) to spread and amplify divisive content and debates on social media, as well as the use of software such as Photoshop to falsify official documents and images has become common place in today's digital world. The latest technological tool of disinformation, commonly referred to as "deep fake", allows creating convincing fake audio and video, making a person appear to say or do something they did not bringing about new challenges on what to believe.

The age old saying "A lie can travel half way around the world while the truth is putting on its shoes" has proven more true in the modern digital world than any time before. The ease and speed in which misleading information spreads online has been a subject of many researches. A research from Massachusetts Institute of Technology (MIT) from 2018 found that false content spread up to six times faster than factual content on social media sites and false news stories were seventy percent more likely to be shared on twitter than their truthful counterparts.²⁸ Researches show that People are inclined to "accept information [from social media sources] that

²⁶ Fernando Nuñez, Disinformation legislation and freedom of expression, *The UC Irvine Law Review* Vol10(2) (2020), pg 787.

²⁷ Ibid, citing CNN, Isa Soares, *The Fake News Machine: Inside a Town Gearing Up for 2020*,

²⁸ Massachusetts Institute of Technology News (MIT News), Study: On Twitter, false news travels faster than true stories, available at <https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308> (Last accessed January 2, 2023).

aligns with their own partisan views” demonstrating how fake news stories are able to spread so fast, and are often not fact checked or critically assessed by their readers.²⁹

2.2. Dangers of Disinformation

Disinformation is believed to pose a significant risk to the market place of ideas in contemporary society by flooding the market with falsities. It can be used to influence elections and public perceptions abusing the electoral system. According to the European Commission, foreign state actors are increasingly deploying disinformation strategies to influence societal debates, create divisions and interfere in democratic decision-making. These strategies target not only [European Union] Member States but also partner countries in the Eastern & Southern Neighborhoods the Middle East and Africa.³⁰

Disinformation can confuse and manipulate citizens; create distrust in international norms, institutions or democratically agreed strategies; disrupt elections; or feed disbelief in key challenges such as climate change³¹. Thus, the spread of misleading information threatens democracies, civic participation, and efficient governance. It jeopardizes the right of the public to be well informed and to discuss societal issues based on reliable, high-quality, accurate information based on the public interest.³²

The spread of disinformation especially with the use of social media platforms is blamed to be behind a number of real life negative consequences. For instance, misleading information spread online is accused of influencing the 2016 US Presidential election and the Brexit referendum with accusations of the winning campaigns misrepresenting facts to voters.³³ Close to home, the company behind the controversies in those two elections , Cambridge Analytica was reported to have played a significant role in the presidential elections of Kenya, with executives recorded

²⁹ Holly Latham, Fake News And Its Implications For Human Rights, available at <https://www.humanrightspulse.com/mastercontentblog/fake-news-and-its-implications-for-human-rights> (Last accessed January 2, 2023).

³⁰ Action plan on disinformation, supra note at 17

³¹ Carme Colomina, Héctor Sanchez Margalef and Richard Youngs, The Impact of Disinformation on Democratic Processes and Human Rights in the World, European Parliament, 2021, page 2

³² Lejla Turcilo and Mladen Obrenovic, Misinformation, Disinformation, Malinformation: Causes, Trends, and Their Influence on Democracy, A Publication of Heinrich Böll Foundation, August 2020, page 17

³³ Mark Scott, Cambridge Analytica helped ‘cheat’ Brexit vote and US election, claims whistleblower, Politico, March 27, 2018 available at <https://www.politico.eu/article/cambridge-analytica-chris-wylie-brexit-trump-britain-data-protection-privacy-facebook/> (Last accessed January 3, 2023).

boasting about the psychological manipulation, entrapment techniques and fake news campaigns they employed.³⁴

Aside from negative consequences in the democratic process, disinformation can also become a serious threat to security and public order. For instance, On January 6, 2021 a mob of thousands of U.S. President Donald Trump supporters stormed the Capitol Building in Washington, D.C. in an attempt to overturn the results of the 2020 presidential election which they felt was “stolen”. Misleading information distributed through different social medias is said to have emboldened the crowd which marched towards the US capitol and engaged in violent acts which resulted in the death of five people and injury of more than a hundred police officers. The mayhem led to Trump's second impeachment trial and the permanent ban of the former president’s social media accounts on Facebook³⁵ , Twitter³⁶ and YouTube.³⁷ However the former president’s ban on Twitter was lifted in 2022 following the social medias acquisition by billionaire Elon Musk.³⁸ While the impeachment trial did not lead to the conviction of the former president, disinformation surrounding the election is credited to have had significant impact in the public acceptance of the 2020 presidential election results.³⁹

The damages caused by disinformation become exponentially worse in the context of armed conflicts wherein misleading information may pose several distinctive forms of harm to civilians including exposure to retaliatory violence, distortion of information vital to securing human needs and causing severe mental suffering.⁴⁰

³⁴ CNBC, Here’s how Cambridge Analytica played a dominant role in Kenya’s chaotic 2017 elections, available at <https://www.cnbc.com/2018/03/23/cambridge-analytica-and-its-role-in-kenya-2017-elections.html> (Last accessed January 3, 2023).

³⁵ Meta, Our Response to the Violence in Washington, available at <https://about.fb.com/news/2021/01/responding-to-the-violence-in-washington-dc/> (Last accessed January 3, 2023).

³⁶ Twitter Inc, Permanent suspension of @realDonaldTrump available at https://blog.twitter.com/en_us/topics/company/2020/suspension (Last accessed January 3, 2023).

³⁷ CNN, YouTube is suspending President Donald Trump’s channel, available at <https://edition.cnn.com/2021/01/12/tech/youtube-trump-suspension/index.html> (Last accessed January 3, 2023).

³⁸ BBC, Musk lifts Donald Trump's Twitter ban , available at <https://www.bbc.com/news/world-us-canada-63692369> (Last accessed January 3, 2023).

³⁹ Gabriel R. Sanchez, Keesha Middlemass, and Aila Rodriguez, Misinformation is eroding the public’s confidence in democracy, available at <https://www.brookings.edu/blog/fixgov/2022/07/26/misinformation-is-eroding-the-publics-confidence-in-democracy/> (Last accessed January 3, 2023).

⁴⁰ Eian Katz, “Liar's war: Protecting civilians from disinformation during armed conflict”, International Review of the Red Cross , Volume 102 , Issue 914: Emerging Voices , August 2020 , pp. 659 - 682

2.3. Disinformation and International law

Recognition of the challenges brought about by acts of disinformation on stability of nations was raised as early as the time of League of Nations and during the early years of the UN . In 1936, the assembly of the League of Nations opened for signature The International Convention Concerning the Use of Broadcasting in the Cause of Peace which mandated contracting parties to prohibit and stop incorrect transmissions deemed likely to harm good international understanding of nations.⁴¹ This multilateral instrument which entered into force in 1938 is understood to be the first international treaty obliging states to "restrict expression which constituted a threat to international peace and security".⁴²

Following the end of the second world war a Convention on the International Right of Correction. New York, opened within the auspices of the United Nations, recognized the dangers of disinformation. Ethiopia became a signatory to this convention on 31 March 1953 and ratified it on 21 January 1969⁴³ one of only 23 countries to be a party of this convention. The convention was a result of a recommendation by the General Assembly which called for the adoption of measures designed to combat the dissemination of false or distorted reports likely to injure friendly relations between states,⁴⁴ While the convention does not impose duties or permit states to restrict what are termed "false and distorted reports", it intended to provide for a right of correction of which foreign governments may avail themselves when necessary. It should be noted however that both the convention on correction and the 1936 International Convention on the Use of Broadcasting in the Cause of Peace were intended to keep world peace to the extent it affected international relations of states rather than domestic politics of countries.

Actions by states to regulate and control the various types of disinformation and misinformation are bound to apply as limits to freedom of expression which is considered as one of the fundamental human right recognized worldwide. Accordingly, the next section looks into the

⁴¹ International Convention concerning the Use of Broadcasting in the Cause of Peace, signed at Geneva, September 23rd, 1936 [1938] LNTSer 80; 186 LNTS 301, Art 3

⁴² Michael G. Kearney, *The Prohibition of Propaganda for War in International Law* (Oxford: Oxford University Press, 2007) pp. 28–33.

⁴³ See status of verification at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVII-1&chapter=17&clang=en (Last accessed January 3, 2023).

⁴⁴ Convention on the International Right of Correction, 16 December 1952, A/RES/630(VII), Preamble

status of freedom of expression under international human right instruments, its limits and specifically their application to disinformation.

2.4. Freedom of expression under International law and its permissible limits

Although one can find freedom of expression provided in various legal instruments, ranging from international documents such as treaties and declarations to domestic laws like constitutions and other subsidiary legislations, each document has found a way to recognize the content of the freedom in different ways in accordance with its drafter's authentic understanding of the concept and the needs it seeks to accomplish.

Freedom of expression, as reflected in the language of the most widely accepted international instruments and their respective case law jurisprudences, includes a bundle of conceptually integrated and practically intertwined set of rights. Accordingly, four main freedoms, '*Freedom to hold opinions*', '*Freedom to impart information and opinions*', '*Freedom to receive information and ideas*' and '*Freedom of the media or press*' are generally recognized as the fundamental rights protected under the umbrella of freedom of expression.

The universal declaration of human rights adopted and proclaimed by the General Assembly in 1948 stipulates;

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”*⁴⁵

Although the UDHR does not have the binding force of a treaty, it was proclaimed as a common standard of achievement for all peoples and all nations⁴⁶ and is widely held as having acquired customary international law status since then. It has also had remarkable success in shaping the human right landscape of domestic laws of member countries.

After the UDHR, the most important international instrument in the crystallization of freedom of expression is probably the International Covenant on Civil and Political Rights. The ICCPR, which is a binding elaboration of the civil and political rights set forth in the UDHR, declares the following in relation to freedom of expression: -

⁴⁵ *Universal Declaration of Human Rights(UDHR)*, 10 December 1948, 217 A (III), Article 19

⁴⁶ UDHR, Preamble

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.*⁴⁷

As can be seen from the above two provisions both the UDHR and ICCPR protect the right "to seek, receive and impart information and ideas" irrespective of the media chosen for dissemination of the idea or opinion. But the later has succeeded in clarifying the most common modes of communication which is not an exhaustive list. Furthermore, the language used both in the ICCPR, and the UDHR is "information and ideas" thus implying that the free transfer of opinions, which may be personal or otherwise is also protected in addition to facts.

The Human Right Committee, established as a monitoring body to the ICCPR, has issued two separate general comments on freedom of expression, general comment 10 & 34 with the later replacing the former on July 2011. The general comments along with several decisions adopted by the committee provide a rich source of interpreting guidance in understanding the scope of freedom of expression under the treaty.

Additionally both the United Nations Convention on the Rights of the Child⁴⁸ and the African charter on the Right and Welfare of the Child⁴⁹ grant freedom of expression to children. Similarly the Convention on the Elimination of Discrimination against Women⁵⁰ stresses the importance of ensuring Equal access and representation of women in the media.

Aside from the previously discussed international instruments, the major regional human right treaties have also acknowledged freedom of expression in a similar language. Both the European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights recognize the right under Article 10 and Clause 13 respectively.

⁴⁷ International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 19

⁴⁸ Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 13

⁴⁹ African charter on the Right and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), Article 7

⁵⁰ Convention on the Elimination of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, Article 3

Another important Regional Human Right instrument key to the discussion at hand is The African Charter on Human and Peoples rights, which was adopted by the Assembly of Heads of State and Government of the Organization of African Unity in 1981. Accordingly, the Charter provides the following general principle: -

“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”.*⁵¹

The Charter's protection of freedom of expression, however visibly differs from the protection afforded by other treaties in that it does not expressly include a right to receive ideas or to impart information. It also doesn't explicitly guarantee the freedom to hold opinions without interference. Nevertheless, decisions of the African Commission suggest that these rights are implicitly protected under the Charter's provisions.

Although the case law of the African Commission is not as vast as that of the other two regional mechanisms, the Commission has nonetheless elaborated on a number of concepts in relation to the exercise of freedom of expression in the continent. In addition, the Commission has also adopted the Declaration of Principles on Freedom of Expression in Africa⁵² in 2019 to supplement Article 9 of the African Charter.

[2.4.1. Limitations on Freedom of expression.](#)

Although freedom of expression is granted a fundamental importance that is reflected both in the language of the fundamental international instruments worldwide and the case law of the international courts and quasi-judicial systems, certain limitations and restrictions are provided on the exercise of the right. This is mainly due to the fact that the exercise of freedom of expression may usually come into conflict with other rights and societal values, as a result, balancing of rights and important values may be needed in certain cases

⁵¹ African Charter on Human and Peoples Rights (ACHPR), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 9

⁵² Declaration of Principles on Freedom of Expression and Access to Information In Africa, Adopted by the African Commission on Human and Peoples' Rights at its 65th Ordinary Session Held from 21 October to 10 November 2019, (2019)

Each system has thus come up with ways to limit forms of expression when it comes into conflict with the rights of others or societal values. It is important to note however that the right of individuals to hold opinions is recognized as an absolute right under international law. But as soon as the individual decides to communicate his ideas or opinions by externalizing them through chosen forms of communication, the matter automatically enters the realm of imparting opinions and information which may be subject to certain restrictions and limitations.

As the exercise of freedom of expression often clashes with other people's rights such as honor, reputation, privacy and freedom of religion, different schemes of limitations have been developed by various jurisdictions to be applied on the enjoyment of the right. Limitations to the exercise of this right may take the form of prior censorship or subsequent judicial decisions which apply criminal or civil sanctions and in some cases even administrative measures. It is also widely recognized that such measures may be taken against persons acting in their individual capacity or members of the media whenever they are considered to have overstepped the bounds set on the exercise of the freedom. In some cases, the limitations imposed on the right could take the form of extra-legal measures which do not emanate from a specific set of laws.

2.4.1.1. Limits to Freedom of expression under international law

A proper understanding of freedom of expression requires appreciation of the permissible limitations that can be imposed on the exercise of the freedom. An overview of the major protections to freedom of expression as a human right under international law has already been provided earlier. In this section the different schemes of limitations accepted by the various international instruments will be discussed.

A key feature in the protection of freedom of expression under international law is that the freedom to hold opinions is afforded an absolute protection. The freedom to hold opinions as one aspect of freedom of expression cannot be subjected to limitations. This means individuals are free to think the most evil and heinous thoughts in their minds. However, giving expression to such thoughts and opinions may carry with it certain liabilities and sanctions in accordance with the laws of the country.

Aside from the previously discussed freedom to hold opinions all of the major human right instruments that will be discussed subsequently provide for certain limitations in the enjoyment

of freedom of expression. In this sense, the term ‘Limitation’ is understood to refer to clauses in the human right treaties that have the purpose of setting forth permissible state restrictions on the exercise of the substantive right.⁵³

Although, each of the international instruments recognizes that the exercise of freedom of expression can be subjected to limits, this does not mean that States are free to impose any and every restrictions on the exercise of the freedom. Rather, each limitation scheme has come up with tests and conditions that need to be fulfilled before the imposition of such restrictive measures by states. It can thus be said that the state’s power to limit the exercise of the freedom is itself limited by these very tests.

These tests and conditions are indeed very important because they are key to determining whether the restrictions placed by a state organ are violations of the state’s international obligations or justified limitations to the exercise of the right.

Universal Declaration of Human Rights

As we have noted earlier, the UDHR, which is considered to be the fountainhead document of international human rights, recognizes freedom of expression as a fundamental human right under Article 19. Nevertheless, this provision does not provide for limitations that can be imposed on the exercise of the freedom. This should not however be narrowly construed as implying the UDHR’s recognition of freedom of expression as an absolute right or as a positive affirmation of the absolutist theory.

Although the UDHR does not provide for explicit limits permissible in the exercise of freedom of expression under Article 19, the comment is often made that the absolutist thought is inherently contradictory to the language and purpose of the UDHR as a document of “common standard of achievement for all peoples and all nations.”⁵⁴ Furthermore, the UDHR has incorporated a general limitation clause under its Article 29 , which permits restriction of rights by law, to secure "*due recognition and respect for the rights and freedoms of others and meeting*

⁵³ H. Victor Condä, *A Handbook of International Human Rights Terminology*, (University of Nebraska Press, Lincoln and London, 2nd edition, 2004), page 152

⁵⁴ UDHR, preamble

*the just requirements of morality, public order and the general welfare in a democratic society".*⁵⁵

The International Covenant on Civil and Political Rights

The legally binding core international human right instrument, ICCPR, provides for a more comprehensive scheme of permissible limitations under Article 19. The relevant provision provides the following: -

“The exercise of the rights provided for in paragraph 2 of this article [the freedom to seek, receive and impart information and ideas] 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.*⁵⁶

As can be seen from the above clause, limitations on the exercise of freedom of expression are expected to meet a strict three-part test under the Covenant. Any restrictions imposed on freedom of expression must comply with the principles of legality and proportionality and be imposed for one or more of the legitimate purposes enumerated in article 19(3).

This three-part test was further emphasized by the Human Right Committee in its various decisions and the General Comment it has issued in relation to freedom of expression. Accordingly, restrictions on the exercise of freedom of expression placed by state parties should be “*provided by law*”; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality.

Primarily, the Covenant requires all restrictions on freedom of expression to be provided by duly promulgated laws. In this regard the HRC has held that “For the purposes of paragraph 3, a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an

⁵⁵ UDHR, Article 29(2)

⁵⁶ ICCPR, Art 19 (3)

individual to regulate his or her conduct accordingly and it must be made accessible to the public.”⁵⁷

Furthermore, restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant.⁵⁸ Thus under the ICCPR the only legitimate grounds for limiting the exercise of freedom of expression are those designed to protect the right’s and reputation of others, national security, public order, public health or morals.

In addition, restrictions placed on freedom of expression should be “necessary” for the legitimate purpose and must not be overbroad. In this regard the Committee has held that “... the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.”⁵⁹ The Committee has in this regard observed that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...”⁶⁰

The Human Rights committee has also observed that “when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”⁶¹ Thus the norm should always be the freedom while the narrowly defined limitations are considered as exceptions.

In addition to limitations which fall within the scopes of Article 19 paragraph 3, the Covenant requires states to prohibit by law any “propaganda for war” and “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”⁶²

The limitations prescribed under Article 20 differ from those provided under Article 19 paragraph 3, since they entail a positive obligation on the state party to enact laws which prohibit

⁵⁷ Human Right Committee(HRC), General Comment 37, CCPR/C/GC/34, para 25, page 6 and Communication No. 578/1994, De Groot v. The Netherlands, Views adopted on 14 July 1995

⁵⁸ HRC, General Comment 34, para 22 page 6

⁵⁹ Marques de Morais v Angola, Communication No 1128/2002, HRC, 18 April, 2005. CCPR/C/83/D/1128/2002. paragraph 6.8

⁶⁰ HRC, General Comment 27 and General Comment 34, para 34

⁶¹ HRC, General Comment 37, paragraph 21

⁶² ICCPR, Art 20

propaganda and advocacy as described therein, while the later are to be imposed with discretion by the state party. This optional vis-à-vis obligatory nature of the two limitations is evident from the language employed in the convention. i.e. “*may ...be subject to certain limitations...*” in Article 19 (3) and “*... shall be prohibited by law*” In Article 20.

African system

We have previously seen that the African Charter on Human and Peoples’ Rights provides a general guarantee for freedom of expression. The Charter is however lacking in providing detailed provisions with respect to the scope and limits in the exercise of the freedom.

The charter’s provision which merely states “*Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law*”⁶³ pales in comparison with the other international human right instruments in providing detailed rules on the exercise of the freedom. It has also already been stated that the language used in the Charter shows clear lacking in neglecting to provide explicit guarantees to the right to receive opinions (*as opposed to the right to receive information*) and also the right to express and disseminate information (*as opposed to express and disseminate opinions*). In addition to this, the charter’s Article 9 is also unusual in that, it does not include any express restrictions on the enjoyment of the right.

One major concern raised in relation to permissible limitations on the exercise of freedom of expression under the Charter is in relation to what are commonly referred to as “claw-back clauses”. The charter’s provision which states; “*Every individual shall have the right to express and disseminate his opinions within the law.*” (*Emphasis added*) is taken as a prime example of claw-back clauses which seem to plague the whole charter.

This provision, which seemingly makes the exercise of the freedom subject to the domestic law of states parties, is criticized for rendering the charter’s protection ineffective. This has led many to criticize the African system as one where the state can evade its international responsibilities by merely enacting overly restrictive laws which, based on the literal understanding of the provision, would take primacy over the charter’s provisions.

⁶³ ACHPR, Article 9

In relation to this concern, which seem to place the enjoyment of freedom to disseminate opinions at the mercy of the state party's domestic laws, the commission ruled that the "...within the law" phrase in the provision is a reference to international law rather than domestic law. This issue was directly addressed in Constitutional Rights Project et al v. Nigeria where the commission held: -

*"According to Article 9.2 of the Charter, dissemination of opinions may be restricted by law. This does not mean that national law can set aside the right to express and disseminate one's opinions; this would make the protection of the right to express one's opinions ineffective. To allow national law to have precedent over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter."*⁶⁴

Moreover, the Commission observed "The reasons for possible limitations must be founded in a legitimate state interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained. Even more important, a limitation may never have as a consequence that the right itself becomes illusory."⁶⁵

The African commission has reiterated this in several other decisions where it held limitations imposed on the exercise of rights must be in conformity with other international human rights instruments and practices. The Commission can in this regard be said to have adopted the three-part test available in the ICCPR, and by doing so has effectively neutralized the dangers of claw-back clauses using its mandate to interpret the Charter in light of international human rights jurisprudence under Articles 60 and 61.⁶⁶ Two decisions rendered by the African Court on Human and Peoples Rights similarly endorsed such rules requiring limits on freedom of

⁶⁴ Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project v Nigeria, African Commission on Human and Peoples Rights, Communication No. 105/93-128/94-130/94-152/96, November 6, 2000, Para 66

⁶⁵ Ibid para 69&70

⁶⁶ The Commission is empowered by Articles 60 and 61 of the Charter to draw inspiration from international law on human and peoples' rights and to take into consideration as subsidiary measures other general or special international conventions, customs generally accepted as law, general principles of law recognised by African states as well as legal precedents and doctrine.

expression to be provided by law, serve a legitimate purpose, be proportionate and strictly necessary in a democratic society.⁶⁷

The African system also benefits from a detailed instrument on freedom of expression which was adopted by the African Commission by exercising its mandate under Article 45(1) b of the Charter.⁶⁸ This instrument is formally known as “Declaration of Principles on Freedom of Expression in Africa” or simply the “Banjul declaration” after the place it was adopted in.

The declaration which was adopted first in 2002, then amended in 2019, addresses many areas of concern in the interpretation and application of Article 9(2) of the charter and has successfully enriched the corpus of international law on the issue of freedom of expression by crystalizing many widely recognized international practices into a soft law instrument.

In particular, the Banjul declaration adopts the three-part test in limitation of freedom of expression by stating: -

“States may only limit the exercise of the rights to freedom of expression and access to information, if the limitation:

a. is prescribed by law;

b. serves a legitimate aim; and

c. is a necessary and proportionate means to achieve the stated aim in a democratic society.”⁶⁹

As can be seen from the above principle, the Declaration interestingly adds the important requirement of restrictions being “*necessary in a democratic society*” which wasn’t clearly provided in the African Charter or even the ICCPR. The African Commission has since applied the principles incorporated within the Declaration while deciding on several communications under its protective mandate. It has in fact held in one of its decisions that the meaning of the

⁶⁷ Ingabire Victoire Umuhoza v. The Republic of Rwanda, Application no 003/2014, African Court of Human and Peoples’ Rights, December 7, 2018 para 133-144 and Lohé Issa Konaté v. The Republic of Burkina Faso, No 004/2013, African Court of Human and Peoples’ Rights, December 5, 2014, para 145-166

⁶⁸ The African Commission is granted a promotional mandate under Article 45(1)b of the charter “To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

⁶⁹ Declaration of Principles on Freedom of Expression and Access to Information, Principle 9(1),

phrases under Article 9 of the charter must be interpreted in the context of principles elaborated under the Declaration.⁷⁰

The major international and regional human right frameworks, i.e. *the Universal Declaration, International Covenant, American and European Conventions and the African Charter*, can be said to essentially apply the same three-part test in determining the legitimacy of restrictions placed upon freedom of expression. Although there might be some minor differences in the language of the said instruments, especially in relation to the legitimate purposes for restrictions, each of the limitation schemes applied by the treaty bodies basically require restrictions 1) to be provided by law; 2) serve one of the legitimate purposes enumerated in their texts; and 3) be necessary.

In light of this concurrence among the leading human rights instruments and because all countries are obliged to observe the Universal Declaration, a strong argument can be made that all countries should apply the three-part test in limiting freedom of expression.

Given the previous discussion on the permissible limitations to freedom of expression worldwide, we will see whether acts of disinformation can be regulated or restricted legitimately.

2.5. Disinformation as a ground for limiting freedom of expression

As can be seen from the previous discussion none of the human right instruments recognizing freedom of expression as a human right, mention disinformation or misinformation specifically. However, it would not be an overstretch to conclude that the societal harms that disinformation can cause could constitute legitimate grounds for limits that can be placed on the right.

As much as free expression supports an informed citizenry and is considered vital to ensuring public and private sector accountability, wide disinformation can counter this objective by blurring the lines between what is true and what is false. Dissemination of false reports and information can in this regard be detrimental to peace and security of the public by undermining the public's trust.

Out of the legitimate grounds for limiting freedom of expression under ICCPR, national security, public safety, prevention of disorder, protection of health, protection of reputation or rights of

⁷⁰ Scanlen & Holderness / Zimbabwe, Communication 297/05, African Commission on Human and Peoples Rights, April 3, 2009, para 112

others can directly align with state actions placed on what is considered disinformation. Disinformation may also in some cases constitute a propaganda for war or as an incitement to national, racial or religious hatred, in which case limitations could align with restrictions mandated under Article 20 of the Covenant.

However, such restrictions must be provided by law, be necessary & proportional to protect the interests sought. Practically speaking, proving restrictions on speech are proportional and necessary towards combating disinformation is usually difficult. The problem is further complicated by the philosophical ascertainity of the truth at any given moment. What is considered a matter of “common knowledge” and “fact” may be disproved later on. In other words, ‘What is true today may not be true tomorrow.’ This leads some philosophers to argue against the existence of any absolute truths. After all, history teaches us that mankind believed that a stationary earth was the center of a revolving universe for millennia, and during that time scientists like Giordano Bruno were burned at the stake for teaching “falsehoods” alleging the opposite. Galileo was sentenced of heresy and forced to spend his life under house arrest for not confirming with the popularly held belief at the time that the sun moved from east to west.⁷¹ Such historical incidents can serve as a warning against taking extreme measures on disinformation since we have no way of knowing whether what we regulate today as false can be proven to be factual later on. And this is especially true with respect to political opinions and societal utterances which could be subjective and dependent on many contextual factors. One should also be cognizant of the danger of government attempts of suppressing information and cover-up under the guise of combating disinformation.

Rarely do statements fall in a clear binary division between truth and falsity, rather an expression is more likely to include both what the speaker perceives to be facts and his/her opinions. Add to that the possibility of some exaggerations and embellishing statements which are commonplace in daily speeches, a careful line needs to be drawn on what type of expression need to be restricted via government regulation.

The requirement for limits placed on freedom of expression to be necessary in a democratic society essentially requires a margin of tolerance to be afforded to some speech that might be

⁷¹ Helden, A. Van. "Galileo." Encyclopedia Britannica, November 9, 2022. Available at <https://www.britannica.com/biography/Galileo-Galilei>. (Last accessed January 3, 2023).

considered problematic. The expression landscape should thus not be limited to only the most popular and agreeable statements only, but also have room for what is normally considered controversial. The Human Right Committee, chief monitoring body to the ICCPR, has in this regard held that “even expression that may be regarded as deeply offensive may be protected under Article 19 of the covenant.”⁷²

In 2017, in the aftermath of the US presidential elections and Brexit referendum, with highly publicized concerns of the potential impact of disinformation the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information issued a Joint declaration on freedom of expression and “fake news”, disinformation and propaganda.⁷³

The rapporteurs took note of the growing prevalence of disinformation and propaganda in legacy and social media, fueled by both States and non-State actors alike, and the various harms to which they may be a contributing factor or primary cause.⁷⁴ Expressing their concern that disinformation and propaganda are often designed and implemented so as to mislead a population, as well as to interfere with the public’s right to know and the right of individuals to seek and receive, as well as to impart, information and ideas of all kinds, they emphasized that some forms of disinformation and propaganda may harm individual reputations and privacy, or incite to violence, discrimination or hostility against identifiable groups in society.⁷⁵

The Special Rapporteurs emphasized that general prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information”, were incompatible with international standards for restrictions on freedom of

⁷² HRC, General Comment 34, paragraph 11

⁷³ Joint Declaration on Freedom of expression and “Fake news”, Disinformation and Propaganda, FOM.GAL/3/17 3 March 2017

⁷⁴ Ibid, Preamble

⁷⁵ Id

expression.⁷⁶ They also called on State actors to disseminate reliable and trustworthy information about matters of public interest and avoid making, sponsoring or further disseminating statements which they know or reasonably should know to be false.⁷⁷

Accordingly, the joint declaration reiterated that any limitations imposed by States on freedom of expression should necessarily meet the three-part test as provided under international human right law and/or should be consistent with requirements noted under Article 20/2/ of the ICCPR.

The UN Human Right Council on the other hand has expressed its concern about the spread of disinformation and misinformation, noting that it can be designed and implemented so as to mislead, to violate and to abuse human rights, including privacy and the freedom of individuals to seek, receive and impart information, and to incite all forms of violence, hatred, discrimination and hostility, inter alia, racism, xenophobia, negative stereotyping and stigmatization.⁷⁸ Furthermore, it held that responses to the spread of disinformation and misinformation must be grounded in international human rights law, including the principles of lawfulness, legitimacy, necessity and proportionality, and underlining the importance of free, independent, plural and diverse media and of providing and promoting access to independent, fact-based and science-based information to counter disinformation and misinformation,

Restrictions imposed by the government on speech believed to be misleading should thus take into account not only the rights of the speaker or the writer which is imparting his/her ideas and opinions but also the listeners and readers who have the right to receive the same in a media environment capable of providing multiple points of view.

Furthermore, measures taken by governments to combat the impacts of disinformation within their societies would not be expected to be identical. Instead, each state will be afforded a certain margin of appreciation to identify which measures best suit it, given its unique circumstances. The doctrine of Margin of appreciation widely recognized by each of the international and regional mechanisms of human rights emanating from the subsidiary nature of international human right law grants each state discretion on what measures best suit the ends sought to be achieved within reason. The African Commission has in this regard, underscored that the state is best positioned to adopt its own domestic norms and standards to promote and protect the human

⁷⁶ Ibid, Art 2(a),

⁷⁷ Ibid Art 2(c) & 2(d)

⁷⁸ Human Right Council, Resolution 44/12, Freedom of opinion and expression, A/HRC/RES/44/12, preamble

and peoples' rights under the charter, as it has direct and continuous knowledge of its society, its needs, resources, economic and political situation, legal practices, and the fine balance that need to be struck between the competing and sometimes conflicting forces that shape a society.⁷⁹ Thus factors such as the practical dangers of disinformation within the community, the landscape of media, level of media literacy of the population etc. would be considered as instrumental in identifying which measures would be considered as necessary or proportionate.

⁷⁹ Garreth Anver Prince v South Africa, Communication 255/2002, African commission on Human and Peoples Rights, December 2004. para 51

Chapter Three

3. Freedom of Expression in Ethiopia and Regulation of Disinformation

3.1. Freedom of Expression under the FDRE Constitution

Now that we have seen the international human right law landscape of freedom of expression we will proceed to look at the protection it is afforded in the Ethiopian context. Any discussion on the level of protection of freedom of expression, or any other right for that matter, in Ethiopia should necessarily give due consideration to the FDRE constitution which is considered as the supreme law of the land. The constitution which entered into force on August, 1995 is considered as a liberal document with almost one third of its provisions dedicated to granting protection to fundamental rights. The rights included within the constitution include a broad range of freedoms which fall in each of the three generations of human rights. The constitution which affords protection to most of the human rights recognized in various international instruments also includes a clause requiring the interpretation of human right principles to be in conformity with internationally recognized principles in the UDHR and other instruments adopted by Ethiopia.⁸⁰

Freedom of Expression is one of the fundamental rights guaranteed by the FDRE constitution. under the title “Right of Thought, Opinion and Expression”. Article 29 of the FDRE Constitution follows the design of international texts like the ICCPR by constructing freedom of expression as a prima facie human right.⁸¹ Accordingly the sub articles found in the beginning of the provision seem to grant an absolute right of freedom of expression with limitation clauses provided near the end. All of the four components of freedom of expression are given explicit protection under the above mentioned constitutional provision which provides:

- 1. Everyone has the right to hold opinions without interference.*
- 2. Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of*

⁸⁰ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art 13, Proclamation No. 1/1995, Neg. Gaz. Year 1, No. 1 (Hereinafter the FDRE constitution)

⁸¹ A prima facie human right is a substantive human rights norm that appears to be absolute in its first clause (at first appearance) but then is followed by a “limitation clause”

frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.

3. Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:

(a) Prohibition of any form of censorship.

(b) Access to information of public interest.⁸²

As can be seen from the above provision, the constitutional formulation of freedom of expression is almost identical to that provided in international instruments such as the UDHR and the ICCPR. The first two clauses of the provision can specially serve as clear evidence of the fact that, the drafters of the constitution drew inspiration from international Human right instruments while setting forth the content of the freedom. Accordingly, the constitutional protection of freedom of expression has been made to include all four components of freedom of expression namely the right to hold opinions, freedom to seek, receive and impart information and ideas.

The constitution also explicitly restricts censorship with respect to the media as an obvious response to the long established culture of prior censorship that plagued Ethiopian Media for many decades during previous regimes. It also recognizes the vital role media has in the functioning of a democratic order and allows the press to access information of public interest.⁸³

Article 29(6) introduces the permissible limitations on the exercise of freedom of expression by providing:-

“These rights 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 well-being of the youth, and the honour and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.”

By using terms such as “...only through laws...”, “legal limitations can be laid down...” and “shall be prohibited by law” the drafters of the constitution clearly indicated their intentions that

⁸² FDRE Constitution, Article 29

⁸³ FDRE Constitution, Article 29(3)

any limits on the exercise of freedom of expression should be backed by duly promulgated laws. Accordingly, while limitations with the objective of protecting the well-being of the youth and the honor and reputation of individuals are permissible for the legislator to come up with laws to regulate, propaganda for war as well as expression intended to injure human dignity are mandated by the constitution to be prohibited.

The first clause of Article 29/6/ provides the overriding principle that freedom of expression cannot be limited on account of the content or effect of the point of view expressed. Little has been written on the meaning and consequence of this principle. Gedion Timotheos in his article titled “Freedom of expression in Ethiopia the jurisprudential dearth” forwards an interesting outlook on the provision.

“It provides that limitations on account of the content or effect of the view point expressed are not allowed. The first part of these prohibitions is a prohibition of “content based” limitation and seems to have been inspired by the US jurisprudence on “content based discrimination.” The second prohibition is a proscription of limitations on freedom of expression based on the “effect of the view point” of the expressed opinion. Its inspiration does not seem to be as obvious as that of the first prohibition. But one might contend that it is also inspired by US free speech jurisprudence on ‘view point discrimination’.”⁸⁴

For Girmachew Alemu et al, the principles restricting content or effect are only aspirational as the “content or effect” of views can indeed serve as a ground of limitation.⁸⁵ They cite the fact that expression of an opinion with its content or effect to propagate war is prohibited under the constitution as an example.⁸⁶

The permissible grounds for limiting freedom of expression under Article 29 are only four i.e. protection of the youth, protection of honour and reputation of individuals, prohibition of propaganda of war and prohibition of public expression of opinion to injure human dignity. The constitution does not explicitly mention protection of national security or of public order (ordre public), or of public health or morals as limiting grounds of freedom of expression. But it doesn't

⁸⁴ Gedion Timotheos, “Freedom of expression in Ethiopia the Jurisprudential Dearth” (2010) Mizan law review Vol. 4 No. 2 (2010), pg 214

⁸⁵ Girmachew Alemu , Yonas birmeta and Wondemagegn Tadesse, Ethiopian Human Rights Handbook, Pg 104

⁸⁶ Ibid

seem like this was a willful rejection by the drafters of international law, which recognizes those as legitimate grounds.

For Gedion Timothewos “... *the list of grounds for limiting freedom of expression, expressly mentioned in the Constitution cannot be taken as an exhaustive list. Though the list might appear to be exhaustive, it leaves out some grounds of limitation that are usually considered as legitimate grounds of limiting free speech such as national security and the fair trial rights of individuals. This implies that the list cannot reasonably be taken as exhaustive. The danger of this implication is that it seems to invite additions of other “reasonable” grounds of limitation which might at the end of the day result in a very long list that would jeopardize freedom of expression.*⁸⁷

An interpretation capable of recognizing that limitations on those grounds can indeed be imposed under the constitution is possible by referring to article 13 of the constitution which provides: -

*The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia*⁸⁸

Thus an interpretation of article 29 that finds the list of limiting grounds as non-exhaustive while at the same time limiting the possible grounds of limits in accordance with international agreements Ethiopia is a party to, seems to be an ideal compromise.

Given that disinformation can come into conflict with values such as national security, public safety, public order, health as well as protection of the rights and reputation of others one can find legitimate limits under the constitution through the combined reading of Article 29 and 13.

3.2. The State of Disinformation in Ethiopia

Ethiopia has long recognized the dangers of the spread of misleading information and enacted a number of laws to combat it. The first codified penal code of Ethiopia adopted in 1957, had provisions which outlawed deliberately spreading false rumors.⁸⁹ Similarly, the first press proclamation of Ethiopia enacted by the transitional government of Ethiopia in 1992, which

⁸⁷ Gedion Timohewos, Supra note at 84, Page 220

⁸⁸ FDRE Constitution, Art 13/2/

⁸⁹ Penal Code of the Empire of Ethiopia, 1957, Art 479 & 480, Proclamation No 158/1957, Neg. Gaz Year 16, No 1

preceded the FDRE constitution, mandated all press products to be free from any defamation or false accusation against any individual nation/nationality, people or organization.⁹⁰

More recently, in 2016, Ethiopia openly recognized the threats posed by disinformation at the international stage in an address given by the then prime minister at the United Nations General Assembly. In his address, Hailemariam Desalegn told the assembly *“As much as social media offers a digital platform to improve exchange of information and enhance popular participation, its attendant negative impacts simply cannot be ignored”*⁹¹ *“In fact, we are seeing how misinformation could easily go viral via social media and mislead many people, especially the youth,”* he said in his address to the annual general debate, adding: *“Social media has certainly empowered populists and other extremists to exploit people's genuine concerns and spread their message of hate and bigotry without any inhibition.”*⁹²

The National Information and Communication Technology (ICT) Policy and Strategy adopted the same year also emphasized this point stating:” The rising use of ICTs, notably the Internet, has brought attention to the need for proper care and due protection to minimize risks. For instance, inaccurate or false information can be rapidly disseminated through ICT networks feeding misleading information to individuals, firms and public organizations.⁹³ ... These factors erode the confidence of users in adopting new services and applications and furthermore can have serious consequences for government and business networks. Thus, in order to increase confidence in the wide application of ICTs requires the implementation of the necessary standards and creation of a safe and secure environment.⁹⁴

The former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, who visited Ethiopia from 2 to 9 December 2019 noted that the introduction of social media to the country’s political discourse has amplified the voices of many, facilitating freedom of expression. At the same time, the country has witnessed several

⁹⁰ A Proclamation To Provide For The Freedom Of The Press,1992, Article 10/2/b, Proclamation No. 34/1992, Neg. Gaz. No 8

⁹¹ Ethiopian leader at UN Assembly decries use of social media to spread messages of hate and bigotry available at <https://news.un.org/en/story/2016/09/540022-ethiopian-leader-un-assembly-decries-use-social-media-spread-messages-hate-and> (Last accessed January 3, 2023).

⁹² *ibid*

⁹³ National ICT Policy and strategy (September, 2016), pg 12, available at <https://comesabusinesscouncil.org/wp-content/uploads/2020/04/6-ICT-Policy-and-Strategy.pdf> (Last accessed January 3, 2023).

⁹⁴ *ibid*

tragedies in response to the amplification of misinformation and fear. The need to counter what many consider “hate speech” and various forms of disinformation in the media, including the print and broadcast media and digital and social media, took on heightened immediacy and gravity as they became entangled with violence and tragic loss.⁹⁵

Other studies conducted in the area similarly note that the extent of fake news, misinformation, and hate speech have thrived in the Ethiopian media ecosystem, and particularly online. This is strongly correlated with significant, tragic, real-world consequences, in the sense that it has exacerbated pre-existing tensions, and contributed to violence and conflict.⁹⁶

The same assessment found that Ethiopia’s media ecosystem’s weaknesses have made it vulnerable to fake news, misinformation, and hate speech. Some of the driving factors are undoubtedly historical, including the weak state of private media in Ethiopia, the critical role of the Ethiopian diaspora in media ownership, and the proliferation and wild rise in popularity of entertainment-news page services Facebook and Twitter.⁹⁷

While extensive researches quantifying or measuring the extent of the problem of disinformation in Ethiopia have not yet been conducted most studies indicate that disinformation is becoming a formidable challenge to the Ethiopian political and media environment especially with increasing social media engagement. For instance, an assessment by the European institute of peace based on 81 instances of fake news, misinformation, and hate speech within a five month period in 2020 found that the majority of the misleading information spread online on social medias tended to focus on 4 specific topics i.e. ethnicity, federalism and ethnic nationalism, the Grand Ethiopian Renaissance Dam (GERD), and international relations.⁹⁸ Furthermore, the assessment indicated that many of the most widely read sources of information have weak editorial controls and remain susceptible to state influence. At the same time the most popular online sources in the Ethiopian information ecosystem were produced outside the country and are often owned and managed by members of the diaspora, who were more politically polarized than their colleagues

⁹⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his visit to Ethiopia, A/HRC/44/49/Add.1, Pg 9-10

⁹⁶ European Institute of Peace, Fake News Misinformation and Hate Speech in Ethiopia: A Vulnerability Assessment, pg 3, available at <https://www.eip.org/publication/fake-news-misinformation-and-hate-speech-in-ethiopia-a-vulnerability-assessment/> (Last accessed January 3, 2023).

⁹⁷ Ibid

⁹⁸ Ibid, pg 17

in the Ethiopian media and lack the same traditional and established editorial controls and quality assurance systems.⁹⁹ Succeeding sections will consider the possible impacts of disinformation to Ethiopian society and the government's response to the problem by highlighting three notable instances

3.2.1. The Prime Minister's Audio clip

On 31st of May, 2021, an audio file purporting to be leaked from the Prosperity Party's executive committee meeting" wherein the prime minister was heard saying "Noone will be able to form a government in the coming 10 years and that he would rather die than hand over power" was released by Kello media an online news media based in the US.¹⁰⁰ Posted a mere 21 days before the 2021 general Ethiopian election the prime minister was heard saying "We have a big responsibility to disrupt the election and discourage any competing forces," to a roaring applause from supposed members of the prosperity party.¹⁰¹ The clip garnered quite a lot of views as soon as it was posted getting traction on Facebook and YouTube. The original post received more than 49,000 views and 3000 likes on Facebook in addition to the thousands of views it got on its other re-uploads. In addition to its virality on Ethiopian social media sphere the release of the audio file even attracted international media attention with a number of Egyptian news media' sharing the news on their platforms.¹⁰²

The supposed leaked audio clip was however a doctored clip intended to mislead audiences as it was later proved that the statements attributed to the prime minister were assembled from different speeches at different occasions and taken out of context to give a different meaning. The government was quick to respond to the clip, immediately issuing a rebuttal the same day the clip was posted by Kello Media, saying; *"The office of the Prime Minister wishes to affirm that supposed leaked audio of the Prime Minister during Prosperity Party meeting of last week is a fake audio compilation which has been put together by drawing on different remarks made by the Prime Minister and editing it into one compilation. In this era of disinformation and as the*

⁹⁹ Ibid pg 9

¹⁰⁰ Kello Media, Abiy Ahmed's Leaked Audio with English Subtitle, [video] available at https://www.facebook.com/kellomedia/videos/abiy-ahmeds-leaked-audio-with-english-subtitle/515315456285752/?locale=az_AZ (Last accessed January 3, 2023).

¹⁰¹ Ibid

¹⁰² The English Ahram <https://english.ahram.org.eg/News/413335.aspx>, Egyptian Gazette <https://egyptian-gazette.com/world/anger-in-ethiopia-over-abiy-leaked-audio-recording/> and Egypt Today <https://www.egypttoday.com/Article/1/104561/Ethiopian-PM-purportedly-says-no-one-can-form-gov-t> all run the story to their audiences

elections draw nearer, we urge citizens to be vigilant about such types of disinformation campaigns aimed at creating discord.”¹⁰³The state owned Ethiopian News Agency (ENA) also came up with a report detailing the step by step process through which the doctored clip was fabricated.¹⁰⁴

This was later verified by independent fact checkers from the BBC¹⁰⁵ and Addis Zeybe¹⁰⁶ who analyzed the audio clip and found it to have been manipulated. Three separate sections of the audio were traced back to previous public recordings of the prime minister’s speeches.¹⁰⁷

The Ethiopian government could be said to have successfully mitigated the impact of disinformation in this instance by immediately and decisively debunking the alleged claim, providing convincing proof that the supposed audio clip was fake etc. However, this is not always the case, sometime misleading information released online and in the media can cause devastating real world consequences before the record can be corrected.

3.2.2. The Aftermath of an Artist’s Murder

Another instance that can give valuable insight on the possible impacts disinformation can have in Ethiopian society is the aftermath of the murder of prominent musician and social activist Hachalu Hundesa (also spelled Haacaaluu Hundeessaa) in the capital on the night of June 29, 2020. Haacaaluu, 34, was a bold performer and artist considered a cultural treasure, particularly by the Oromo people, the country’s largest nationality, cultural and linguistic group with a population of around 40 million.¹⁰⁸

Protesters took to the streets in the Oromia region and the capital Addis Ababa the next day expressing their grievances and demanding justice for the death of Hachalu. Media such as the Oromia Media Network (OMN) broadcasted uncensored footage from the demonstrations where

¹⁰³ Office of the Prime Minister-Ethiopia, Official Statement, May 31,2021. Available at <https://www.facebook.com/PMOEthiopia/posts/1115104635647385> (Last accessed January 4, 2023).

¹⁰⁴Ethiopian News Agency (ENA), How Is PM Abiy’s Audio File Doctored?, Available at <https://www.ena.et/en/?p=25020> (Last accessed January 4, 2023).

¹⁰⁵ BBC, Ethiopia elections: The misinformation circulating online, available at <https://www.bbc.com/news/world-africa-57511739> (Last accessed January 4, 2023).

¹⁰⁶ Addis Zeybe, Is the audio of Prime Minister Abiy Ahmed at a Prosperity Party meeting real? Available at <https://addiszeybe.com/featured/hagcheck/currentaffairs/is-the-audio-of-prime-minister-abiy-ahmed-at-a-prosperity-party-meeting-real> (Last accessed January 4, 2023).

¹⁰⁷ENA, Supra note at 104

¹⁰⁸ Time, How the Murder of an Ethiopian Singer Triggered an Uprising Against a Disintegrating Democracy, available at <https://time.com/5871217/ethiopia-protests-haacaaluu/> (Last accessed January 4, 2023).

several extreme and uninformed opinions regarding the incident were transmitted uncensored.¹⁰⁹ Individuals who squarely put the blame for the artists death on “Neftegnas”, a term often hurled as a dog-whistle reference to Amhara people, and that called for their expulsion from Oromia were broadcast live that day. Ethiopian social media was also already abuzz with conspiracy theories, hate speech & disinformation campaigns regarding the artists death¹¹⁰

In addition to allegations of who was to blame for Hachalu’s death false and misleading claims bubbled up in a debate over where Hachalu should be buried. Some diaspora-based Oromo activists asserted that government authorities pressured Hachalu’s family to hold his funeral in Ambo, his hometown. Others accused authorities of rushing the funeral in Addis Ababa, to hide criminal evidence. These claims further inflamed ethnic tensions and continued to persist despite the artists family appearing on media trying to notify the public that it was their decision.¹¹¹

As tensions continued to mount, the Ethiopian government implemented a blanket internet shutdown throughout the country at approximately 9:00 the next day on June 30,2020.¹¹² Broadcasts by OMN and TPLF affiliated media such as Dimtsi Weyane TV where in accusations that the singer had been killed because he had made critical comments against the Government and for opposing the Government's moves away from federalism continued to be broadcasted.¹¹³

The Government's response to the sudden surge of disinformation and hate speech was largely disorganised, with Prime Minister Abiy describing the death as part of a set of coordinated actions by the TPLF to instigate conflicts among different ethnic groups and the then Mayor of Addis Ababa, Takele Uma, assigning blame to the Oromo Liberation Army (OLA) one of the Oromo nationalist factions that has since been designated as a terrorist organization.¹¹⁴

¹⁰⁹ European Institute of Peace, Supra note at 96, Pg 16

¹¹⁰ Endalkachew Chala, How the murder of musician Hachalu Hundessa incited violence in Ethiopia: Part II, available at <https://advox.globalvoices.org/2020/08/08/how-the-murder-of-musician-hachalu-hundessa-incited-violence-in-ethiopia-part-ii/> (Last accessed January 4, 2023).

¹¹¹ Ibid

¹¹² Netblocks, Internet cut in Ethiopia amid unrest following killing of singer, available at <https://netblocks.org/reports/internet-cut-in-ethiopia-amid-unrest-following-killing-of-singer-pA25Z28b> (Last accessed January 4, 2023).

¹¹³ European Institute of Peace, Supra note at 96, page 16

¹¹⁴ Id

In the successive days of turmoil, youth carrying sticks and metal rods in various areas in the Oromia region attacked people from other ethnic groups, Properties belonging to non-ethnic Oromos were also attacked and businesses vandalized, burned, or looted by the organized mobs in Arsi Negele, Robe, Adaba, Asasa, Ziway, and other towns of the region¹¹⁵ The ensuing unrest that continued for three days took the life of hundreds and resulted in the injury of thousands in addition to property destruction amounting in the millions.¹¹⁶ A report published by the Ethiopian Human Rights Commission on 1st January 2021, found that in the subsequent 3 days unrest following the murder of the artist more than 500 people were injured and 123 people lost their lives within 40 locations investigated by the commission within the Oromia region.¹¹⁷ Deputy police commissioner of Oromia region Girma Gelan places the number of deaths much higher to 145 civilians and 11 security forces in the same time period.¹¹⁸

In the following days the Government arrested over two thousand people and maintained the internet shutdown for three more weeks across the country. The events have however highlighted the fragility of ethnic relations in the country and the devastating consequences disinformation campaigns can have if left unabated.¹¹⁹

The destruction to human life and property that followed the artist's assassination which was characterized as meeting the definition of "crime against humanity" by the Human Right Commission in its report can indeed be said to have been the result of the amplification of false and dangerous narratives transmitted through social media and broadcast media

¹¹⁵Ethiopia Observer, Ethnically-motivated attacks in Shashemene and elsewhere, available at <https://www.ethiopiaobserver.com/2020/07/06/ethnically-motivated-attacks-in-shashemene-and-elsewhere/> (Last accessed January 5, 2023).

¹¹⁶ Office of the Prime Minister Federal Democratic Republic of Ethiopia, Context and Updates on Current Issues in Ethiopia Press release, 8 Jul 2020, available at <https://www.ethioembassy.org.uk/context-and-updates-on-current-issues-in-ethiopia/> (Last accessed January 5, 2023).

¹¹⁷ የኢትዮጵያ ሰብዓዊ መብት ኮሚሽን፣ የአርቲስት ሃጫሉ ሁንዴሳ ግድያን ተከትሎ በተከሰተው የፀጥታ መደፍረስ ምክንያት የተፈጸሙ የሰብአዊ መብቶች ጥሰት ምርመራ ሪፖርት available at <https://addisstandard.com/wp-content/uploads/2021/01/%E2%80%9C%E1%88%98%E1%8A%95%E1%8C%8D%E1%88%A5%E1%89%B5-%E1%8B%AB%E1%88%88-%E1%8A%A0%E1%8B%AD%E1%88%98%E1%88%B5%E1%88%8D%E1%88%9D-%E1%8A%90%E1%89%A0%E1%88%AD%E2%80%9D-Full-Report-Amharic.pdf> (Last accessed January 5, 2023).

¹¹⁸ Aljazeera, More than 160 killed in Ethiopia protests over singer's murder, available at <https://www.aljazeera.com/news/2020/7/5/more-than-160-killed-in-ethiopia-protests-over-singers-murder> (Last accessed January 5, 2023).

¹¹⁹ European Institute of Peace, Supra note at 96, page 16

Problems associated with disinformation have also been observed in relation to the armed conflict that erupted in the northern part of Ethiopia in November 2020 between the Federal government and the TPLF, a brief outlook of this will be provided next.

3.2.3. Disinformation in the context of the armed conflict in Tigray

Ethiopia's northern most region of Tigray has been the setting to a devastating armed conflict since November 2020 between the federal government and Tigrayan peoples liberation front (TPLF) forces. The conflict which at times expanded to neighboring regions of Amhara and Afar has resulted in a lot of destruction with significant loss of life and property.

A study conducted by Harvard Kennedy School, found that both sides shared misleading, unverified, and false information, to varying degrees and effects. Furthermore the study concluded fear of disinformation may have prompted an additional challenge to victims of the conflict by allowing people to dismiss substantiated reports of atrocity crimes as fabricated or overblown.¹²⁰

Deputy Director of The Information Network Security Agency (INSA), Kefyalew Tefera alleged the TPLF was disseminating up to 20,000 pieces of disinformation via Twitter on a daily basis using its online media group named “*Digital Woyane*” in an interview he gave to a local media.¹²¹ Although this has not been independently verified, this narrative has gained significant traction, with pro-government activists labeling almost all tweets about potential government wrongdoing as TPLF-funded disinformation.¹²²

One notable instance of this related to a massacre that took the life of hundreds of civilians in the city of Axum by Eritrean soldiers in November 2020 which was discredited as disinformation by some when it was first reported by amnesty international.¹²³ Months later the Ethiopian human right commission (EHRC) verified the incident reporting, “... *preliminary investigation*

¹²⁰ Claire Wilmot et al, supra note at 8

¹²¹ Fana Broadcasting Corporate, TPLF Clique Was Disseminating Up To 25,000 Pieces Of Disinformation Via Twitter On Daily Basis: INSA, available at <https://www.fanabc.com/english/tplf-clique-was-disseminating-up-to-25000-pieces-of-disinformation-via-twitter-on-daily-basis-insa/> (Last accessed January 5, 2023).

¹²² The Washington post, Analysis by Dr. Alexi Drew and Claire Wilmot, In Ethiopia's digital battle over the Tigray region, facts are casualties, available at <https://www.washingtonpost.com/politics/2021/02/05/ethiopias-digital-battle-over-tigray-region-facts-are-casualties/> (Last accessed January 5, 2023).

¹²³ Jeff Pearce, Ethiopia: Lies, Damn Lies, Axum and the West, available at <https://jeffpearce.medium.com/ethiopia-lies-damn-lies-axum-and-the-west-242f471c45ae> (Last accessed January 5, 2023).

*confirm that during the two days of November 28 and November 29, grave violations of human rights were committed and that in Aksum, over one hundred residents including visitors from other parts of the country ..., were killed by Eritrean soldiers.*¹²⁴

Prior to this confirmation the state-run Ethiopian Herald newspaper had even wrongly reported that the United States Agency for International Development (USAID) had conducted its own investigation into the incident and found no evidence of the atrocities¹²⁵ which was itself later debunked by AFP Fact check¹²⁶ and Pesacheck¹²⁷ as false.

The involvement of Eritrean forces in the conflict itself was a subject of denial initially, with government officials and state media dismissing any allegation to the contrary. Minister of Defense of FDRE at the time, Doctor Kenea Yadeta, had for example described such assertions as “complete lies” in a press briefing¹²⁸ claiming “There was no reason for the army to request additional support from outside and the army will not fight its own country collaborating with an outside force.”¹²⁹ It was only after 4 months into the conflict that the prime minister finally acknowledged Eritrean forces’ presence in Tigray.¹³⁰

On the TPLF’s side an allegation that the Tekeze hydroelectric dam was hit by airstrikes in early November 2020, originating from a speech by TPLF leader Debretsion Gebremichael was widely circulated on social medias. However this was denied by the Ethiopian government¹³¹ and

¹²⁴ Ethiopian Human Right Commission, Investigation into Grave Human Rights Violations in Aksum City Report on Preliminary Findings, pg 9, available at <https://ehrc.org/wp-content/uploads/2021/05/Investigation-into-Grave-Human-Rights-Violations-in-Aksum-City-Report-on-Preliminary-Findings-2-1-1.pdf> (Last accessed January 5, 2023).

¹²⁵ The Ethiopian Herald, March 9, 2021 edition, See Annex One

¹²⁶ AFP Fact Check, Social media posts falsely claim that USAID found no evidence of a massacre in Ethiopia’s Tigray region available at <https://factcheck.afp.com/social-media-posts-falsely-claim-usaid-found-no-evidence-massacre-ethiopias-tigray-region> (Last accessed January 5, 2023).

¹²⁷ Pesa Check, FALSE: USAID did not conduct an investigation into Ethiopia’s Axum massacre, available at <https://pesacheck.org/false-usaid-did-not-conduct-an-investigation-into-ethiopias-axum-massacre-fa42ceb7d70f> (Last accessed January 6, 2023).

¹²⁸ Africa News, 'Complete lie': Ethiopia denies Eritrean army's involvement in Tigray <https://www.africanews.com/2020/11/12/complete-lie-ethiopia-denies-eritrean-army-s-involvement-in-tigray/> (Last accessed January 6, 2023).

¹²⁹ Press briefing by the FDRE Minister of Defence Nov 11, 2020 የኢ.ፌ.ዴ.ሪ መከላከያ ሚኒስትር ዶክተር ቀንኦ ያደታ የሰጡት መግለጫ available at <https://www.youtube.com/watch?v=bXncyzcazi4> (Last accessed January 6, 2023).

¹³⁰ Aljazeera, Abiy Ahmed finally came clean about Eritrean troops. What next? Available at <https://www.aljazeera.com/news/2021/4/2/abiy-ahmed-finally-came-clean-about-eritrean-troops-what-next> (Last accessed January 6, 2023).

¹³¹ Reuters, Ethiopia denies bombing Tigray's Tekeze power dam, Available at <https://www.reuters.com/article/ethiopia-conflict-dam-idUKL8N2HZ3OJ> (Last accessed January 6, 2023).

widely believed to be wrong.¹³² The Ethiopian government has similarly attributed “unfounded rumors on relocation of the African Union from Addis Ababa” as well as “reports of troops allied against the government reaching the outskirts of the capital” as being part of a campaign to destabilize the country by disseminating fake news.¹³³

Overall the armed conflict in the northern part of the country can be said to have been accompanied by a lot of activism, disinformation and misinformation throughout, with supporters of both sides trying to take the upper hand in dictating the narratives of the conflict. Immediately after the start of the conflict in November 2020, despite disruptions of internet services in Tigray, Tigrayans in the diaspora encouraged supporters to take to Twitter, circulating instructions and videos on WhatsApp describing how to use the platform to raise awareness about the conflict.¹³⁴ Prime minister Abiy Ahmed had also called on all Ethiopians and friends of Ethiopia to launch a counter-offensive against “TPLF’s distortions” and “lies” in the international arena.¹³⁵ False declarations of military victories, false allegations of attacks on civilians as well as false claims of captured infiltrators have become quite common scenes in social media posts with little being done by the platforms to remove them.¹³⁶

A Washington post analysis made in February 2021, three months into the conflict found more than 500,000 tweets were already made by supporters from both sides. Members of the Tigrayan diaspora mobilized online campaigns on twitter with hashtags like #IStandWithTigray, #TigrayGenocide, #TigrayWillPrevail, #StopTheWaronTigray, while government’s supporters made use of taglines like #IstandWithENDF, #EthiopiaPrevails, #UnityForEthiopia, #EthiopiaWillPrevail, #TplfJunta,¹³⁷

As the conflict progressed and diplomatic pressures mounted on the Ethiopian government following a number of unfavorable reports about the distractive impacts of the conflict in Tigray,

¹³² Washington post, supra note at 122

¹³³ Ethiopian News Agency, AU Says Social Media Reports of Temporary Relocation Are Fake, available at <https://www.ena.et/en/?p=30315> (Last accessed January 6, 2023).

¹³⁴ Claire Wilmot et al, supra note at 8

¹³⁵ Abiy Ahmed Ali, Twitter Post, available at <https://twitter.com/AbiyAhmedAli/status/1356628326434168832> (Last accessed January 6, 2023).

¹³⁶ The Guardian, Facebook ‘let’s vigilantes in Ethiopia incite ethnic killing’, available at <https://www.theguardian.com/technology/2022/feb/20/facebook-lets-vigilantes-in-ethiopia-incite-ethnic-killing> (Last accessed January 6, 2023).

¹³⁷ Washington post, supra note at 122

the prime minister's office issued a statement on February 24, 2021 expressing it was gravely concerned by unsubstantiated and politically motivated misinformation being extensively shared by several actors about the situation in Tigray.¹³⁸

The competition to control the narrative of the conflict between supporters of each side, which was made worse by a near complete communication blackout in Tigray has made almost all information coming out of the conflict zone uncertain. The dueling information campaign between the two sides has also spilled over to legacy media evidenced with the government regulatory body ,The Ethiopian Media Authority(EMA), issuing written warnings to four international media in November 2021 for their reporting on the conflict described as false news in support of the TPLF.¹³⁹

The issue of disinformation and misinformation has at times even taken center stage in the international relations of the country putting strain on its diplomacy. This was especially the case during the height of the conflict in 2021. The disseminating of misleading information was one of the reasons cited by the Ethiopian authorities when they declared seven UN aid workers *persona non grata* and expelled them from the country on September, 2021.¹⁴⁰ The expulsion of senior UN officials including Mr Adele Khodr, Unicef Country Representative for Ethiopia, over claims of interference with the country's internal affairs drew ire from various organs.

The UN Secretary General Antonio Guterres expressed that he believed Ethiopia was violating international law in ousting the individuals from the country.¹⁴¹ Describing Ethiopia's 30 September announcement that it will expel seven senior United Nations officials — most of them humanitarian staff — as “disturbing”, he said “this unprecedented expulsion should be a matter of deep concern for us all as it relates to the core of relations between the United Nations

¹³⁸ FDRE Office of the Prime Minister, Updates on Tigray Region, Federal Democratic Republic of Ethiopia, Office of the Prime Minister (February 24, 2021) <https://ethiopianembassy.org/updates-on-tigray-region-federal-democratic-republic-of-ethiopia-office-of-the-prime-minister-february-24-2021/> (Last accessed January 6, 2023).

¹³⁹ Written Notices by Ethiopian Media Authority to Reuters, Associated Press, Cable News Network (CNN) and British Broadcasting Corporation (BBC) dated 19 Nov, 2021, available at <https://twitter.com/ethmediaauth/status/1461715312819191808?lang=en> (Last accessed January 6, 2023). See Annex Two

¹⁴⁰ Official Twitter page of Ministry of Foreign Affairs of Ethiopia available at : <https://twitter.com/mfaethiopia/status/1443596419068305408/photo/1> (Last accessed January 6, 2023).

¹⁴¹ Secretary-General Denounces Ethiopia's Expulsion of Senior United Nations Officials as Security Council Delegates Differ on Potential Response, available at: <https://www.un.org/press/en/2021/sc14657.doc.htm> (Last accessed January 6, 2023).

and Member States". The White House condemned the move "*in the strongest possible terms*" with Press Secretary Jen Psaki calling it "unprecedented action to expel the leadership of all of the United Nations organizations involved in ongoing humanitarian operations".¹⁴²

The Government of Ethiopia's response to combating the spread of disinformation is the main subject in the following chapters. A number of different measures have thus far been employed by the state to address the problems of the spread of misinformation. Measures ranging from criminalization, blocking and restricting access to media and websites have been applied all for the supposed interest of combating disinformation. The thesis will look at each of those measures vis-à-vis the binding constitutional and international protections of freedom of expression.

On the one hand, the negative impacts of disinformation to democracy and human rights cannot be underestimated, especially in the context of developing nations such as Ethiopia where disinformation campaigns can be used to exacerbate social divisions, polarize societies, spread hatred, and incite violence. On the other hand, responses to such challenges can also sometimes go directly against state responsibilities to respect and protect human rights. Repressive approaches which use combating disinformation as a pretext to silence critical and dissenting views are incompatible with international obligations of states.

With this in mind the next sections of this thesis will look into the various responses the Ethiopian government has employed to combat acts of disinformation. Government responses to disinformation discussed in the following section can generally be divided into two categories: criminal measures and non-criminal measures. Criminal measures involve the criminalization of speech that is considered to be disinformation, with the accused potentially facing various penalties through the criminal legal system. Non-criminal measures, on the other hand, involve administrative and other measures that do not necessarily involve the criminal justice system but still seek to exert control over media and other channels of communication.

Criminal measures include the use of laws or regulations that specifically target disinformation, such as the hate speech and disinformation proclamation as well as specific provisions in other laws that may apply to spreading of false information. These measures while present in the laws

¹⁴² France 24, Ethiopia to expel senior UN staff following criticism of Tigray aid blockade, available at <https://www.france24.com/en/africa/20210930-ethiopia-to-expel-senior-un-staff-following-criticism-of-tigray-aid-blockade> (Last accessed January 6, 2023).

of many countries can raise concerns about their potential for abuse and their impact on freedom of expression as a human right.

Non-criminal measures on the other hand may include regulating media content through administrative measures, allowing individuals or organizations to respond to inaccurate statements, imposing prior restraints, blocking internet access, and removing access to publications or online content. While non-criminal measures are considered to impose lesser burdens than their criminal counter parts concerns can still be raised about their effectiveness and their compatibility to human rights.

3.3. Criminal Law Responses to Disinformation

3.3.1. The Hate Speech and Disinformation Prevention and Suppression Proclamation

Proclamation No. 1185 /2020, formally known as the Hate Speech and Disinformation Prevention and Suppression Proclamation is arguably the most comprehensive attempt by the Ethiopian legislature to regulate disinformation. The objectives of the Proclamation are stipulated as follows:-

- 1/ Ensure that in their exercise of freedom of expression, individuals will not engage in speech that incites violence, is likely to cause public disturbance or promotes hatred and discrimination against a person or an identifiable group or community based on ethnicity, religion, race, gender or disability;
- 2/ Promote tolerance, civil discourse and dialogue, mutual respect and understanding and strengthening democratic governance;
- 3/ Control and suppress the dissemination and proliferation of hate speech, disinformation and other related false and misleading information.¹⁴³

Gedion Timothewos, who was Deputy Attorney General at the time of drafting of the proclamation explained to the parliament's Legal, Justice and Democracy Affairs Standing Committee that the aim of the draft bill was to punish those perpetrators who make dangerous statements. He stated: *“In the past few years, we have learned of tragic violence, ethnic and religious-based attacks, lynching, and civilian displacements in different parts of the country.”*

¹⁴³ Proclamation No. 1185 /2020, Art 3

*As such, the aim is to quell these ills and ensure the rule of law. He added that the government is guided by good faith and will strive to promote freedom of expression.*¹⁴⁴

The objectives are further elaborated in the preamble to the proclamation which recognize that it has become necessary to prevent and suppress by law the deliberate dissemination of hate speech and disinformation, which pose a threat to social harmony, political stability, national unity, human dignity, diversity and equality.

The preamble also provides that “*limitations on fundamental rights should be proportionate, narrowly tailored and prescribed by law in pursuit of aims that are legitimate in a democratic society*”, essentially adopting the test employed in the Declaration of Principles on Freedom of Expression in Africa. This can indeed be considered as one of the most important contributions of the proclamation to the human right discourse of the country as it can be said to have laid the ground work for interpretation of limits that may be placed on the exercise of human rights even outside the scope of the present legislation. In this respect, it should be noted that the wording used by the legislature goes far beyond any test previously indicated in any other body of law or the FDRE constitution with respect to permissible limits to rights. And since it was not framed to be exclusively applicable to freedom of expression but rather to all human rights, a liberal interpretation can be made, that with this paragraph the Ethiopian legislature has formally adopted the rule that limits to human rights should essentially pass the three-part test as well as be legitimate in a democratic society

The proclamation defines disinformation as speech that is false, is disseminated by a person who knew or should reasonably have known the falsity of the information and is highly likely to cause a public disturbance, riot, violence or conflict;¹⁴⁵ .“Speech” is understood to refer to the act of disseminating of information verbally, textually, graphically or by other means;¹⁴⁶ Furthermore, it should also be noted that the proclamation employs the term “dissemination”, defined to mean the spreading or sharing of a speech on any means for many persons excluding liking or tagging on social media.¹⁴⁷

¹⁴⁴ Yohannes Eneyew Ayalew, Muting sectarianism or muzzling speech? Available at: <https://www.ethiopia-insight.com/2020/01/31/muting-sectarianism-or-muzzling-speech/> (Last accessed January 6, 2023).

¹⁴⁵ Proclamation 1185/2020, Art 2(3)

¹⁴⁶ Proclamation 1185/2020, Art 2(1)

¹⁴⁷ Proclamation 1185/2020, Art 2(7)

This has led scholars like Yohannes Eneyew, to criticize the law for introducing the concept of “dissemination” instead of using the term “advocacy” which is commonly used in most international and national laws with respect to the subject matter. For him the term “dissemination” lacks specificity and remains subjective and advocacy would have been preferable to demonstrate intent.¹⁴⁸

Based on the definition under the proclamation one can identify a number of elements that should be fulfilled for an expression to count as disinformation,

- The information communicated should be false
- This false information should be shared to “many persons” through different means which could be verbal, textual, graphical or any other means
- The person should know or reasonably be expected to know the falsity of the information
- The sharing of this information should be highly likely to cause a public disturbance, riot, violence or conflict

As can be inferred from the definition, the law requires the person to know or reasonably be expected to know the falsity of the information to hold him/her responsible of committing an act of disinformation. A speech will not be considered as disinformation and prohibited if a reasonable effort has been made under the circumstances by the person making the speech to ensure the veracity of the speech. In this respect the law seems to have imposed the burden of proving what steps the person took to check or verify the truthfulness of the information he disseminated if it was found later on that the information was indeed false.

Secondly, the speaker or writer is not necessarily required to have the intention to cause public disturbance, riot, violence or conflict rather this seems to be left to the judiciary which is going to make an assessment of the likelihood that the sharing of the information had to cause such harms irrespective of the personal intent of the accused.

The requirement that the speech needs to be false essentially implies that the ambit of the proclamation is limited to information and ideas but not opinions, beliefs and other forms of expression which cannot be evaluated under the lens of a “truth/falsity” dichotomy.

¹⁴⁸ Yohannes Eneyew Ayalew, “Defining ‘Hate Speech’ under the Hate Speech Suppression Proclamation in Ethiopia A Sisyphean exercise” Reflections on Ethiopia’s Media Law Reform, Ethiopian Human Rights Law Series (Volume - XII) Addis Ababa University - School of Law, pg 67

In addition to defining what disinformation is, the proclamation criminalizes disseminating of any disinformation on public meeting, by means of broadcasting, print or social media using text, image, audio or video punishable with simple imprisonment not exceeding one year or a fine not exceeding 50,000 birr. Although the proclamation requires the sharing of the information to third parties in order to consider it disseminated, the proclamation does not specify how much of a reach a specific information needs to have as it only uses the general term “shared to many persons”. While “many” obviously implies an information needs to be shared to more than one person, the minimum number of people it needs to reach to meet the proclamation’s definition of dissemination is not clear. This is especially problematic in the context of messaging apps where a message could be shared within a closed group of a few people without being open to the general public, giving a wide margin for the executive to interpret the proclamation selectively.

The proclamation does however use the possible reach of a particular expression as an aggravating circumstance by providing “If the offense of hate speech or disinformation offense has been committed through a social media account having more than 5,000 followers or through a broadcast service or print media, the person responsible for the act shall be punished with simple imprisonment not exceeding three years or a fine not exceeding 100,000 birr.¹⁴⁹ It’s not clear how the legislator came up with 5000 in this respect but some have drawn comparisons with a 2018 Egyptian media law that equates social media accounts that have more than 5,000 followers to media establishments.¹⁵⁰

In comparison to the definitions of disinformation at the international level discussed early on, the proclamation’s formulation does not require the intention to deceive the public or cause public harm. Neither does it require the offender to have the intention to secure economic or political gain. This primary state of mind that is primarily used to distinguish between acts of disinformation and misinformation at the international level seems to be absent under the proclamation as it has opted to make the test on whether the false speech could lead to public disturbance, riot, violence or conflict the only requirement. Furthermore, out of those four public ills sought to be avoided, only violence is defined under the proclamation¹⁵¹ leaving the other

¹⁴⁹ Proclamation 1185/2020, Art 7(4)

¹⁵⁰ Kinfe Micheal Yilma, “On Disinformation, Elections and Ethiopian Law” *Journal of African Law*, Volume 65 , Issue 3, 2021, Pg 358

¹⁵¹ “Violence” means any injury of property, body or life against on an individual or a group of people; Art 2/6/

three namely public disturbance , conflict or riot, subject to interpretation by enforcing authorities.

The broad and vague definition under the proclamation was criticized by a number of commentators. Article 19, an international nonprofit organization working in the area of freedom of expression criticized the proclamation by stating “... the breadth and subjectivity of the key terms in these provisions make the offences in the ... proclamation indeterminate in scope.”¹⁵²

Another NGO, Access Now, with a mission to defend and extend the digital civil rights of people around the world criticized the proclamation’s definition of disinformation as too broad with a risk to opening up loopholes for arbitrary application of the law and creating a breeding ground for human right violations.¹⁵³

Despite the broad nature of the definition of disinformation under the proclamation, articles included therein by way of exceptions and exemptions rein in the possible ambit of the proclamation. For instance, the proclamation provides that , a speech will not be considered as disinformation and prohibited if a reasonable effort has been made under the circumstances by the person making the speech to ensure the veracity of the speech or if the speech is more inclined to political commentary and critique instead of being a factual or news report.¹⁵⁴

Furthermore, a clear exemption is provided under article 6 which states

“Notwithstanding Articles 4 and 5 of this Proclamation, a speech will not be considered hate speech or disinformation and its dissemination is not prohibited if it is part of;

- a) An academic study or scientific inquiry,*
- b) A news report, analysis or political critique,*
- c) Artistic creativity, performance or other form of expression,*
- d) Religious teaching*¹⁵⁵

¹⁵² Article 19, Ethiopia: Draft Proclamation to prevent the spread of Hate Speech and False Information, October 2019, Pg 13, available at :<https://www.article19.org/wp-content/uploads/2020/01/Ethiopia-Hate-Speech-Law-Final.pdf> (Last accessed January 7, 2023).

¹⁵³ Berhan Taye, Ethiopia’s hate speech and disinformation law: the pros, the cons, and a mystery, <https://www.accessnow.org/ethiopias-hate-speech-and-disinformation-law-the-pros-the-cons-and-a-mystery/> (Last accessed January 7, 2023).

¹⁵⁴ Proclamation 1185, Art 6/2/

¹⁵⁵ Proclamation 1185, Art 6/1/

Despite the positive implications of the inclusion of such exemptions in the proclamation the law did not escape criticism from organizations such as Article 19 which claimed the protection of these types of expressions should have been the rule rather than the exception as in international standards of freedom of expression.¹⁵⁶

The proclamation was also highly criticized for the punitive approach it applied with respect to acts of undesired expression covered therein, which was said to be counter-productive with a risk to place protected expressions under criminal scrutiny, posing dangers not only to the right to freedom of expression but also to the right of freedom from discrimination.¹⁵⁷

Another definitional deficiency of disinformation under the proclamation is that by focusing on speech that would lead to unrest and violence the proclamation has essentially failed to cover misleading speech that has the capacity to cause significant damage to society without creating chaos. For example, misleading information about political parties and candidates that can have the potential of deceiving voters, medical misinformation capable of damaging societies health etc. will not be covered within the proclamation's definition of disinformation as long as they do not meet the requirement of being likely to lead to public disturbance, riot, violence or conflict. While this makes the proclamation's scope of application narrower than the international understanding of disinformation, considering that the proclamation is mainly intended to provide criminal penalties to acts of disinformation, the limit in scope might not be as such problematic. Other forms of misleading information not capable of leading to public disturbance but still harmful to society could still arguably be combated by other means of regulation outside the proclamation.

In fact, limiting criminal liabilities to those acts of disinformation which lead to violence and disturbance could arguably be considered a human right based approach to combating disinformation. Leaving the space for the government to employ methods other than the criminal justice system to make sure society does not get misled. The media proclamation, for instance, has provisions which mandate media houses to provide a balanced and comprehensive coverage of election campaigns by proportionally including the views of political parties and voters on news, analysis and discussion programs. Accordingly, media regulation authorities would be on

¹⁵⁶ Article 19, Supra note at 152 , Pg 2,

¹⁵⁷ Ibid pg 2

the lookout in ensuring such rules are followed by licensees without the need to impose criminal penalties on offending media.

With regard to criminal penalties, the proclamation provides a number of criminal sentences for various acts of disinformation. Disseminating disinformation as specified under Article 5 of the proclamation is punishable with simple imprisonment not exceeding one year or a fine not exceeding 50,000 birr.¹⁵⁸ In cases where the disinformation offense has been committed through a social media account having more than 5,000 followers or through a broadcast service or print media, the person responsible for the act shall be punished with simple imprisonment not exceeding three years or a fine not exceeding 100,000 birr.¹⁵⁹ If violence or public disturbance occurs due to the dissemination of disinformation, the punishment can extend to rigorous imprisonment of two year up to five years as this is considered an aggravating circumstance under the proclamation.¹⁶⁰

On the other hand, if no violence or public disturbance resulted due to the commission of the offense of disinformation, a court could sentence the convict to render mandatory community service in lieu of other penalties provided therein.¹⁶¹ However this is only applicable in exceptional cases where the court is convinced that the correction of the convict could be better served through alternatives other than fine or imprisonment in cases where the act of disinformation did not result in any violence or disturbance.

3.3.2. Criminal Regulation of Disinformation under other laws

Criminal sanctions to acts that can fall within the scope of disinformation can also be found in other laws. Of the various scattered provisions found in various laws, the proclamation repeals Article 486 of the Criminal Code¹⁶² which stated:

¹⁵⁸ Proclamation 1185, Art 7(3)

¹⁵⁹ Proclamation 1185, Art 7(4)

¹⁶⁰ Proclamation 1185, Art 7(5)

¹⁶¹ Proclamation 1185, Art 7(6)

¹⁶² Proclamation 1185, Art 9

“Whoever... Starts or spreads false rumors, suspicions or false charges against the government or the public authorities or their activities thereby disturbing or inflaming public opinion or creating a danger of public disturbances or, By whatever accusation or any other means foments dissension, arouses hatred or stirs up acts of violence or political, racial or religious disturbances is punishable with simple imprisonment or fine or in serious cases with rigorous imprisonment not exceeding three years.”¹⁶³

The proclamation has however left intact a number of other provisions, some carrying even higher penalties than those provided under the proclamation but which nonetheless can apply to the material offence of disinformation. For instance, Article 485 of the criminal code, which provides *“Whoever spreads alarm among the public by threat of danger to the community... or by deliberately spreading false rumors concerning such happenings or general disturbances or imminent catastrophe or calamity is punishable with simple imprisonment not exceeding three years or fine.”¹⁶⁴* can be said to apply to the exact type of offences sought to be governed by the disinformation proclamation.

The criminal code of Ethiopia is the premier criminal legislation in Ethiopia and has served as the most comprehensive code to prosecute crimes within the country since its adoption in 2005. The code, which amended a previous penal code, consists of a number of provisions which can fall within the scope of disinformation as defined in earlier chapters.

Among those the most notable are: -

*“Whoever, with the object of committing or supporting any of the acts provided under Articles 238-242,246-252: (which deal with Crimes against the state & the nation state)... launches or disseminates, systematically and with premeditation, by word of mouth, images or writings, **inaccurate**, hateful or subversive information or insinuations calculated to demoralize the public and to undermine its confidence or its will to resist, is punishable with simple imprisonment, or where the foreseeable consequences of his activities are particularly grave, with rigorous imprisonment not exceeding ten years.”¹⁶⁵*

¹⁶³ The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, 2005, Art 486, Proclamation No 414/2004, Neg. Gaz. Year 10 (hereinafter The Criminal Code)

¹⁶⁴ Criminal Code, Article 485

¹⁶⁵ Criminal Code, Art 257(e) emphasis added

The criminal code also penalizes False or Tendentious Information in the context of crimes against the defense forces under Chapter II, Section II of the code which provides: -

*“Whoever, when troops have been mobilized or are on active duty, puts forth or disseminates information which he knows to be inaccurate or tendentious, with intent to obstruct or thwart measures ordered in the military interest, to impede or endanger movements or operations of the defense forces, to incite troops to indiscipline or insubordination or to foment disorder and spread alarm among the population, is punishable with rigorous imprisonment not exceeding ten years or in grave cases, with rigorous imprisonment up to life.”*¹⁶⁶

In addition to those, the code also has provisions which criminalize Defamation and Calumny¹⁶⁷ which do not recognize truth as a defense, as long as there is an intention to injure the honor or reputation of another.¹⁶⁸ Although defamation constitutes a different aspect of misleading expressions from disinformation given the comparative value of the right to honor of individuals some types of defamations directed at government officials and opposition figures may fit within the definition of disinformation.

The Computer crime proclamation adopted by the house of peoples’ representatives in 2016 is yet another body of law which could be used to prosecute acts of disinformation but with fewer elements than those provided under proclamation 1185. The proclamation includes a provision which states ; *“Whosoever intentionally disseminates through a computer system any written, video, audio or any other picture that incites violence, chaos or conflict among people shall be punishable with rigorous imprisonment not exceeding three years.”*¹⁶⁹ It should be noted this proclamation which was meant to be applicable to any data disseminated through a computer, computer system, or computer network¹⁷⁰ can be applicable to supposed acts of disinformation committed through social media and the internet without the need for the prosecution to prove the information communicated is false or that the person knew the falsity of the shared information.

¹⁶⁶ Criminal Code, Article 337

¹⁶⁷ Criminal Code, Article 613

¹⁶⁸ Combined reading of Articles 613 & 614 of the Criminal code

¹⁶⁹ The Computer Crime Proclamation ,2016, Art 14, Proclamation No. 958/2016, Neg. Gaz Year 22 No. 83

¹⁷⁰ Proclamation 958/2016, Article 2(1)c

Although an argument can be made that the provisions in the other laws were not meant to be identical to those in the Disinformation proclamation, and can indeed have different applications other than those covered within it, it is undeniable that they have clear intersections and the same act of disinformation could fall within the scope of the different laws concurrently. In such a case, given the differences between the gravity of the penalties, there is a significant risk of selective aggressive prosecution of individuals unless the judiciary steps in and changes the provision using its discretionary powers. Furthermore, in comparison with the provisions of proclamation 1185, the criminal code's and Computer crime proclamation articles applicable in disinformation cases, lack the exemptions to expressions intended as news report, political critique, academic study or other forms of artistic expression.

3.3.3. Practical application of Criminal law in the regulation of Disinformation

A practicing criminal attorney who was interviewed for this thesis alleged that proclamation 1185/2020 is rarely used to prosecute individuals and it is relatively rare to see the proclamation being applied whenever individuals are accused of misleading the public or creating disturbances through expressions. Practically, most cases do not reach the level of prosecution which requires the specific mention of a provision, instead in most cases, investigations are commenced against individuals or members of the media and opposition groups alleging suspicion of misleading the public and an arrest is made based on the suspicion of commission of a crime.¹⁷¹

Neither the law nor the practice requires the investigating police to disclose the specific provision or law a suspect is accused of violating, rather, a generalized accusation of “creating disturbance” “calling for violence” or similar things is alleged whenever the suspect is taken to court for remand

The courts do not require specification of a particular legal provisions violation at the stage of pretrial detention and the suspects are not allowed to bring evidence of their innocence at this stage as the only matter at issue is whether bail should be allowed or not, seen in accordance with Article 63 and 67 of the criminal procedure code of Ethiopia

According to the interviewed attorney, while most cases do not reach the level of prosecution, the suspects have already suffered weeks or months of pretrial detention on generalized charges thus the damage is already done and creates a chilling effect on others. And the judiciary is not

¹⁷¹ Interview with Betemariam Alemayehu, Attorney at Law, August 1, 2022

proactive in protecting the constitutional bail rights of suspects and even a newly added provision which explicitly rejects pretrial detention of journalists is routinely overlooked.¹⁷²

Even in those cases wherein the public prosecutor formally files a criminal charge, Proclamation 1185 is rarely used as the specific exemptions which allow defendants to raise defenses not available in other laws make it the least preferable option for the prosecution. Of note is the high profile cases against journalist Temesgen Desalegn¹⁷³ and the criminal cases against Tadios Tantu et al¹⁷⁴ where the prosecutor cited the 2004 criminal code and Computer crime proclamation to bring legal action against the defendants where it could have easily been covered under proclamation 1185. Interestingly charges against Temesgen Deslaegn were later altered by the court to provisions under the disinformation proclamation as the court deemed it to be the most appropriate law.¹⁷⁵

This thesis does not discuss a widely reported case of disinformation involving a women's rights advocate and lawyer named Elizabeth Kebede, which was investigated by the Harari regional state police.¹⁷⁶ It should be noted, however, that the case could not be included in the study as its scope was limited to federal courts, and the author was unable to find any information regarding charges being brought against the accused. Therefore, the inclusion of this case was not possible due to insufficient data.

The only case the researcher could find where the federal public prosecutor brought a criminal charge citing Proclamation 1185 for spreading misleading information was a case involving a journalist who was accused of alarming the public at the height of the Covid 19 pandemic in the country by posting false information on Facebook.

3.3.3.1. Federal Public Prosecutor vs Yayeew Shimelis

In this case, the accused was charged with violating Articles 5 and 7/4 of the proclamation disseminating disinformation through a social media account having more than 5000 followers,

¹⁷² Ibid

¹⁷³ Federal Public Prosecutor vs Temesgen Desalegn, Criminal File No. 292441, Federal High court (Unpublished)

¹⁷⁴ Federal Public Prosecutor vs Tadios Tantu, Criminal File No. 292417, Federal High Court (Unpublished)

¹⁷⁵ Federal Public Prosecutor vs Temesgen Desalegn, Ruling on Prosecution's evidence, October 21,2022 (Unpublished)

¹⁷⁶ Human Rights Watch, Ethiopia: Free Speech at Risk Amid Covid-19, New Emergency Law Raises Concerns of Further Arrests, Prosecutions available at <https://www.hrw.org/news/2020/05/06/ethiopia-free-speech-risk-amid-covid-19> (Last accessed January 7, 2023).

punishable with simple imprisonment of up to three years or a fine not exceeding 100,000 ETB. The social media post that was the basis for the prosecution involved a Facebook post wherein the defendant was accused to have reported on March 26, 2020 that the government had ordered the preparation of two hundred thousand/200,000/ burial plots in anticipation of the impact of the Covid pandemic. The photograph of the Minister of Health Doctor Liya Tadesse accompanied the post, which according to the prosecution was intended to make the post seem official.¹⁷⁷

Unfortunately, the case does not give much of an insight as to what Ethiopian courts would consider to fulfill the definition of disinformation in accordance with the proclamation and the possible extent of its exemptions. This is mainly due to the fact that the defenses raised by the accused mainly focused on arguments that the post did not originate from the accused's own account. Neither the content of the post nor the likelihood of it meeting the threshold of the proclamations definition of disinformation was a major component of the accused's defense.

It was however initially raised at the preliminary stage of the proceedings when the accused requested the court to dismiss the charge, arguing the social media post should be considered as an exempted speech under the proclamation's Article 6(1)b for political commentary. This argument was not accepted by the court which ruled: -

“ተከላሽ የፖለቲካ ምርመራ ጋዜጠኛ በመሆኑ ይህን ስራውን በተመለከተ የሚሰራ ስራ በአዋጁ የወንጀል ተጠያቂነት የለውም በማለት አንቀፅ 6/1/ለ የተጠቀሰውን በተመለከተ ፤ ይህ ጉዳይ በዚህ ደረጃ ክርክር ሳይደረግበት እና በማስረጃ ባልተረጋገጠበት የሚቀርብ መቃወም አይደለም፤ ይልቁንም በማስረጃ አሰማም ሂደት የሚጣራ እና ከሕጉ አግባብ የሚመዘን የሚሆን ነው፤ ስለሆነም ይህን መቃወሚያ አልተቀበልንም፡፡”

“In regards to the objection raised by the defense arguing the act for which the journalist is being charged for is an exempted act pursuant to Article 6(1)b of the proclamation as it is part of the journalist's political investigative work, the court holds such arguments cannot be raised as preliminary objections at this stage of the proceedings before any evidence or argument is presented on these facts. Since any such claims should be brought to the court at the evidentiary

¹⁷⁷ Federal Public Prosecutor vs Yayesew Shimelis, Prosecution File No. 222/12, Federal First Instance Court, Lideta Bench(Unpublished)

stage of the proceedings and will be ruled upon at that time, the court rejects preliminary objections raised in this manner. ¹⁷⁸

Such a defense was however no longer a part of the defenses strategy at the evidentiary stage of the proceedings who chose to oppose the charge on the ground that the post was made by somebody else who was impersonating the accused on the social media.

Although the court did not accept the defense's allegation that he was not the one who made the social media post at the center of the case, it nonetheless altered the provision to the proclamation's Article 7/6/, allowing it to levy alternative punishments other than fine or imprisonment, as the prosecution did not present any evidence proving the disinformation had resulted in any violence or public disturbance. Accordingly, the journalist did not have to serve any prison sentence for the crime of disinformation he was found guilty of, instead the court sentenced him to mandatory community service for a period of 3 months to be served at the Yeka subcity administration which was his place of primary residence.¹⁷⁹

¹⁷⁸ Federal Public Prosecutor Vs Yayesew Shimelis, Criminal File No 284141, Ruling on preliminary objections, September 03, 2020, translation mine ,pg 4, (Unpublished)

¹⁷⁹ Federal Public Prosecutor Vs Yayesew Shimelis, Criminal File No 284141, Sentence ruling, May 25, 2022(Unpublished)

3.4. Non criminal Responses to Disinformation

3.4.1. The Media proclamation

3.4.1.1 Basic features of the media Proclamation

The Ethiopian government has long been criticized for its heavy-handed approach towards citizens criticizing it, using the criminal justice system to restrict fundamental rights. Repression of journalists and activists was common and the country usually found itself topping lists of the worst offender states of human rights obligations.¹⁸⁰ However, in 2018, there was hope for change with the rise to power of Prime Minister Abiy Ahmed, who took positive steps including loosening restrictions on media operation and allowing exiled political groups and journalists to return to the country and participate in the political process.

One of the positive steps taken by the new administration of Prime Minister Abiy Ahmed towards widening the political space and creating a more conducive environment for the free expression of ideas and opinions is the Media proclamation enacted as proclamation 1238/2021 on April 5, 2021. The proclamation which acknowledges the fundamental role the media can play for the success of efforts towards building a democratic system in Ethiopia¹⁸¹ replaces the Mass Media and Access to Information Proclamation No. 590/2008 and the Broadcasting Service Proclamation No. 533/2007.¹⁸²

Considering the fact that countries with diverse and robust independent news media seem to be more resilient to disinformation this section of the thesis will look into the legal landscape of media regulation in Ethiopia along with available means of administrative and legal rules that could be employed as a response to the challenge of disinformation in Ethiopia.

Proclamation 1238 defines “Media” to encompass all organs established to provide news or programs or news and programs to the public via periodicals, broadcasting service, and online

¹⁸⁰ CPJ’s 2014 prison census found that Ethiopia was the fourth worst jailer of journalists in the world and ranked fourth on CPJ’s 2015 list of the 10 Most Censored Countries. Complete list can be found at <https://cpj.org/imprisoned/2014.php> and <https://cpj.org/2015/04/10-most-censored-countries.php> (Last accessed January 7, 2023).

¹⁸¹ Media Proclamation, 2021, Preamble, Proclamation No. 1238/2021, Neg. Gaz. Year 27, No. 22 (Hereinafter Media Proclamation)

¹⁸² Media Proclamation, Article 91

media; excluding books, social media, blogs, and photos, images and cartoons that are not part of a periodical, news agencies¹⁸³

The definition for media has for the first time been made to include “online Media” which is in turn defined as “internet-based information dissemination service by an organization whose principal business involves the collection, production, processing and dissemination of news or programs or news and programs, through online images, audio, video and websites or through a combination of the aforementioned means, in accordance with the editorial responsibility of a media service provider”¹⁸⁴ The major criteria for content made available online to be considered as “online media” is the editorial process i.e. whether a central editor is responsible for the selection and arrangement of content. Accordingly, ordinary social media activities such as tweeting and posting messages on Facebook would be excluded since the level of editorial control in such activities is below the scope of the proclamation’s definition.¹⁸⁵

The proclamation expects media organizations to operate with high ethical standards and professionalism, encouraging free flow of ideas and diversity of views while protecting public peace, security, impartiality and the public from harm. Regulation of content is allowed to ensure this. Online media must also avoid content that incites violence based on gender, ethnicity and religion, and ensure contents and production processes are balanced, fair and include diverse voices.¹⁸⁶ Furthermore, The proclamation stipulates that content regulation shall be implemented by ensuring freedom of expression and freedom of the press is not endangered by censorship and without endangering the right of the media to publish accurate information and quality news and programs.¹⁸⁷

The proclamation explicitly recognizes a number of rights to the media and journalists who are parts of it .In this respect the proclamation provides that program or news should be balanced and impartial in reflecting diverse viewpoints to serve the public at large; and broadcasters are

¹⁸³ Media Proclamation, Art 2(1)

¹⁸⁴ Media Proclamation, Art 2(4)

¹⁸⁵ Mesenbet Assefa and Solomon Goshu Shiferaw, Reflections on Ethiopia’s Media Law Reform, Ethiopian Human Rights Law Series (Volume -XII) Addis Ababa University - School of Law, pg 35

¹⁸⁶ Media Proclamation, Art 47 & Art 61

¹⁸⁷ Media Proclamation, Art 47(4)

expected to make reasonable effort to ensure the content and source of their program or news is accurate and put in place systems and procedures to correct mistakes when it happens.¹⁸⁸

Prohibition of program and news in the media which offend human dignity; cause actual harm, or encourage behavior which is harmful to health or safety of the public; and those that are capable of inciting crime or disturbance of peace and security¹⁸⁹ under the proclamation can be broadly applied in the regulation of acts of disinformation in the media.

However interestingly the proclamation distances itself from the criminal justice model in favor of regulatory measures by the Ethiopian Media Authority(EMA), and decriminalizes defamation committed through the media resulting in only civil liability. Initially, members of the legislative house were hesitant to dismiss criminal responsibility altogether, claiming “*decriminalizing defamation is not compatible with the realities of the country.*”¹⁹⁰ However there must have been a change in their stance as the final ratified version not only decriminalized it but also ensured that the compensation and penalty imposed takes into consideration the profit conditions, seriousness of the damage and effect on media viability.¹⁹¹

In a further rebuke to the criminal justice approach in regulating the media, the proclamation stipulated a shorter statute of limitation for crimes committed through the media than those specified under other laws, Accordingly, no criminal proceeding for an offence committed through a periodical may be instituted after the lapse of 1 year from the date when the offending item was published.¹⁹² On the other hand, offences committed through broadcasting services & online media will be barred by limitation unless criminal investigations have been started 6 months from the broadcast date or 3 months from the availability of the offending program online respectively.¹⁹³

Given the history of the misuse of criminal laws and detention to suppress freedom of expression rights of members of the media, the proclamation notably explicitly removed pretrial detention of journalists and members of the media in addition to requiring speedy proceedings to be held by

¹⁸⁸ Media Proclamation, Art 68(1)b

¹⁸⁹ Media Proclamation, Art 68(2)

¹⁹⁰ House of Peoples Representatives of the FDRE, “ዜና ፓርላማ: በመገናኛ ብዙሃን የሚደረግ ስም ማጥፋት በወንጀል አገ ሙታየት እንዳለበት ተገለፀ” January 11, 2021, available at <http://www.hopr.gov.et/am/web/guest/-/በመገናኛ-ብዙሃን-የሚደረግ-ስም-ማጥፋት-በወንጀል-አገ> (Last accessed January 7, 2023).

¹⁹¹ Media Proclamation, Art 84(3)

¹⁹² Media Proclamation, Art 87(1)

¹⁹³ Media Proclamation, Art 87(2)

mandating the court to pronounce its judgment within 1 month from the commencement of the trial in media related cases.¹⁹⁴

Considering the fact that no criminal provisions are included in the proclamation, articles prohibiting pretrial detention, mandating speedy trial as well as proscribing a shorter statute of limitation will be rendered meaningless if not applied to crimes emanating from other laws. Thus any charges brought against journalists and members of the media whether brought under the criminal code, the Disinformation Proclamation, or any other law should proceed under the lenient procedural rules established within the media proclamation.

The practice has however been far from this, whenever investigations are opened or charges filed against journalists, courts have refused to apply the lenient media proclamation rules instead opting for the far more restrictive general rules included in the criminal code and the criminal procedure code to deny bail rights and reject objections raised on the basis of shorter statute of limitations prescribed under the proclamation. Pretrial detention of journalists is still widely practiced in today's Ethiopia and trials normally take months if not years, far from meeting the one month limit prescribed under the media proclamation.¹⁹⁵

Similarly, the shorter statute of limitations for bringing charges and reaching a decision specially make sense in cases of disinformation. Bringing legal actions in respect of disinformation long after the spread of the said misleading information would have lesser value in protecting the public. Any action taken by the government to protect the public from negative impacts of disinformation are best served if taken immediately, with the end purpose of preventing or reducing damage to the population. For instance in Public prosecutor vs Temesgen Desalegn some of the charges for False or Tendentious Information brought against the journalist involved publications from early 2019, preceding the criminal charge by more than three years.¹⁹⁶ Such delays in responding to crimes committed through the media will be counter-productive in their results by giving ample opportunity for the information to spread wide within the public, almost negating the very reason behind their criminality. Furthermore, allowing the government to

¹⁹⁴ Media Proclamation, Art 86(1)

¹⁹⁵ The media proclamation envisages trials against media to be an expedited process whereby the court will render its final judgement within 30 days. Article 86(4)

¹⁹⁶ See count two in charge, Public Prosecutor Vs Temesgen Desalegn, supra note at 173

prosecute journalists based on statements made a long time ago, long after the statement left the public's subconscious, will pave the way to target opposition groups and lead to self-censorship.

3.4.1.2. Administrative Measures

The new media law establishes a regulatory body known as the Ethiopian Media Authority (EMA) which is entrusted with the power to take administrative measures against offending members of the media. Accountable to the House of Peoples' Representative instead of the executive organ as was the case in previous media regulatory bodies, an attempt has been made to make changes to the composition, appointment process, and powers and functions of the regulatory body in order to make it a less political body.¹⁹⁷

Accordingly, The Authority is organized in such a way as to be composed of a management board (hereinafter referred to as the "Board"), a Director general and, as appropriate deputy director generals; along with the necessary staff to conduct its work.¹⁹⁸ Mrs Konjit Tamrat, director of legal affairs at the EMA disclosed that the authority currently regulates disinformation through two methods, The first is through 3 monitoring teams organized within the authority in charge of reviewing media products in, commercial media, public and community media & international and online media. It also receives complaints from the public on disinformation committed through the media through a free hotline 9192 as well as its website <https://www.ema.gov.et/>¹⁹⁹

The Authority is entrusted to take the following administrative measures, where a broadcasting service provider contravenes the provisions of the Proclamation and subsidiary rules adopted in accordance with it:

- a) issue a written warning;
- b) impose administrative fine up to Birr 200,000 (Two Hundred Thousand Birr);
- c) suspend or terminate the program that violated the law;
- d) suspend or revoke the license of the licensee that violates the law.²⁰⁰

The administrative measures are envisaged to be taken step by step based on the severity of the offence committed by the media organ. The measures while not specifically limited to disinformation practices in the media, can be applied in regulating it nonetheless.

¹⁹⁷ Mesenbet Assefa and Solomon Goshu Shiferaw, supra note at 185, page 33

¹⁹⁸ Media Proclamation, Article 8

¹⁹⁹ Interview with Mrs Konjit Tamirat, Director of legal affairs at the EMA, November 11, 2022

²⁰⁰ Media Proclamation, Article 73

Based on severity written warnings and fines can be considered as the least severe administrative measures that can be taken by the EMA against media. Art 74 provides a non-exhaustive list of 12 offences that may give rise to the issuing of a written warning from the authority. Among those “failing to fulfil content-related obligations”²⁰¹ and “violating provision dealing with duties related to transmission of election period statements”²⁰² can serve to show written warnings may be issued for offences related to disinformation. Warnings, as their name indicates, are intended to correct mistakes rather than punish perpetrators, thus the proclamation provides that warnings should clearly indicate the reasons for their issuance, the measure that should be taken, as well as the time frame within which the corrective measures should be taken²⁰³

The EMA has used this power at least once against foreign based media with operations in Ethiopia, when on November 2021, it issued strongly worded written warnings to the BBC, Associated Press (AP), CNN and Reuters for “ manufacturing and dissemination of false news and news analyses on Ethiopia to assist the TPLF’s objectives, reporting the law enforcement operation as a genocidal campaign, making of reports undermining the government’s efforts to address the humanitarian crisis in the Tigray Region, reporting that the government is using famine and rape as a weapon of war in the Tigray region, and producing defamatory reports on the country’s leading institutions.”²⁰⁴ EMA’s warning indicated there was a possibility to revoke the license granted to the institutions to operate in Ethiopia if corrective action was not taken.

Another administrative measure falling within the purview of the EMA is the levying of fines which can range up to up to 200000 birr, the offences which could result in the imposition of fines according to the proclamation are mostly unrelated with disinformation with the exception of Art 75(1) f which provides:- “*any editor or program producer who has failed to publish or broadcast a reply or correction sent to him pursuant to Article 50 of this Proclamation shall be punishable with a fine up to Birr 15,000 (Fifteen Thousand Birr).*”²⁰⁵ However the list of offences resulting in fines under Art 75(1) is similarly non-exhaustive, as EMA is empowered to levy

²⁰¹ Media Proclamation, Art 74(1)g

²⁰² Media Proclamation, Art 74(1)j

²⁰³ Media Proclamation, Art 74(2)

²⁰⁴ Written Notices by Ethiopian Media Authority to Reuters, Associated Press , Cable News Network (CNN) and British Broadcasting Corporation (BBC) dated 19 Nov, 2021, available at <https://twitter.com/ethmediaauth/status/1461715312819191808?lang=en> (Last accessed January 7, 2023).

²⁰⁵ Media Proclamation, Art 75(1)f

finer up to 50000 ETB for other offences found to be on a similar level.²⁰⁶ Thus an argument can be made the authority may use its powers under this sub provision to impose fines on media who broadcast disinformation.

Media and media professionals punished with fines have the right to be informed that they are threatened with a fine, and given an opportunity to comment, both on the alleged breach itself and on the intention to levy a fine. Furthermore, the amount of the fine should take into account the seriousness of the breach, the licensee's record of breaches, any financial benefit the licensee might have gained as a result of the broadcast and the overall financial state of the broadcasting service licensee.²⁰⁷ The proclamation also explicitly provides that fines should be proportionate to the offence. And the Authority should not seek to levy fines of such magnitude that it seriously endangers the broadcaster's viability.²⁰⁸

Other administrative measures included in the proclamation consist of 'suspension or termination of a program' and 'suspension of licence' which apply to a specific program and the broadcasting service license holder respectively. The EMA board is conferred with the power to suspend the broadcasting licenses of broadcasters for a period of one month where the licensee failed to comply with the provisions of the proclamation or regulations and directives issued thereunder, or keeps committing more serious offenses and does not take corrective measure;²⁰⁹ Failure to take corrective actions after suspension of licence could also result in revocation of the license all together.

Decisions on giving written warning, imposing fines, taking measures on suspending or terminating a program can be taken by the Authority while the power to make decisions on refusal to renew license, and suspension and revocation of licenses rest with the board.²¹⁰ The board also serves as an appellate body for administrative measures taken by the authority. However, parties aggrieved by the decision of the board can still file their appeal to the federal high court which has the power to review both questions of fact and law.²¹¹

²⁰⁶ Media Proclamation, Art 75(1)j

²⁰⁷ Media Proclamation, Art 75(3)

²⁰⁸ Media Proclamation, Art 75(4)

²⁰⁹ Media Proclamation, Art 77(1)

²¹⁰ Media Proclamation, Art 81/1/ & 81/3/

²¹¹ Media Proclamation, Art 82

Interestingly, most of the administrative measures listed within the proclamation seem to be tailored to be applied to broadcast media, thus it is questionable whether those administrative measures can be applied against periodicals and online media. With the exception of issuing of written warnings and imposition of fines for failing to register periodicals and online media under Art 26 & 27 and some rules dealing with obligations to provide essential information in the media's outputs most provisions in the proclamation which give rise to administrative measures are directed to broadcast license holders-

Currently there doesn't seem to be a way for the EMA board to suspend or revoke registration of a periodical or online media which engaged in acts of disinformation. And this seems to be by design rather than an accident or a case of poor drafting. The law clearly sought to err on the side of free expression as opposed to extensive control in differentiating between licensing scheme and registration process envisaged for the different types of media.

In explaining the reasons for the distinctions between the two, Mesenbet and Solomon mention that the media law working group adopted the approach of registration for print and online media outlets to ward of improper pressures and interferences from the government under the guise of licensing.²¹² Thus the exclusion of the licensing requirement for such media was believed to contribute in reducing the burden of the press from government manipulation and creating unnecessary administrative hurdles for the press to operate freely and independently.²¹³ Moreover, the advent of online platforms such as blogs, commentaries and other social media platforms made the requirement of licensing obsolete and incompatible with the evolving technological change.²¹⁴

In this regard registration of periodicals and online media is intended to serve the important roles of preventing duplication of names, recording shareholders and the identity of owners, and compiling information on dissemination of media outlets,²¹⁵ While at the same time warding of improper pressures and interferences from the government in a licencing regime. Accordingly, non-broadcast media can acquire a certificate of recognition within 30 days from making an

²¹² Mesenbet Assefa and Solomon Goshu Shiferaw, *Supra* note at 185, page 28

²¹³ *Ibid*

²¹⁴ *Ibid*

²¹⁵ *Id* page 29

application to the authority.²¹⁶ The media which made an application for registration is also entitled to start publication and distribution once the 30 day period is concluded, as a presumption of legal recognition is provided under the proclamation even if the certificate was not issued within the period specified.²¹⁷ It can thus be inferred that the board lacks the capacity to revoke the “license” of non-broadcast media outlets which it never issued in the first place.

The argument against applying revocation and suspension of licences to non-broadcast media will not however extend to other administrative measures such as issuing of written warnings and imposition of fines as those measures have nothing to do with the way those media get registered & licensed. The fact that the offences listed under Articles 74 and 75 are specified as ‘non-exhaustive’ paves the way for the authority to take such administrative measures against periodicals and online media without the need to resort to a specific provision thereunder. It however remains to be seen what legal measures the authority and the board can take against non-broadcast media who fail to take corrective measures after receiving warnings and fines.

The series of administrative measures provided under the proclamation are clearly less intrusive methods that could ideally be employed to regulate disinformation, coupled with right of correction and reply, there is a possibility of wronging disinformation without the need to resort to the criminal justice system which should be reserved to the most serious offences.

3.4.1.3. Right of Reply

Another method included within the media proclamation as a means to correct disinformation is “right of reply”. This ensures that parties affected by false or defamatory statements in the media have the opportunity to respond and correct the information. The law stipulates that media outlets are obligated to respect this right and make corrections within specific time frames, depending on the type of media involved.²¹⁸ Having such a time limit gives the best chance for the corrections to remedy any irreversible problems that could have been caused due to the unfettered distribution of the disinformation to the public had it been left unaddressed.

Furthermore, it provides an opportunity to the complainant and the media outlet to resolve the issue on their own without needing to file a formal charge in a court of law. Where the media

²¹⁶ Media Proclamation, Articles 26(3) and 27(2)

²¹⁷ Media Proclamation, Articles 26(5) and 27(3)

²¹⁸ Media Proclamation, Articles 50(3)

through which the misleading information was transmitted failed to honor a claimed right of correction or reply, the person affected is entitled to appeal to a court of law which is empowered to order the media to publish the correction in addition to imposing a fine on the editor of the offending media who acted in bad faith.²¹⁹

Although The right of reply is an important tool in combating disinformation, it is only effective when there is a specific aggrieved party claiming that false information is being transmitted about them. Nevertheless, the right of reply has limitations in addressing the full scope of disinformation, as it only applies to expressions about specific individuals and institutions. Therefore, alternative measures are needed to combat the broader problem of disinformation.

3.4.2. Prior restraints

In addition to post publication measures that could take the form of criminal and administrative measures, media products could also face prior restraints as a result of their contents. Prior restraints are understood to refer to state actions that prohibit speech or other forms of expression before they can take place. In contrast to a system of subsequent punishment, which permits the communication but imposes a subsequent penalty for its publication, prior restraints prevent communication from occurring in the first place.²²⁰ They can take a variety of forms including impounding measures, bans on the circulation, distribution or sale of publications; judicial orders prohibiting journalists from practicing their profession on a permanent or temporary basis as well as blocking and filtering of online content. While prior restraints are not outright prohibited under international human right law, the considerable danger they pose for democratic societies makes restrictions of this kind call for the most careful scrutiny.²²¹

3.4.2.1. Impounding and Injunction

The media proclamation maintains the power of the public prosecutor to impound broadcast transmissions and periodicals where there is sufficient reason to believe they contain illegal matter, which if disseminated, lead to a clear and imminent grave danger to the national security²²². Such danger should also be one which could not otherwise be averted through a

²¹⁹ Media Proclamation, Article 50(4) & (5)

²²⁰ Council of Europe, Thematic Factsheet, Prior Restraints and Freedom of Expression; The Necessity of Embedding Procedural Safeguards in Domestic Systems, pg 1, available at <https://rm.coe.int/factsheet-prior-restraints-rev25may2018/16808ae88c> (Last accessed January 7, 2023).

²²¹ Ibid

²²² Media Proclamation, Article 85(1)

subsequent imposition of sanctions. As a matter of principle the power to impound media products is given to the federal high court which will make its decisions based on an application from the public prosecutor, However in cases of emergency the Prosecutors office has the capacity to impound and make its application to the court within 2 days.²²³

This power of the public prosecutor office to seize unpublished press products has been a part of Ethiopian law for decades. Even preceding the FDRE constitution the first press proclamation of Ethiopia in 1992 contained a similar provision providing:

*“The prosecutor ...may be, may where he has sufficient reason to believe that a press is ready to disseminate any illegal press product which may cause serious damage, enjoin the dissemination of such press product.”*²²⁴

In comparison, the latest proclamation proscribes a much greater level of danger which is capable of initiating such a response by the prosecutor. Thus making it an exceptional measure which should be taken only in cases where a subsequent imposition of sanctions would not be able to remedy the “clear and imminent” danger to the national security that could be caused by the publication. Misleading information contained in a press product that meets such an extraordinary criterion could thus in principle initiate such a reaction by the office of the prosecutor. The Ethiopian government has rarely used this power of impounding periodicals with one notable exception in 2012 whereby an action was taken to curb what were at the time claimed to be dangerous false rumors.

On July 23, 2012 authorities blocked the distribution of an edition of a prominent newspaper in the capital in connection with its stories on the health of former Prime Minister Meles Zenawi.²²⁵ About 30,000 copies of the weekly newspaper “Fitih” were said to have been seized by authorities after an order of injunction was sent by the Ministry of Justice to the state owned publisher of the paper Birhanina Selam Printing press.

At the time the government did not publicly confirm the specific contents of the banned periodical merely mentioning it contained articles detrimental to the country’s national

²²³ Media Proclamation, Article 85(2)

²²⁴ Press Proclamation No. 34/1992, Article 15(1)

²²⁵ CPJ, Ethiopian weekly blocked for reporting on Meles’ health <https://cpj.org/2012/07/ethiopian-weekly-blocked-for-reporting-on-meles-he/> (Last accessed January 7, 2023).

security.²²⁶ It nonetheless tried to quell the widespread rumors about the wellbeing of the prime minister through different statements dismissing reports that claimed he was critically ill.²²⁷

Despite this, the death of the prime minister was officially reported by state and international media on 20 August 2012²²⁸ less than a month after the confiscation of the newspaper.

The injunction and impounding order taken against the newspaper by the ministry of justice was later confirmed by the high court in a decision taken in camera, however the details of the decision have not been made available to the public.

The compatibility of prior restraints to constitutional and human right obligations of the country has been a subject of much debate. Questions can be raised on how the powers given to the public prosecutor under the press proclamation conform to the constitutional prohibition of censorship in all its forms. This issue has however been addressed by the drafters of the constitution who compared the constitutional provision to similar powers given to the prosecution under the press proclamation in force at the time and found them not to be inconsistent in anyway especially given the fact that the final decision on the impounding was left to the courts.

“ፕሬስ ነጻነትና ሕዝብ የሚያበጣብጥ ከሆነ ሰላም በሌለበት ነፃ ፕሬስ ቀርቶ ሕይወት ራሷም አደጋ ላይ መውደቋ ስለማይቀር ፕሬስን ከእንዲህ አይነት ተግባር የሚያቅብ ሕግ መቆም አለበት። ለምሳሌ ‘በሕዝብ ወይም ለሕይወት ለጤና ወይም ለያንዳንዱ ሰው ንብረቶች አስጊ የሆነ አደጋ መጣ’ በማለት ማስፈራራት ‘ወራሪ ነፍስ ገዳይ መጣ’፣ ‘ቃጠሎ ተነሳ’፣ ‘አገር መውደሙ ነው ወይ መዘረፉ ነው’ በማለት ወይም እንደዚህ ያሉትን የሐሰት ወሬዎች በመንዛት ሕዝብን ማሸበር ወዘተ ‘የእገሌ ሃይማኖት ተከታዮች የእገሌ ሀይማኖት ተከታዮችን ጨፍጭፈዋልና ተበቀል’፣ ‘የእገሌ ብሔር ሕዝብ የእገሌን ብሔር እያሰቃየ በመሆኑ ተነስ’፣ ‘ነገ በመንደሩ ውስጥ ከፍተኛ ብጥብጥ የሚነሳ በመሆኑ ማንም ሰው ከቤት እንዳይወጣ’ እና የመሳሰሉ አስደንጋጭና ከፍተኛ ጉዳት ሊያስከትሉ የሚችሉ የፕሬስ ስራዎች ለሕዝብ ቀርበው እልቂት ከማድረሳቸው በፊት ታግደው ፍርድ ቤት መቅረብ አለባቸው። ይህና ከታች በንዑስ አንቀፅ 6 ስር በምናብራራው ምክንያት የተነሳ በፕሬስ ነፃነት አዋጅ ላይ የተመለከተው ድንጋጌ ከሕገመንግስቱ ረቂቅ ጋር የሚጋጭ አይሆንም። በተለይም የማገድና የመፍቀድ ሥልጣን ያለው ነፃው ፍርድቤት ከመሆኑ አንፃር ሲታይ፣ ነፃ ፕሬስ በተለይም በኃላፊነትና በሕዝብ ተቆርቋሪነት ስሜት የሚንቀሳቀስ

²²⁶ Mohammed Ademo, Media restrictions tighten in Ethiopia, available at https://archives.cjr.org/behind_the_news/ethiopia_news_crackdown.php (Last accessed January 7, 2023).

²²⁷ BBC, Ethiopian leader Meles Zenawi 'in hospital' <https://www.bbc.com/news/world-africa-18882674> and Bloomberg, Ethiopia Says Meles Is Ill Amid African Union Summit Absence: available at <https://www.bloomberg.com/news/articles/2012-07-16/ethiopia-says-meles-is-ill-amid-african-union-summit-absence-1> (Last accessed January 7, 2023).

²²⁸ BBC, Ethiopian PM Meles Zenawi dies after illness <https://www.bbc.com/news/world-africa-19328356> (Last accessed January 7, 2023).

ፕሬስ የሚያነጣጥረው በሕግ አስፈጻሚው አካል በመሆኑ ሕግ አስፈጻሚው አካል ነፃውን ፕሬስ የማገድ ወይም የመገደብ ስልጣን ባይኖረውም በነፃ ፍርድቤት የማይዳኝ ነፃ ፕሬስ ግን በየትም ሀገር የለም፡፡”

“If the press were to be given free rein to disturb the peace of the public, it would create a scenario whereby life will be endangered let alone rights like freedom of the press. It is therefore important to have a law that prevents the press from having such an adverse impact. For instance, false reports alleging grave danger on the health and wellbeing of the public, that have the capacity to terrorize the population or press products inciting followers of one religion against another as well as advocating for violence between members of different ethnic groups shall necessarily be impounded and presented to a court of law before they can cause significant damage. Considering that the final decision on the impounding and injunction of the press product rests on an independent court, such a provision will not be overly restrictive or unconstitutional. While there is indeed merit in the principle that the executive should not have the sole power of impounding press products whose reports could be critical of its day to day activities, no press can be considered outside the jurisdiction of a free judiciary.”²²⁹

One can see from the above quote that the drafters of the FDRE constitution not only found impounding measures to be compatible with the constitution but were also in favor of employing such measures in relation to acts of disinformation capable of terrorizing the public.

A closer look into the impounding powers given to the government under the proclamation show that the power is explicitly limited to periodicals and broadcasting services whose content is about to be disseminated or transmitted. This obviously leaves internet media out of the scope of its application.

This could be a direct result of the limited process behind transmissions of online media who unlike print and broadcast media rarely have to go to third parties to transmit their reports. Instead the process of publishing in online media is usually done in-house at the click of a button thereby making it difficult for authorities to know about the content of a specific transmission before it is uploaded online.

²²⁹ The Constitutional Commission of the Transitional Government of Ethiopia, የኢትዮጵያ ሕገመንግስት ማብራሪያ Explanatory note to the FDRE Constitution (1994) (pg 67-68) translation mine

This doesn't however mean the government doesn't take prior restraint measures against online media in practice, these usually take the form of filtering and blocking content which will be discussed next.

3.4.2.2. Blocking and Filtering of content

The Ethiopian government has long been accused of blocking and restricting access to websites and the internet.²³⁰ The fact that the government owned EthioTelecom, was the sole internet service provider in the country for quite a long time has enabled the Ethiopian government to switch of access to millions over the internet with no oversight.²³¹ It has also on several occasions jammed TV and radio signals, who transmit their broadcasts from abroad through satellite frequencies. The later do fall in the category of broadcast media which would normally fall within the scope of the media proclamation, however the fact that the means of transmission used are satellite links outside the control of the Ethiopian government practically made them outside the reach of the government's regulatory authority. Thus making the government resort to methods like blocking and jamming whenever their transmissions were found to be undesirable by the government.

With the coming to power of prime minister Abiy Ahmed in 2018 a number of websites and previously blocked Satellite TV frequencies became accessible giving reason for optimism. Fitsum Arega, the prime minister's chief of staff at the time posted on twitter: *"Freedom of expression is a foundational right that other rights depend on. Ethiopia has opened access to 264 blocked websites/bloggers/ ESAT and OMN. A free flow of information is essential for engaged & responsible citizenry. Only a free market of ideas will lead to the truth."*²³² The government

²³⁰ Freedomhouse rated Ethiopia as "not free" with scores less than 20 out of 100 in its annual global freedom on the net ranked Ethiopia in 2017, See <https://freedomhouse.org/country/ethiopia/freedom-net/2017> (Last accessed January 7, 2023).

²³¹ Olesia Andersen, Internet Shutdowns in Ethiopia: The Weapon of Choice, available at <https://blog.prif.org/2022/03/11/internet-shutdowns-in-ethiopia-the-weapon-of-choice/#:~:text=The%20most%20frequently%20alleged%20motive,regime%20by%20discrediting%20its%20actions> (Last accessed January 7, 2023).

²³² Fitsum Arega, Twitter Post from June 22, 2018 , available at <https://twitter.com/fitsumaregaa/status/1010095287254372353>? (Last accessed January 7, 2023).

also highlighted this accomplishment in its submission to the Universal Periodic Review (UPR) in 2019 conceding they were previously blocked due to their political contents.²³³

Despite this, the government has since then disrupted internet services for all or sections of the country on several occasions. For instance, on 22nd June 2019, following an alleged coup attempt in the Amhara region, access to the internet was shut down throughout the country and once internet access was restored, access to WhatsApp was blocked.²³⁴ A complete blackout of internet services was also observed across most of Ethiopia from 30 June 2020 amid protests and unrest following the killing of a popular artist Hachalu Hundessa.²³⁵ Frehiwot Tamiru, chief executive of the sole telecommunications provider - government-owned Ethio Telecom, said, the nationwide shutdown was necessary to prevent the internet from being used by criminals to “kill and displace, create chaos and destroy the country”.²³⁶ Interruption of mobile data services and throttling of speed of connectivity is also routinely seen during national examinations.²³⁷

Sometimes the disruption of services is directed to a specific area of the country. This was true for the northern region of Tigray whose internet connectivity has been discontinued since the start of an armed conflict in November 2020 making it one of the longest shutdowns of internet services worldwide.²³⁸ Similarly an internet and communication blackout has been observed in several areas of western Oromia where the government is conducting military operations against the armed wing of Oromo Liberation Front (OLF) which is designated as a terrorist group in the country. It should be noted, the government hasn't officially admitted that it has intentionally turned off access to the internet in Tigray and areas in Amhara regional state that fell into

²³³ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Working Group on Universal Periodic Review, A/HRC/WG.6/33/ETH/1, paragraph 56, page 9

²³⁴ Open Observatory of Network Interference (OONI), Resurgence of Internet Censorship in Ethiopia: Blocking of WhatsApp, Facebook, and African Arguments, available at <https://ooni.org/post/resurgence-internet-censorship-ethiopia-2019/> (Last accessed January 7, 2023).

²³⁵ CNN, Internet cut off in Ethiopia amid outcry over death of singer-activist, available at <https://edition.cnn.com/2020/06/30/africa/ethiopia-singer-killing-sparks-protest-intl/> (Last accessed January 7, 2023).

²³⁶ Reuters, Feature-Six million silenced: A two-year internet outage in Ethiopia, available at <https://www.reuters.com/article/ethiopia-internet-shutdown-idAFL8N2ZM09X> (Last accessed January 7, 2023).

²³⁷ All Africa, Ethiopia Has Blocked Internet Services Seven Times in Five Years, available at <https://allafrica.com/stories/202111090620.html> (Last accessed January 7, 2023).

²³⁸ Reuters, , Supra note at 236

TPLF's control, instead maintaining this was a result of destruction committed by rebel forces on telecommunication infrastructures in occupied areas.²³⁹

However, the use of such tactics of internet shutdowns as an information control tool is not new in Ethiopia. Most notably the government had on frequent occasions switched off access to the internet during the widespread protests against the government in 2015 which contributed to the coming into power of prime minister Abiy Ahmed, as the protests were fueled and orchestrated through social media platforms. At the height of the protests, the then EPRDF led government, to which the TPLF was a member of, resorted to internet shutdowns on a number of occasions be it to stop the spread of leaked text of national university entrance examinations or to suppress allegations of brutal crackdown on protestors,²⁴⁰

Despite the initial optimism that saw the new government of Prime minister Abiy Ahmed allowing access to previously banned websites, deployment of similar tactics interrupting internet and communication services have led organizations like Open Observatory of Network Interference (OONI), to accuse the government of employing repressive tactics over the internet as was practiced by the previous government.²⁴¹

Pronouncements by the prime minister on August 1, 2019, where he expressed that the government was willing to take such measures of internet shutdowns in the future have especially raised concerns on the possible implications it has in the protection of human rights. The prime minister was quoted as saying: *“Internet is not water, internet is not air. Internet is very important. However, if we use it as a revolution tool to incite others, to kill and burn, it will be shut down not only for a week, but longer than that. “For sake of national security, internet and social media could be blocked any time necessary. “As long as it is deemed necessary to save lives and prevent property damages, the internet would be closed permanently, let alone for a week”*²⁴²

²³⁹ ITweb Africa, Efforts to fully restore communication in Tigray futile says Ethio Telecom, available at <https://itweb.africa/content/GxwQD71Z4mAMIPVo> (Last accessed January 7, 2023).

²⁴⁰ Kinfe Michael Yilma, supra note at 150, pp 364

²⁴¹ OONI, Resurgence of Internet Censorship in Ethiopia, Supra note at 234

²⁴² Africanews, Twitter backlash after Ethiopia PM's internet 'not water or air' threat available at <https://www.africanews.com/2019/08/03/twitter-backlash-after-ethiopia-pm-s-internet-not-water-or-air-threat//> (Last accessed January 7, 2023).

The government has further reinforced this position in its replies to the list of issues in relation to its second periodic report under the ICCPR where it responded to concerns raised by other member states on shutdowns of internet and telephone services, as well as the blocking of social media platforms, doubling down on its position;

“... Regarding the concerns of the Committee related to internet shutdowns, the Government of Ethiopia strongly believes freedom of expression is a foundational right and especially after the commencement of the reform, restrictions on websites and TV channels including news outlets and blogs due to their political contents have been lifted. However, through social media platforms, some individuals and activists have been instigating violence and, as a result, hundreds of people have died sometimes with just a single post. For instance, the deadly October 2019 violence in Addis Ababa and different towns of Oromia Regional State occurred following social media posts on October 23, 2019 by an activist, accusing the Government authorities of threatening to lift his security protection. These posts alone have caused violent mobs along ethnic lines that resulted attacks on civilians, looting of property, burning of shops and businesses, etc. Due to these violent protests, more than hundred people have died, several more have been injured and property worth of several million Birr has been destroyed. Similar social media posts following some incidents have caused the death of several people in different parts of the country.

Accordingly, considering the situation, it has become clear that, to avoid or at least minimize the impacts of social media posts following some incidents, internet shutdowns are unavoidable means to protect the interest of the general public. Nevertheless, especially in the post April 2018 period, there is no political reason behind internet shutdowns in Ethiopia and rather it is a legitimate measure to defend the human rights of the people.²⁴³

Although internet shutdowns could be employed under the guise of protecting the public from widespread acts of disinformation, it should be noted that any such measures should be seen in light of the government’s obligation to human rights. In this regard, the freedom to impart information and ideas protects not only the content of what is being imparted but also the manner or means of dissemination chosen by the individual. The HRC has especially observed that *“this may include spoken, written and sign language and such non-verbal expression as images and objects of art. Moreover, books, newspapers, pamphlets, posters, banners, dress, legal submissions, forms of audio-visual as well as electronic and internet based modes of expression can be used as modes of expression.”²⁴⁴* Thus the argument can be made that, as the internet is

²⁴³ Replies of Ethiopia to the list of issues in relation to its second periodic report, CCPR/C/ETH/RQ/2, [Date received: 26 July 2021] para 122-123 pg 17

²⁴⁴ HRC, General comment 34, para 10

considered one mode of expression, permanent internet blackouts regardless of the motive could be considered incompatible with Article 19 of the ICCPR.

Leaving that aside any restrictions on access to the internet should at the very least meet the three-part test under the covenant for limiting freedom of expression. A joint resolution issued by the leading international freedom of expression mandates in 2015, has in this regard dictated “*Filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communication systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.*”²⁴⁵ A resolution by the United Nations Human Rights Council has also condemned the use of deliberate internet shutdowns, even those that are more targeted, stating that “*measures to intentionally prevent or disrupt access to or dissemination of information online,*” *violates international human rights law.*”²⁴⁶

In the African Continent, the Declaration of Principles on Freedom of Expression and Access to Information adopted by the African Commission on Human and Peoples’ Rights explicitly prohibits states from engaging in or condoning any disruption of access to the internet and other digital technologies for segments of the public or an entire population.²⁴⁷ Furthermore the declaration stipulates “*States shall not interfere with the right of individuals to seek, receive and impart information through any means of communication and digital technologies, through measures such as the removal, blocking or filtering of content, unless such interference is justifiable and compatible with international human rights law and standards.*”²⁴⁸ Thus, the legality of internet shutdowns within the continent can be considered to have been settled with this instrument which considers it as a violation of rights.

Coming to the domestic side, The FDRE constitution recognizes the right of every individual to seek receive and impart information “**regardless of frontiers**” either orally, in writing or in print, in the form of art, “**or through any media of his choice**”²⁴⁹ Thus the argument can be made the constitution’s protection of freedom of expression gives protection to unlimited means of expression including the internet.

²⁴⁵ Joint Declaration on Freedom of Expression and Responses to Conflict Situations, Art 4(c), (May 4, 2015).

²⁴⁶ Human Rights Council Resolution 32/13, The promotion, protection and enjoyment of human rights on the Internet, A/HRC/RES/32/13, Article 10

²⁴⁷ Declaration of Principles on Freedom of Expression and Access to Information, Principle 38(2)

²⁴⁸ Ibid, Principle 38(1)

²⁴⁹ FDRE Constitution, Art 29

Furthermore, disruption of internet services is not currently regulated by any subsidiary Ethiopian law and seems to rest with decisions by the state owned Internet Service Provider Ethio-telecom and Information Network Security Agency (INSA) with no judicial review or oversight. The exception is state of emergency rules issued by the Ethiopian government in response to national emergencies which on occasion empowered the government to “...cause the closure or termination of any means of communication”²⁵⁰ Similarly 2016’s state of emergency directive gave wide powers to the Emergency Command Post to cause the closure or termination of any means of communication when it believes it is necessary for the observance of the constitutional order and for the maintenance of peace and security of the public and citizens.²⁵¹ Thus with the exception of state of emergency laws which allow the government to temporarily derogate from its human right obligations, any internet filtering and blocking measures taken by the Ethiopian government fail to meet the requirement of legality which is the primary requirement under human right law for limits to be acceptable.

Secondly such disruption of services despite being intended for legitimate purposes such as combating disinformation, maintaining public order etc, should also be seen in light of requirements of proportionality and necessity which they do not usually meet. In 2020, A Spokesperson for the UN High Commissioner for Human Rights: Rupert Colville urged the government to lift internet restrictions in various areas of the country saying: “*Ethiopia is not the only country to shut down communications links. We urge all governments to immediately end any and all blanket internet and telecommunication shutdowns. Everyone has the right to receive and impart information. Blunt measures such as blanket Internet and telecommunications shutdowns, sometimes for prolonged periods, violate the principles of necessity and proportionality and contravene international law.*”²⁵²

This was also highlighted by the former UN Special Rapporteur on freedom of opinion and expression who visited Ethiopia who explicitly called on the government to refrain from imposing internet or telecommunications network disruptions and shutdowns as they, not only

²⁵⁰ State of emergency Proclamation enacted to Avert the Threat against National Existence and Sovereignty, 2021, Art 4(4), State of Emergency Proclamation No 1/2021

²⁵¹ State of emergency Directive, 2016, Art 4(2)

²⁵² UN High Commissioner for Human Rights , Press briefing note on Ethiopia, available at <https://www.ohchr.org/en/press-briefing-notes/2020/03/press-briefing-note-ethiopia> (Last accessed January 8, 2023).

often fail to meet the necessity and proportionality test, but also affect emergency services and economic activities. He urged the authorities to ensure that any disruption has a legal basis that is in line with international law.²⁵³

The Joint Declaration on Freedom of expression and fake news, disinformation and propaganda has in this regard crystalized the compatibility of such measures to human right obligations of states by providing:-“ *State mandated blocking of entire websites, IP addresses, ports or network protocols is an extreme measure which can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense of that it is proportionate, there are no less intrusive alternative measures which would protect the interest and it respects minimum due process guarantees.*”²⁵⁴

The joint declaration has also mentioned the rules states should consider when jamming or blocking broadcast frequencies mentioning:

*“The right to freedom of expression applies “regardless of frontiers” and jamming of signals from a broadcaster based in another jurisdiction, or the withdrawal of rebroadcasting rights in relation to that broadcaster’s programs, is legitimate only where the content disseminated by that broadcaster has been held by a court of law or another independent, authoritative and impartial oversight body to be in serious and persistent breach of a legitimate restriction on content (i.e. one that meets the conditions of paragraph 1(a)) and other means of addressing the problem, including by contacting the relevant authorities of the host State, have proven to be demonstrably ineffective.”*²⁵⁵

The Ethiopian government has previously gone as far as prohibiting viewing and following foreign based television and radio programs like Ethiopian Satellite Television (ESAT) and Oromia Media Network (OMN), which were deemed to have links with designated terrorist groups in a state of emergency directive.²⁵⁶ Such restrictions although based in law are highly unlikely to meet the requirements of proportionality and necessity as imposing restrictions and

²⁵³ Report of the Special Rapporteur on visit to Ethiopia, supra note at 95, paragraph 70 page 16

²⁵⁴ Joint Declaration on Freedom of expression and “Fake news”, Disinformation and Propaganda, Supra note at 73 Article 1(f)

²⁵⁵ Ibid, Article 1(h)

²⁵⁶ State of emergency Directive 2016, Art 2

criminal responsibilities on audiences instead of the broadcaster and speaker are practically unheard of in human right discourse.

A resolution adopted by the Human Rights Council on 16 July 2020, has reaffirmed that responses to the spread of disinformation and misinformation must be grounded in international human rights law, including the principles of lawfulness, legitimacy, necessity and proportionality.²⁵⁷ The council also called on states to refrain from arbitrarily imposing restrictions that are inconsistent with article 19 of the ICCPR , including through the use of internet shutdowns, the banning or closing of publications or other media and the abuse of administrative measures and censorship in the same resolution.²⁵⁸

The Concluding observations on the second periodic report of Ethiopia adopted on October 31, 2022 have in this regard included a specific recommendation by the Human Right Committee to the government of Ethiopia, to ensure that any restriction on access to internet and phone services strictly adheres to the principles of legality, proportionality and necessity and is subject to independent oversight.²⁵⁹

Given the history of violence and unrest in the country and how disinformation in social media has supposedly exasperated such problems, an argument could be made that internet restrictions could be considered permissible limits to the exercise of the freedom where there is sufficient proof that the restriction is duly intended to protect other fundamental rights. However, even if one was to take the Ethiopian government’s allegation that internet shutdowns were “*unavoidable means to protect the interest of the general public*” at face value, finding them to be a necessary measure to avoid unrest and ethnic strife, measures which are not based in duly promulgated laws will not be considered as acceptable limits. Furthermore, blanket bans and long term restrictions to the internet as they are currently being applied in Ethiopia, are bound to fall well outside the scope of any margin of appreciation that could be conferred to the state under the situation.

²⁵⁷ Resolution adopted by the Human Rights Council on Freedom of opinion and expression, 16 July 2020, A/HRC/RES/44/12, Preamble

²⁵⁸ Ibid, Art 8(g)

²⁵⁹ Human Rights Committee, Concluding observations on the second periodic report of Ethiopia CCPR/C/ETH/CO/2, Para 40(d)

In addition to them being incompatible to the state's obligation under international human right law, the economic costs of internet blackouts to the society are also quite significant. One report in 2020 found each day of internet shutdown in Ethiopia runs up a bill in excess of \$4.5 million, in terms of the economic impact to the GDP taking into account lost business, informal trade and a degree of lost confidence.²⁶⁰ The value of communication services in conflict stricken areas is even more significant considering its importance in delivery of humanitarian aid as well as accessing lifesaving information in such crisis environments.

Furthermore, in the context of combating disinformation, internet blackouts could be counterproductive by making it difficult for the public to receive reliable information from the affected area which is suppressed due to the communication restriction. Whenever the internet is shut down, the measure does not single out those individuals who are engaging in hateful or deceptive content but also the whole community, who will not be able to access the internet to communicate its feelings and experiences.

This was partly seen during the armed conflict in the northern part of the country where Tigray and other areas controlled by TPLF forces were shut off from most communication. This led to conflicting and sometime outright fabricated narrations to appear online about the areas which were completely shut off from the outside world. In such scenarios individuals outside those areas were able to create and transmit narrations about the occupied areas which were supportive of their own political, ideological or commercial motives thus leading to further polarization and distrust among the public.²⁶¹

Muthoki Mumo, CPJ's sub-Saharan Africa representative described the difficulties of getting accurate information from the conflict zone and its possible contribution to the spread of misleading information:

"We've had journalists, publication houses speaking out and saying that essentially it's incredibly difficult to document what's happening on the ground... Because you're unable to contact sources, it's difficult to verify what you're hearing, and it's in this kind of environment

²⁶⁰ CGTN Africa, Ethiopia lost at least \$100 million during internet shutdown, Civil society group says, available at <https://africa.cgtn.com/2020/07/27/ethiopia-lost-at-least-100-million-during-internet-shutdown-civil-society-group-says/> (Last accessed January 8, 2023).

²⁶¹ Claire Wilmot, et al, Dueling Information Campaigns: supra note at 8

where the work of journalists becomes difficult, perhaps where you might even see misinformation going unchecked.”²⁶²

3.4.3. Removal of online content by Social Medias

One built in option that can be found under the disinformation proclamation that allows for removal of online content without blocking access to the entire internet is the process of removing posts from social medias. Accordingly the proclamation imposes the duty to suppress and prevent the dissemination of disinformation and hate speech through their platform on all enterprises that provide social media services.²⁶³ Such companies are expected to act within twenty four hours to remove or take out of circulation the disinformation or hate speech upon receiving notifications about such communication or post.²⁶⁴

Despite mandating Social media enterprises to have policies and procedures to discharge their duty under the proclamation it is not clear how the Ethiopian government would be able to enforce those provisions. Although the proclamation provides that The Council of Ministers may issue a Regulation to provide for the detailed responsibilities of service providers and relevant Governmental Institutions²⁶⁵ no subsidiary law has thus far been enacted with respect to this issue.

It is more than likely such a regulation could fill the gap as to which particular body of government would be entrusted to report such offending posts, mode of communication, what type of responsibility the entity would have to face if unable or unwilling to remove the post etc. It should however be noted that the only thing that challenges the implementation of the obligations of social media enterprises is not the mere lack of such a regulation.

It is questionable how a country like Ethiopia could sway the decisions of multibillion international companies such as Meta and Alphabet who have no physical presence in the country if they choose to not abide by such requests. Currently, the only available means envisaged by the proclamation seems to be a naming and shaming strategy according to which

²⁶² VOA News, Journalists Struggle Through Information Blackout in Ethiopia, available at https://www.voanews.com/a/press-freedom_journalists-struggle-through-information-blackout-ethiopia/6199045.html (Last accessed January 8, 2023).

²⁶³ Proclamation 1185 /2020, Art 8(1)

²⁶⁴ Proclamation 1185 /2020, Art 8(2)

²⁶⁵ Proclamation 1185 /2020, Art 8(7)

the EMA is mandated to prepare a report to notify the public on social media enterprises whether they discharge their duty properly under the proclamation.²⁶⁶ For Kinfe Micheal Yilma the provision mandating social media enterprises to remove content would most likely have a better chance of enforceability and be applicable to future local social media companies that could be established locally, rather than the global giants that are already currently in use.²⁶⁷

Finally giving unopposed and unqualified power for the government to decide which posts should remain and which should be taken down could amount to violation of fundamental rights in and of itself, if no due process is followed. The special international mandates on freedom of expression in their 2011 Joint Declaration on Freedom of Expression and the Internet have in this regard noted that laws that require intermediaries to screen content for legality and impose liability absent a judicial or analogous order to takedown content present problems in terms of freedom of expression.²⁶⁸

As can be seen from the above discussion the Ethiopian government has taken and continues to take a number of legal, administrative, and practical measures to address the issue of disinformation. One such response has been the criminal approach, as demonstrated by proclamation 1185 and other similar provisions in other laws. The criminal provisions in the Ethiopian Hate Speech and Disinformation Prevention Proclamation, while not perfect, have made positive progress by:

- Differing penalties on the basis of whether damage was caused or not²⁶⁹
- Requirement that the speaker knew or should have known the falsity of the statement²⁷⁰
- Narrowing its application to those expressions that are highly likely to cause a public disturbance, riot, violence or conflict²⁷¹
- Providing exceptions to news reports, analysis or political critique,²⁷²

²⁶⁶ Proclamation 1185 /2020, Art 8(4)

²⁶⁷ Kinfe Micheal Yilma, supranote at 150, pg 359

²⁶⁸ Joint Declaration on Freedom of Expression and the Internet (2011), Article 2

²⁶⁹ Art 7(6) of Proclamation 1185 gives the court the option to sentence the defendant to mandatory community service in lieu of imprisonment where no violence or disturbance resulted from the offence

²⁷⁰ Proclamation 1185/2020, Art 6(2)

²⁷¹ Proclamation 1185/2020, Art 2(3)

²⁷² Proclamation 1185/2020, Art 6(1)

However, as long as the government and prosecution have access to other provisions in other laws that carry higher penalties and have fewer exceptions, the more liberal provisions of the disinformation proclamation will likely be overlooked in favor of the more restrictive rules in those laws.

In addition, the new media proclamation's provisions, such as the abolition of pretrial detention and the prescription of shorter periods of limitations, show a move away from the criminal law method in certain cases. However, these provisions will be rendered meaningless if they are not applied to all criminal cases involving journalists and media organizations, regardless of which law is cited by the prosecution.

Given the extensive role of the Ethiopian Media Authority (EMA) in overseeing the media, it is important to ensure that the EMA acts impartially and is seen as a neutral arbiter rather than as another tool of governmental control. The use of prior restraints, such as internet restrictions, can also have a severe impact on freedom of expression and should be carefully examined. Shutting off internet access to a significant portion of the population without due process or legal recourse is also dangerous and should be considered a violation of human right obligations of Ethiopia even when employed for the legitimate purpose of combating disinformation online.

Currently, there is a growing trend globally towards a human rights-based approach to combating disinformation. The special rapporteur's report on disinformation, for example, emphasized that *"there is growing evidence that disinformation tends to thrive where human rights are constrained, where the public information regime is not robust, and where media quality, diversity, and independence is weak. Conversely, where freedom of opinion and expression is protected, civil society, journalists, and others are able to challenge falsehoods and present alternative viewpoints. That makes international human rights a powerful and appropriate framework for addressing disinformation."* The special rapporteur also stated that *"criminal laws should be used only in very exceptional and most egregious circumstances of incitement to violence, hatred, or discrimination. Criminal libel laws are a legacy of the colonial past and have no place in modern democratic societies. They should be repealed."* The previous special rapporteur on freedom of opinion and expression, David Kaye, went even further in his report on Ethiopia, stating that *"the use of criminal sanctions is generally inappropriate to address false news, and that imprisonment is never an appropriate penalty."*

The next chapter of this thesis will be devoted to discussing major components of a human rights-based approach to mitigating the impact of disinformation.

Chapter Four

4. A Human right based Approach to Disinformation

4.1. In Defense of A human right based Approach to regulating Disinformation

We have already seen that disinformation is considered as a human rights issue because it can directly or indirectly cause harm to a range of human rights. However, inappropriate policy responses to disinformation can, themselves, also pose risks to human rights, particularly the right to freedom of expression.²⁷³

Previous sections of this thesis have tried to describe different methods used by the Ethiopian government to regulate disinformation including those through criminal penalties, administrative measures, prior restraints as well as internet restrictions. And it should be clear from previous discussions that no single method can be a complete solution to the problem of disinformation. For instance, an anti-disinformation strategy solely or overly reliant on criminalization for one would not be effective as it is neither possible nor desirable to prosecute all acts of disinformation, but taking such extreme measures is bound to cast the net so wide that it is inevitable to restrict even legitimate speech. Similarly, methods like internet shutdowns can have severe negative economic implications in addition to the adverse impact they might have in ensuring various rights of the population.

Furthermore, the wide spread use of the internet, social media and other communication technologies has meant that actors engaging in disinformation campaigns could be doing this from other countries outside the jurisdiction of the state. New encryption technologies could also allow a person to keep his identity a secret while garnering a significant following. In such scenarios the criminal law approach could prove to be ineffective. This rings particularly true in Ethiopia, where the most popular online sources in the information ecosystem are produced outside the country and are often owned and managed by members of the diaspora.²⁷⁴

A former recipient of CPJ International Press Freedom Awards in 2015 along with his blogging collective ‘zone 9’, Befekadu Hailu who now serves as the executive director of The Center for the Advancement of Rights and Democracy (CARD Ethiopia) does not see criminal law

²⁷³ Global Partners Digital, A Human Rights Based Approach to Disinformation, <https://www.gp-digital.org/a-human-rights-based-approach-to-disinformation/> (Last accessed January 8, 2023).

²⁷⁴ European Institute of Peace, *supra* note at 96 , pg 9

restrictions as a viable answer to the problem of disinformation in Ethiopia. For him proclamation 1185/2020 has proved itself to be yet another instrument for the government to silence critics. Moreover, he sees its application thus far as politically motivated with major actors who have been engaged in misinforming the public being left to continue their acts with little to no interference, due to their affiliation with government officials.²⁷⁵

He believes *“criminalizing speech should be a measure of last resort if at all ever necessary. Given the country’s poor record in ensuring independence of the judiciary from the executive, it [criminalizing speech] will end up being an instrument for stifling dissent. Instead transparency of officials and accountability when they fail to allow access to information, media literacy, fact checking, social media moderation, and integrating information literacy in the education curriculum are short and long term solutions to counter the problems of misinformation, disinformation and their impact.”*²⁷⁶

Befekadu’s comments are in line with The African Court of Human and Peoples’ Rights which rendered its first ruling on press freedoms in 2014 pronouncing the careful balance state parties need to strike between freedom of expression rights and criminal measures, reasoning: -

“Apart from serious and very exceptional circumstances for example, incitement to international crimes, public incitement to hatred, discrimination or violence or threats against a person or a group of people, because of specific criteria such as race, colour, religion or nationality, the Court is of the view that the violations of laws on freedom of speech and the press cannot be sanctioned by custodial sentences, without going contrary to the above provisions.

*The Court further notes that other criminal sanctions, be they (fines), civil or administrative, are subject to the criteria of necessity and proportionality; which therefore implies that if such sanctions are disproportionate, or excessive, they are incompatible with the Charter and other relevant human rights instruments.”*²⁷⁷

The landmark case, in addition to finding custodial sentences to be incompatible with speech offences such as defamation, notably ruled that freedom of expression in a democratic society

²⁷⁵ Interview with Befekadu Haillu, Executive director of The Center for the Advancement of Rights and Democracy (CARD Ethiopia), November 10, 2022

²⁷⁶ id

²⁷⁷ Lohé Issa Konaté v. The Republic of Burkina Faso, No 004/2013, African Court of Human and Peoples Rights, December 5, 2014, para 165-166, page 45

must be the subject of a lesser degree of interference when it occurs in the context of public debate relating to public figures.²⁷⁸

One should also note, neither criminalization of an individual nor injunctive orders towards media products erase the disinformation from the minds of the public. In fact, in some cases it could give undue attention to some speech that would have otherwise remained relatively unknown to the general public. An example of this is a phenomenon commonly referred to as “*the Streisand Effect*” named after singer Barbra Streisand, which is an online phenomenon in which an attempt to hide or remove information - a photo, video, story etc. - results in the greater spread of the information in question.²⁷⁹

The phenomenon is named after a civil case initiated by the well-known American celebrity, Barbra Streisand, against an aerial photographer for displaying a photograph of her home in Malibu, California, published as part of a series of photos of the California coastline that he was taking for a photographic project, The project named California Coastal Records Project²⁸⁰ was a publicly accessible online database containing thousands of photographs of the California coastline. One of these photographs included the Malibu mansion of Mrs. Streisand who in February 2003, sued the photographer, Kenneth Adelman, and Pictopia.com, an online photo sales company, for invasion of privacy, seeking \$50 million in damages. Before the lawsuit, the photo of Streisand’s residence had been downloaded just six times, two of which were by her own lawyers. In response to the publicity created by the legal action, however, the photo became an immediate internet hit, being downloaded over 420,000 times within just a month.²⁸¹

While further research might be needed to measure the actual impact prosecution and censorship might have had on the overall reach of a particular mode of speech in Ethiopia, the inquisitorial nature of all human beings coupled with the psychological fear of missing out present in all peoples gives no valid reason to believe the opposite could be true in Ethiopia.

²⁷⁸ Ibid para 155 page 42

²⁷⁹ BBC, The Streisand Effect: When censorship backfires, available at <https://www.bbc.com/news/uk-18458567> (Last accessed January 8, 2023).

²⁸⁰ The California Coastal Records Project is an aerial photographic survey of the California Coastline consisting of over 96,000 photographs (totaling over 509GB) of the California coast available at <https://www.californiacoastline.org/> (Last accessed January 8, 2023).

²⁸¹ Sue Curry Jansen & Brian Martin, “The Streisand Effect and Censorship Backfire” *International Journal of Communication*. vol 9 (2015) pg 656-671.

Overall, the argument against such restrictive measures emanates from the observation that the censorship or prosecution could do more in spreading the information sought to be repressed than what would have been the actual possible reach of the initial offending speech. The arrest, prosecution of a journalist might get more exposure than a single post by that very same journalist, thus articles and news stories reporting on the trial and other stages of a prosecution or seizure of a press product could in the normal course of things report on the specificities of the initial speech thereby multiplying its reach.

While the Streisand effect is normally associated with the spread of information online, a similar effect has also been observed in the spread of printed media. For instance, in 1987, a senior UK intelligence officer, Peter Wright, published his memoir, *Spycatcher*. The UK government decided that the memoir contained enough information to present a security risk, and had it officially banned. As a result, copies flew off shelves.

A time magazine article from 1987 commenting on the impact of the ban claimed:

*“The writing is pedestrian, and many of Wright's revelations about the inner workings of MI5, although sensational, have been made elsewhere. But a 23-month campaign by Margaret Thatcher's government to ban the book and any reports about its contents in Britain and the Commonwealth has turned the book into an international publishing phenomenon.”*²⁸²

Here in Ethiopia, books written by opposition party members, individuals linked with groups outlawed by the government tended to be sold often at higher prices and at higher volumes than they were initially being sold for before restrictive measures were imposed. Notably writings by the former heads of Ginbot 7 Andargachew Tsige & Birhanu Nega, and the “Ye Gazetegnaw Mastawesha” series of memoirs by Tesfaye Gebreab, and more recently “*Yetetelefew tigil*” were widely available in the capital despite not being officially published in the country and were under the watchful eyes of the Ethiopian authorities. Again while further research will be required to quantify the actual impact such controlling mechanisms had in curbing the distribution of such publications in Ethiopia, the mere fact that the books continued to be sold in the informal market is a testament that such controlling measures are rarely effective in completely removing publications from the public’s access.

²⁸² Time, Press: How Not to Silence a Spy, Aug. 17, 1987 available at <https://content.time.com/time/subscriber/article/0,33009,965233,00.html> (Last accessed January 8, 2023).

According to an owner of a book shop in Addis Ababa interviewed for this thesis, the government rarely officially outlaws books or publications but takes measures on book street vendors /*metshaf azuariwoch*/ found carrying copies of the books deemed “*illegal*”. Despite this, such restrictions only serve to peak the public’s interest in such publications who are in most cases willing to get their copies at higher prices. Additionally, he claimed that, as the writers of such books are not usually in a position to claim the respect of their copyright from the Ethiopian government, the black market tends to take over the publication role as well, in addition to distribution, thereby printing thousands of more copies and flooding the market for the public consumption. For him restrictive measures placed by the government on books will in most cases be completely ineffective if not counter-productive, having the sole impact of removing the books from the displays of renowned book shops while at the same time increasing the availability and distribution of copies of the book in the black market.²⁸³

The ineffectiveness of such restrictive measures was reinforced by Amnesty international in its submission to the OHCHR in April 2022 which stated; “*False and misleading information cannot be easily censored or simply expunged, particularly in the age of social media and messaging apps. Restricting information and the free expression of opinions and ideas through censorship, punitive laws, internet shutdowns, closing down of media outlets, and persecution of journalists, human rights defenders and others expressing their views, are not only in contravention of international human rights law but are also ineffective measures that do not tackle the root causes of why the public remains vulnerable to misinformation. On the contrary, censorship and a blunt overregulation of the exercise of the right to freedom of expression increases mistrust in the authorities and drives more people to seek out “alternative”, “anti-establishment” or covert sources of information that may not have been put through scrutiny and cannot be debunked in the public arena.*”²⁸⁴

Since scrubbing all forms of false and misleading information from the public space is an impossible task in and of itself, a human rights-based approach to disinformation would, by contrast, be designed and targeted towards addressing the adverse human rights impacts caused

²⁸³ Interview with owner of a book store (Name Confidential), October 19,2022

²⁸⁴ Amnesty International, A Human Rights Approach To Tackle Disinformation; Submission to the Office of the High Commissioner for Human Rights, pg 12 available at <https://www.amnesty.org/en/wp-content/uploads/2022/04/IOR4054862022ENGLISH.pdf> (Last accessed January 8, 2023).

by disinformation, rather than all disinformation itself. While this could mean a number of things, most importantly it could entail steps such as: -

- Having clear requirements in the law for objective harm to be caused before liability is attached to disinformation;
- Improving digital literacy and critical thinking of the public;
- Reducing the impacts of disinformation rather than focusing on the disinformation itself;
- Giving wider access to information;
- Strengthening media landscape of the country²⁸⁵

Such an approach will thus attempt to address disinformation in a way which respects, rather than undermines, fundamental human rights such as freedom of expression.

A criminal justice approach does not necessarily automatically fall exclusively outside the scope of a human right based approach, but it needs to be exceptionally applied and whenever applied be guided on clearly and narrowly stipulated laws, with proportionate penalties. Similarly, administrative measures should take due consideration of human right implications of each measure and follow the principles of legality, proportionality, necessity in a democratic society.

The former UN special rapporteur on freedom of opinion and expression who provided his insights on the disinformation and hate speech prevention proclamation while it was at the drafting stage agreed with this sentiment in his post-visit report to Ethiopia, saying:

“... law alone cannot solve all the problems. On the contrary, an ill-conceived law on hate speech and disinformation could well reinforce rather than ease ethnic and political tensions and undermine the long-term prospects for success of the reforms in the country. As such, no law alone can address hatred, or disinformation. What is needed is not necessarily more law, but vibrant and robust debate, efforts to combat the root causes of tensions, and a broad and deep national dialogue to address grievances and build strong democratic institutions that can adequately and effectively respond to criminal acts. A national dialogue that includes political, religious and community leaders from across the country may well allow the balance to be

²⁸⁵ Global Partners Digital (GPD), A Human Rights-based Approach to Disinformation, available at <https://www.gp-digital.org/a-human-rights-based-approach-to-disinformation/> (Last accessed January 8, 2023).

struck between pursuing the national unity agenda while respecting and empowering individuals and communities' identity."²⁸⁶

A human right based approach to regulating disinformation can be understood as grounded under the positive and negative state obligations of respecting protecting and fulfilling human rights under international law as well as the extent of permissible limits to freedom of expression therein. Accordingly, a human rights-based approach to mitigating disinformation in Ethiopia can be justified because the country is a signatory to major human rights instruments, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, which recognize freedom of expression as a fundamental right. In addition, subsidiary instruments, such as the African Declaration of Principles on Freedom of Expression, call for non-punitive measures against disinformation, such as false news.²⁸⁷ Furthermore, the Ethiopian Constitution explicitly endorses the interpretation of human rights principles in conformity with international law and recognizes freedom of expression as a human right under Article 29. These provide further grounds to justify a human rights-based approach to disinformation in Ethiopia. Some components of a human right based approach to mitigating the impact of disinformation will be discussed subsequently.

4.2. Improving Access to information and its place under Ethiopian law as a human Right

In this day and age, appropriately described as “Age of Information” the value of information cannot be underestimated and access to government records and information is an essential requirement for developing and maintaining a civil and democratic society. The guarantee of freedom of information especially with regard to the media is believed to be a primary requisite of insuring transparency and accountability in any system of government because of the media’s notable role as a channel of access to information for the general public. The enjoyment of the freedom thus serves to facilitate public knowledge and discussion while also providing an important guard against abuses, mismanagement and corruption.²⁸⁸ In the context of disinformation giving wider access to information can serve an important role by providing the

²⁸⁶ Report of the Special Rapporteur on visit to Ethiopia, supra note at 95, para 55 pp 15

²⁸⁷ The Declaration of Principles of Freedom of Expression and Access to Information in Africa, Principle 22

²⁸⁸ David Banisar, Freedom of Information International Trends and National Security , pg 1, Paper presented at the Workshop on " Democratic and Parliamentary Oversight of Intelligence Services" Available at https://www.humanrightsinitiative.org/programs/ai/rti/articles/foia_intl_trends_and_nat_sec.pdf (Last accessed January 8, 2023).

public and the media the opportunity to verify and check the truthfulness or falsity of rumors and allegations for themselves.

The right to access information held by public bodies is however not an absolute right, and it may reasonably be expected that certain information may be restricted by the state for reasons such as protection of national security, privacy of individuals, law enforcement, public order etc. The limitations should however not be broadly construed and vague making discussion on public matters practically impossible. Be that as it may, the full enjoyment of the freedom to receive information requires a break in the commonly held false perception that information held by state organs is confidential and should not be accessible to the public. There is a need to replace this false perception with a rights based approach that ensures maximum disclosure, which acknowledges the principle “No democracy can flourish in secrecy” and accepts the reality that state organs are indeed mere custodians of public information rather than its owners.

4.2.1. Freedom to access information under the FDRE constitution

The FDRE constitution recognizes the freedom to seek and receive information and ideas as one of the components of the Right of Thought, Opinion and Expression under Article 29. Furthermore, freedom of the press under the constitution is framed to include “access to information of public interest” as one element. It should be noted in this regard, the FDRE constitution does not use the term ‘right’ in characterizing the entitlement of receiving information, the media enjoys under Article 29(3)b. the constitutional stipulation under the provision merely stipulates “Freedom of the press shall specifically include... access to information of public interest.” The omission of the word ‘right’ would not have been much of a subject of discussion were it not for what was provided in the Amharic translation of the same provision which provides “የሕዝብን ጥቅም የሚመለከት መረጃ የማግኘት ዕድል”²⁸⁹ directly translated to mean “*opportunity* to access information of public interest.”

The characterization of the entitlement of the media to access information as an “opportunity” instead of a “right” in the Amharic version of the constitution which has final legal authority over the English text²⁹⁰ is a rare anomaly when compared with other similar legislations.

²⁸⁹ Had it been the intention of the drafters to confer a right to access information under the said provision, they would have used the term “መብት” instead of “ዕድል” which is found in the final text of the FDRE constitution

²⁹⁰ Article 106 of FDRE constitution provides “The Amharic version of this Constitution shall have final legal authority”

Legislative history of the constitution clearly shows that the use of the term ‘opportunity’ in the said provision was not a mere accident but a deliberate decision made by the drafters who decided to recognize the entitlement as such.

The unusual approach taken within the constitution with respect to the freedom to access information by the media will be discussed in this section along with its practical implications to the overall enjoyment of freedom of expression. A closer look into supplementary records of the FDRE constitution reveal that the drafters understood the press’s entitlement to receive information as one of “‘opportunity’ rather than that of a ‘right.’”

Background documents related to the drafting of the constitution provide some explanation on the reasoning behind the use of the term ‘opportunity’ in lieu of ‘right’, which indicate the drafters might have had a faulty understanding of freedom to access information from the outset

The explanatory note to the Constitution affirms this understanding of the drafters with regards to the press’s entitlement to access information by providing the following: -

“... ፕራስ የጠየቀው መረጃ የሕዝብን ጥቅም የሚመለከትም እንኳን ቢሆን ሙብቴ ነው በማለት በማናቸውም ጊዜ መረጃ ሰጪውን ማስገደድ አይችልም። ፕራስ መረጃ የማግኘት ዕድል እንጂ መረጃ የማግኘት ሙብት የለውም። ይህ ዕድል በፍርድቤትም አስገዳጅነት ሊከበር አይችልም...”

“...even if the requested information is of public interest, the press cannot as a matter of right demand access to such information. The constitution grants only an opportunity and not a right to access this information. This opportunity cannot even be enforced through a court decision.”²⁹¹

Accordingly, the designing of Article 29(3)b leaves the media’s freedom to access information under the complete discretion of the information holder, which in some cases could be a government body having reputational or other opposing interests to making the information public. The drafters even firmly closed the chance of enforcing the narrowed opportunity granted by the constitution by holding it as ‘non justiciable’, thus leaving the enjoyment of the ‘opportunity’ solely dependent on the wills and whims of its officials.

The recognition of the entitlement of the press in accessing information as an ‘opportunity’ can also be seen in the discussions of the Constituent Assembly which was entrusted with the

²⁹¹ Explanatory note to the FDRE Constitution, supra note at 229, page 69, translation mine

mandate of adopting the constitution. The members of the Assembly who were presented with the draft constitution must have been in agreement with the stipulation provided under Article 29(3)b because no objection was raised in relation to the provision during discussions. One member of the Assembly was in fact recorded in saying: -

“...ጋዜጠኞች ኢንፎርሜሽን የማግኘት ዕድል አላቸው ሲባል ማንኛውም ባለስልጣን በማንኛውም ጊዜ አስገድደው ኢንፎርሜሽን እንዲሰጣቸው ያደርጉታል ማለት እንዳልሆነና የመንግስት ባለስልጣኑም ሙብቱ ተከብሮለት አንፎርሜሽን ሲጠየቅ የመተባበር ሃላፊነት እንዳለበት መገንዘብ እንደሚገባ አስረድተዋል፡፡”

“... When it is said ‘journalists have the opportunity to access information’ it does not mean they can coerce public officials to give them access to such information. Even though government officials are considered to have a responsibility to cooperate whenever such requests are made, the right of the official in such an instance should also be acknowledged”²⁹²

The above quote is particularly interesting because it shows that although the assembly members were not willing to recognize the press’s ‘right’ to access information by labeling it as an ‘opportunity’, they referred to a “right” of government officials to refuse giving such information. While this may have indeed been the personal opinion of the member of the Constituent Assembly who made the remark, it does however shade light on the previously mentioned faulty understanding the framers of the constitution had with respect to freedom to access information.

Clearly, the framers of the constitution perceived ‘the opportunity to access information of public interest’ as a notion contingent on the good wishes of the information bearer. In attempting to balance between the competing interests of the information bearer and the media who requests to access it, the framers choose to lean towards the former instead of upholding the interest of the press and the public in extension.

It is discernable from the previously mentioned background documents that the drafters were indeed aware of the value a vibrant and pluralistic media has for the maintenance of a democratic society. It is also clearly evident the drafters understood the fundamental importance access to information has for the media to carry out its functions. While the discussions of both the

²⁹² Remarks made by Ato Hassen Ali found in Minutes of Constitutional Assembly, Volume 2(1995) (የኢትዮጵያ ሕገመንግስት ጉባዔ ቃለጉባኤ ጥራዝ 2) pgs 000121- 000122 (1995) (Translation mine)

Constitutional Commission and Constituent Assembly provide several mentions of the above mentioned principles, the designing of the freedom of the press almost paradoxically imposed unnecessary obstacles on its exercise. So the question becomes “Why did the framers of the constitution deem it fit to impose these hurdles on the freedom of the press to access information when they recognized its importance in a democracy?”

The answer for this question is not clear-cut, but the first reason for the restricted recognition of freedom of the press in the constitution probably emanated from the drafter’s heightened interest in maintaining certain government held information secret. Secondly the drafters also seem to have placed extraordinary trust on the government to always act in good faith. They presumed the kind of democratic government established by the constitution would not abuse the discretionary power it has been given in order to hide its mistakes or escape blame.

The drafter’s understanding of what the profession of journalism entails, seem to have also contributed to the design of the constitutional provision. The drafters explicitly state in the explanatory note that they consider the role of journalists to be much more than requesting information to be handed to them, rather the main task of a journalist is to unearth and dig up information that may be hidden in certain cases.²⁹³ Accordingly, in the drafter’s opinion it is the responsibility of the press to uncover and expose information needed to carry out its duty, rather than expecting to be handed with the necessary information needed to carry out its duty.

While the above mentioned reasons might serve to show the motives behind the narrowed recognition of freedom of the press under the constitution, they do not by far provide adequate justification to deviate from the internationally recognized principles with respect to the right. The formulation of the constitutional provision becomes all the more odd when considering the constitution was drafted after the transitional government signed and ratified the ICCPR.²⁹⁴ Additionally, the drafters also had the benefit of an already promulgated press law which was already in force at the time of deliberation and which recognized the freedom of the press with respect to accessing information in the following way:-

²⁹³ Explanatory note, supra note at 229, Page 69

²⁹⁴ Ethiopia ratified ICCPR on 11 June, 1993

*Any press and its agents shall, without prejudice to rights conformed by other laws, have the right to seek, obtain and report news and information from any government source of news and information.*²⁹⁵

Despite the availability of the above mentioned instruments to draw inspiration from, the framers of the constitution essentially backtracked from already recognized principles by relegating freedom to access information from its previous position of being a ‘right’ to an ‘opportunity.’

The limitations in the formulation of the right of the press to access information can however be mitigated by the constitutional provision that requires the fundamental rights and freedoms specified therein 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.²⁹⁶ As International human right law gives wide recognition to the freedom to access information rights rather than “opportunity”, It makes sense that Ethiopian authorities should also create enabling environment for the exercise of such a right.

General Comment 34, issued by the HRC to assist States parties in fulfilling their obligations under the Covenant’s Article 19 elaborated responsibilities related to the freedom to access information in the following manner:

*“States parties should make every effort to ensure easy, prompt, effective and practical access to ... information [of public interest]. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.”*²⁹⁷

The Comment further stipulates that state parties should provide procedures for the timely processing of requests for reasonable fees, in addition to requiring authorities to provide explanations for withholding information, and stressing the need to establish appeals mechanisms.²⁹⁸ Freedom to access information is also closely tied with the right of individuals to take part in public affairs. This intrinsic relation was recognized by the HRC who made the observation that Article 19 read together with Article 25 of the covenant on the right to take part

²⁹⁵ Press proclamation 34/1992, Article 8(1),

²⁹⁶ FDRE Constitution, Art 13(2)

²⁹⁷ HRC, General Comment 34, para 19

²⁹⁸ Ibid

in public affairs, implies that citizens, in particular through the media, shall have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members'.²⁹⁹ The Special Rapporteur has similarly reinforced this, expressing his view that the covenant imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems subject only to such restrictions as referred to in article 19, paragraph 3, of the ICCPR.³⁰⁰

While freedom of information is usually expressed in terms of the right of people and especially those in the media to access information held by public authorities, another commonly neglected dimension of the right extends to the right of all people to access and receive information and ideas from those seeking or willing to impart it. The European Court of Human Rights has recognized this aspect of freedom of information as early as 1992 by observing "...not only does [the press] 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'".³⁰¹

The HRC, has further reiterated this principle while considering a communication submitted to it against the government of Uzbekistan where it held the refusal of state authorities to register a newspaper to be a violation of both the freedom of expression rights of the editor and the right of the readers of the newspaper to receive information and ideas.³⁰²

The government can thus be said to have dual responsibilities in ensuring the enjoyment of freedom to access information. The first is a positive obligation requiring the state to ensure the genuine and effective exercise of the freedom through taking measures such as laying the necessary legal framework and making public records easily and practically accessible. Secondly, the state is also assumed to have a negative obligation implying the duty of the state to refrain from interrupting those in the media and others willing to provide their ideas and opinions.

²⁹⁹ Ibid

³⁰⁰ Commission on Human Rights, Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain, UN Doc. E/CN.4/1999/64, para. 12, page 5

³⁰¹ Thorgeirson v. Iceland, Application No. 13778/88. ECHR, 25 June 1992, Para 63.

³⁰² Mavlonov v. Uzbekistan, Communication No. 1334/2004, HRC, 27 April 2009, Para. 8.4.

In the context of disinformation, ensuring the proper exercise of freedom to access information affords the public the means to check and verify rumors and conspiracy theories. Furthermore, the full exercise of such a right allows the media to properly exercise its watchdog role on government in addition to strengthening reputable and professional media that are less likely to engage in acts of disinformation. Similarly, transparency in the working of the government leaves less room for nefarious actors to create those unsubstantiated rumors. Conversely, unnecessary secrecy in the day-to-day work of government and unnecessary hurdles in getting information would contribute to the public's susceptibility to disinformation.

4.2.2. Freedom to Access Information as a method to combat disinformation in Ethiopia

In Ethiopia the first comprehensive law promulgated to make this freedom a reality was the Mass Media and Access to Information Proclamation No. 590/2008.

The objectives of parts of the proclamation which deal with access to information were said to be:

1/ to give effect to the right of citizens to access, receive and import information held by public bodies, subject to justifiable limits based on overriding public and private interests;

2/ to establish mechanisms and procedures to give effect to that right in a manner which enables persons to obtain information as quickly, inexpensively and effortlessly as is reasonably possible; and

3/ to encourage and promote public participation, public empowerment , to foster a culture of transparency, accountability and efficiency in the functions of public bodies and to encourage and promote good governance .³⁰³

As assessed by the RTI Rating, the leading global tool for assessing the strength of legal frameworks for the right to information, the proclamation earned Ethiopia a score of 111 points out of a possible 150 for its overall legal framework for access to information, a score which put Ethiopia in a very respectable 24th position from among the 128 countries currently assessed on

³⁰³ Freedom of the Mass Media and Access to Information Proclamation,2008. Proclamation No 590/2008, Art 11, Neg. Gaz. Year 14, No 64.

the rating.³⁰⁴ Despite this the Proclamation was never recognized as an important tool for accessing information due to the failure of the government to put in place the systems for actually disclosing information in practice.³⁰⁵

Subsidiary laws that were necessary to implement the proclamation in practice including those, the council of ministers was expected to enact with respect to ; 1) Schedules of fees payable for different categories of information 2) The procedures for the custody and classification of information regarded as confidential or declassification of records;³⁰⁶ never came to be. Thus the proclamation's provisions were largely unimplemented in practice. However, the Justice and Legal Affairs Reform Advisory Council, Media Laws Working Group in collaboration with the Office of the Attorney General is currently working on a draft Freedom of Information Proclamation to replace the existing one building on the precioues' strengths and trying to reform some of its weaknesses.

But merely providing ways for requesting and accessing information from government bodies is not enough to combat disinformation in today's world. Governments should be proactive in providing information to the public so that the population doesn't fall victim to actors who might engage in deceptive practices for financial or other purposes.

The African commission endorsed this very fact when in its Declaration on freedom of expression and access to information provided:- *“Public bodies and relevant private bodies shall be required, even in the absence of a specific request, to proactively publish information of public interest, including information about their functions, powers, structure, officials, decisions, budgets, expenditure and other information relating to their activities.”*³⁰⁷ A similar provision in Proclamation No. 590/2008 mandates public bodies to publish pertinent information about their organizational structures and the services they provide to be updated every year.³⁰⁸ However, the present challenges of disinformation require an engagement by public bodies much greater than this, which would require authorities to be attentive of day to

³⁰⁴ Toby Mendel, “Access to Information Legislation in Ethiopia: Transitioning from Strong to Trusted” Ethiopian Human Rights Law Series (Volume -XII) Addis Ababa University - School of Law, pg 43,

³⁰⁵ *ibid*

³⁰⁶ Proclamation No. 590/2008, Art 37

³⁰⁷ The Declaration of Principles of Freedom of Expression and Access to Information in Africa, Principle 29

³⁰⁸ Proclamation No. 590/2008, Article 13

day complaints and allegations regarding their activities and to dispel of any undue claims when necessary.

In this regard, establishment of press secretariat offices at the prime minister's office and the mayor's office of Addis Ababa who provide official comments and respond to questions of the press regarding current affairs can be taken as positive steps by prime minister Abiy Ahmed's administration in the right direction. One should however distinguish between making information available to the public and engaging in propaganda. The latter tends to worsen the problem of disinformation rather than fix it. Defined as "the systematic dissemination of doctrine, rumor, or selected information to promote or injure a particular doctrine, view, or cause"³⁰⁹, propaganda can be considered as a type of state sponsored disinformation campaign.

The four special international mandates on freedom of expression had called on states to refrain from engaging in such practices in their joint declaration of 2017 stating

*"State actors should not make, sponsor, encourage or further disseminate statements which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda)."*³¹⁰ *Instead state actors are mandated to ensure that they disseminate reliable and trustworthy information, including about matters of public interest, such as the economy, public health, security and the environment as a positive obligation.*³¹¹

In this regard government or state owned media are especially susceptible to becoming instruments of government propaganda as they rely on the government for budget and resources. The FDRE constitution seemingly cognizant of this fact provided "*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.*"³¹²

Improving access to information specially as it relates to governance and politics will create the opportunity for the public to a path of greater understanding reducing its likelihood to fall victim to rumors and conspiracy theories. It will at a minimum serve to reduce misinformation i.e.

³⁰⁹ Bryan A. Garner, Black's Law Dictionary, 9th edition (2009), page 1335

³¹⁰ Joint Declaration on Freedom of expression and Fake news, supra note at 73, Art 2(c)

³¹¹ Id, Article 2(d)

³¹² FDRE Constitution, Art 29(5)

unintentional spreading of wrong information, by debunking disinformation that might have been created and transmitted to mislead the public.

Another less discussed venue used by the Ethiopian government to counter unfavorable discussions in social media platforms is deployment of “cyber warriors”. The initial idea of trained personnel who would debunk falsehoods on social media sites was put forward by the then governing party in 2017, the Ethiopian Peoples’ Revolutionary Democratic Front (EPRDF) in order to combat the proliferation of disinformation and hate speech online targeting the party.³¹³ Shortly thereafter, the idea took a different direction, and the government introduced legislation that created a “Cyber Army Development Institute” within the nation’s cyber command, Information Network Security Agency (INSA)³¹⁴

The council of ministers by Regulation No. 401/2017 established the Cyber Army Development Institute with the primary objective of developing a disciplined cyber force capable to protect national interest and respond to the needs of the country’s cyber warfare;³¹⁵ The institute was however short lived as only two years later the Council of Ministers dissolved it by enacting Regulation No. 458/2019.³¹⁶ However the activities of the institute did not seemingly disappear with it, as the regulation transferred the rights and obligations of the institute to the INSA.³¹⁷ Despite the dissolution of the institute the idea of a “cyber force” was notably still under consideration as a draft proposed by prime minister Abiy Ahmed’s government to reform the Ethiopian Defense Forces structure in 2018 notably included cyber security and space forces.³¹⁸ Data on how those members of the cyber army were deployed and to what extent they are used to sway the public’s opinion is however not publicly available.

Establishment of taskforces to counter disinformation campaigns online is not a novel phenomenon in Ethiopia. For instance, The European Council recognizing the threat of online disinformation campaigns by Russia tasked the High Representative to address the issue in 2015.

³¹³Kinfe Micheal Yilma, supra note at 11, pp 368-369

³¹⁴ ibid

³¹⁵ Cyber Army Development Institute Establishment Regulation, 2017, Art 4(1), Council of Ministers Regulation 401/2017, Neg. Gaz. Year 23, No 34

³¹⁶ Dissolution of Cyber Army Development Institute Council of Ministers Regulation, 2019, Art 2, Regulation 458/2019, Neg. Gaz. Year 25, No 96

³¹⁷ Ibid, Art 3

³¹⁸ The Ethiopian Reporter, Draft bill introduces Naval, Cyber, and Space force , available at <https://www.thereporterethiopia.com/6922/> (Last accessed January 8, 2023).

Accordingly, a communication team termed “The East Strategic Communication Task Force” has been set up in charge of developing campaigns designed to better explain EU values, interests and policies in Eastern partnership countries(Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine).^{319 320} Such bodies however tend to blur the lines between provision of information which is a necessary task by the state and propaganda. Such “taskforces” can especially be problematic when employed via anonymous social media accounts without disclosing their links with the government, to push narratives supported by the incumbent government.

In June 2021, the social media giant Meta disclosed it has removed 62 Facebook accounts, 49 Pages, 26 Groups, and 32 accounts on Instagram for violating its policy against coordinated inauthentic behavior *which* originated in and focused on domestic audiences in Ethiopia.³²¹ According to the announcement the network of accounts posted primarily in Amharic about news and current events in Ethiopia, including the Prosperity party, Prime Minister Abiy Ahmed, as well as criticism of Egypt and Sudan related to Ethiopia’s mega dam project. They also posted critical commentary about various opposition politicians and groups in Ethiopia, including Oromo Liberation Front, Ethiopian Democratic Party, and the Tigray People’s Liberation Front among others. Protests against sanctions imposed on Ethiopia by the US government was also another subject the network of accounts was said to have commented about.³²² The report further implicated the Ethiopian government by stating “*Although the people behind it attempted to conceal their identities and coordination, our investigation found links to individuals associated with INSA, the Information Network Security Agency in Ethiopia.*”³²³ Such instances besides bringing embarrassment to the government can arguably be considered as proof of improper use of propaganda to sway the public opinion.

³¹⁹ European Commission, Action plan on disinformation, supra note at 17

³²⁰ European Union External Action, Questions and Answers about the East StratCom Task Force available at https://eeas.europa.eu/headquarters/headquarters-homepage/2116/-questions-and-answers-about-the-east-stratcom-task-force_en (Last accessed January 8, 2023).

³²¹ Meta, Removing Coordinated Inauthentic Behavior From Ethiopia, by Nathaniel Gleicher, Head of Security Policy, June 16, 2021 available at <https://about.fb.com/news/2021/06/removing-coordinated-inauthentic-behavior-from-ethiopia/> (Last accessed January 8, 2023).

³²² Ibid

³²³ Ibid

Another recent attempt at combating disinformation by the Ethiopian government relates to increased online presence of government officials and offices. Accordingly, most ministries, bureaus and other governmental offices have accounts on widely used social medias such as Facebook and Twitter which they use to update their followers on their activities and current affairs. The prime minister's official Facebook and Twitter profiles are one of the most followed pages in the country boasting well over a million followers in both platforms.³²⁴

In addition to the official pages of different branches of government the government is also trying its hand at fact checking through pages like Ethiopia Current Issues Fact Check³²⁵ having more than 120,000 followers on Facebook and Twitter at time of writing. Such pages although intended to provide up to date and reliable information on matters involving the government, they are routinely seen engaging in propagandistic behavior. France 24 severely criticized the Ethiopia Current Issues Fact Check , Facebook account, as *“an account that does not promote independent fact-checking but rather publishes pro-government posts seeking to discredit coverage critical of the intervention in Tigray.”*³²⁶

Current international trends favor fact checking initiatives to be independent from any governmental influence due to the conflict of interest that could arise in their day to day work. Even government fact-checking initiatives that are less overtly propagandistic or opportunistic raise serious questions about independence and integrity. When such units are contained in government information offices or services, they are not well-positioned to act as an independent fact-checking voice, although it is good for such offices to have internal protocols to ensure they are not disseminating disinformation.³²⁷

One such private initiative found locally is Ethiopia Check a project founded by Ethiopian journalist Elias Meseret Taye which routinely debunks claims and exposes disinformation's

³²⁴ Official social media accounts of the prime minister available at <https://www.facebook.com/PMAbiyAhmedAli> and <https://twitter.com/AbiyAhmedAli>

³²⁵ Account links found at <https://www.facebook.com/EthiopiaIssuesFactCheck> and <https://twitter.com/ETFactCheck>

³²⁶ France 24, Ethiopia's warring sides locked in disinformation battle, <https://www.france24.com/en/live-news/20211222-ethiopia-s-warring-sides-locked-in-disinformation-battle> (Last accessed January 8, 2023).

³²⁷ Centre for Law and Democracy, UN Special Rapporteur for Freedom of Expression Submission on an Annual Thematic Report on Disinformation, March 2021, pg 2

using its various platforms on Facebook , Twitter Telegram and its website. ³²⁸ Having its greatest following on Facebook where it boasts well over 145,000 followers, Ethiopia Check also provides online tools for the public to check the authenticity of images circulating on social media and distributes an email newsletter to newsrooms across the country.³²⁹ Other private initiatives in the fact checking sphere are also rising in popularity. One such project is Haqcheck³³⁰ a part of Addis Zeybe digital news outlet, dedicated to verifying media content in English and four local languages. Such initiatives should be given ample space to grow without undue government influence if they are to be effective weapons in the fight against disinformation.

Provision of funding or other support by the government to independent fact-checking initiatives is a step one finds sometimes recommended in literature. One notable example of successful fact checking private project receiving support from the government is “*Real 411*” , a website run by Media Monitoring Africa, which is an independent non-governmental entity yet supported by the South African government.³³¹ Such economic dependency by fact checkers could however compromise the independence of such initiatives, which need complete impartiality and objectivity to conduct their work.

Journalist and fact checker Elias Meseret Taye, who was interviewed for this thesis is of the opinion that government entities should get out of the business of fact checking as they cannot realistically be expected to be impartial in fact checking themselves. For him, attempts taken thus far by the Ethiopian government in engaging in such type of activities served more as tools of Private Relation (PR) and Propaganda rather than proper acts of fact checking and verification.³³²

Instead, he believes the government should focus on strengthening private initiatives in the fact checking space by “Improving access to information, stopping harassment of media workers (including fact checkers), providing necessary in-kind and/or financial support as well as supporting government/public media outlets to engage in fact-checking endeavors. Additionally,

³²⁸ Social Media Accounts of Ethiopiacheck found at <https://www.facebook.com/EthiopiaCheck>, <https://twitter.com/ethiopiacheck> and <https://t.me/ethiopiacheck>

³²⁹ Internews, Fighting False Information to Help Save Lives, available at <https://internews.org/story/fighting-false-information-help-save-lives/> (Last accessed January 8, 2023).

³³⁰ Found at <https://addiszeybe.com/haqcheck/en>

³³¹ Centre for Law and Democracy, supra note at 327, pg 3

³³² Interview with Elias Meseret, Journalist and Factchecker, November 9, 2022

he raises the importance of enabling fact checking initiatives to register in Ethiopia as the existing law currently doesn't have enabling provisions to allow that.³³³

This was confirmed in an interview with authorities from EMA who believed fact checkers do not meet the requirement set by the proclamation for media as they do not provide news and program capable of falling within the definition and lack the level of editorial control that is a principal component of the definition.³³⁴

Center for advancement of rights and democracy (CARD Ethiopia), a non-profit organization registered under the civil society proclamation in 2019, is another private initiative that has sprung up recently in the country, having important contributions in anti-disinformation sphere. Executive director of CARD Ethiopia, Befekadu Hailu indicated his organization was doing this through its engagement in media monitoring, commissioning researches to improve evidence-based engagement, facilitating a series of media literacy training for journalists and online content creators as well as producing materials to self-teach fact-checking to the public³³⁵

4.3. Improving Media & Information Literacy

Another human right centric approach towards mitigating the impact of disinformation is improving media & information literacy of the general public as well as the members of the media. According to Datareportal, an online hub collecting information on global digital trends, there were 29.83 million internet users in Ethiopia in January 2022. Ethiopia's internet penetration rate stood at 25.0 percent of the total population at the start of 2022 with 6.35 million social media users.³³⁶ Annual Report by the government owned Ethio-Telecom published in July 2022 placed the number of mobile internet users in the country to 25.5 million during the same time frame.³³⁷

With the coming to the picture of new technological advances in content manipulation like deep fakes & Photoshop, there are more ways of creating and distributing deceptive information to the public than any time before. This calls for a more vigilant and informed public to resist against

³³³ Ibid

³³⁴ Interview with Mrs Konjit Tamirat , Director of Legal Services at EMA, November 11,2022

³³⁵ Interview with Befikadu Hailu, supra note at 275

³³⁶ Datareportal, Digital 2022: Ethiopia, available at <https://datareportal.com/reports/digital-2022-ethiopia> (Last accessed January 8, 2023).

³³⁷ ሪፖርተር ጋዜጣ ኢትዮጵያ ቴሌኮም የፀጥታ ችግር በገቢው ላይ ተፅዕኖ ማሳደሩን አስታወቀ Available at <https://www.ethiopianreporter.com/108846/> (last accessed February 29, 2023)

the swarm of misleading information both online and offline that is capable of questioning and checking the veracity of data rather than jumping to conclusions.

Tawfik Jelassi, Assistant Director-General for Communication and Information, UNESCO expressed this in 2021 opining *“The defining challenge of our time is to harness the power of fast-evolving digital technologies to effectively contribute to the promotion of information as a public good. In order to seize the opportunities and address content challenges, we need to recognize media and information literacy as an important factor for sustainable development. Media and information literacy, along with digital skills, are more than ever a sine qua non for an informed and resilient society. Therefore, national policies and strategies in these areas have become urgent for all countries.”*³³⁸

Media and information literacy is generally understood to be concerned with people’s understanding of content, how it is produced and disseminated, and by whom; how people use information or not, how they engage with libraries, the media and technology services, or not; what knowledge, skills, and attitude people need to evaluate information; and how people can manage their interaction with information to achieve desired outcomes.³³⁹

The UN General assembly has endorsed the importance of media and information literacy initiatives in its Resolution 75/267 whereby it encouraged all Member States to develop and implement policies, action plans and strategies related to the promotion of media and information literacy, and to increase awareness, capacity for prevention and resilience to disinformation and misinformation, as appropriate;³⁴⁰

This was further reiterated by the leading international mandates on freedom of opinion and expression in their joint declaration on disinformation calling on States to take measures to promote media and digital literacy, including by covering these topics as part of the regular

³³⁸ UNESCO, Media and Information Literacy for the Public Good: Global MIL Week 2021, available at <https://www.unesco.org/en/articles/media-and-information-literacy-public-good-global-mil-week-2021> (Last accessed January 8, 2023).

³³⁹ UNESCO, Global Standards for Media and Information Literacy Curricula Development Guidelines, pg 7, Available https://www.unesco.org/sites/default/files/medias/files/2022/02/Global%20Standards%20for%20Media%20and%20Information%20Literacy%20Curricula%20Development%20Guidelines_EN.pdf (Last accessed January 8, 2023).

³⁴⁰ Resolution adopted by the General Assembly on 25 March 2021, Global Media and Information Literacy Week, Resolution 75/267, A/RES/75/267, Article 3

school curriculum and by engaging with civil society and other stakeholders to raise awareness about these issues.³⁴¹

In Ethiopia, the Hate speech and Disinformation prevention proclamation mandates The Ethiopian Broadcast Authority(EBA) to conduct public awareness and media literacy campaigns to combat disinformation.³⁴² As the EBA is no longer in existence with its rights and obligations transferred to the newly established EMA,³⁴³ the responsibility of conducting such trainings will also be transferred to this organ. This is further reinforced by the fact that the EMA is entrusted to perform consent based capacity building activities including technical and financial support to enhance the capacity of the media in addition to organizing a training center which enables building the capacity of the media; under the proclamation.³⁴⁴

Authorities at EMA interviewed for this thesis have confirmed this, mentioning they have been consistently engaging with the media through various trainings focused on providing journalists and members of media the necessary knowledge and knowhow to serve the public honestly without falling victim to disinformation.³⁴⁵

Kinfe Micheal Yilma questioned the merits of assigning EBA as the pertinent body to raise public awareness in this manner. For him EBA, as a regulator of media was best positioned to follow the regular regulatory channels in shaping media practices instead of engaging in such awareness raising initiatives. He objected to the delegation of media literacy campaigns to a single institution by the proclamation instead favoring a strategy whereby the task would fall to several organs who each conduct it within their sphere of influence and media literacy lessons are given in public schools.³⁴⁶ This argument does seem to be hold water as such approach would obviously be capable of reaching more people thereby making its impact to combat the ills of disinformation that much more.

The UN Special Rapporteur on freedom of opinion and expression also recommends in this regard to make Media and information literacy part of the national school curriculum and engage

³⁴¹ Joint declaration on Freedom of Expression and Fake news, supra note at 73, Article 3(e)

³⁴² Proclamation 1185/2020, Art 8(5)

³⁴³ Media Proclamation, Art 89

³⁴⁴ Media Proclamation, Art 6/11

³⁴⁵ Interview with Mrs Konjit Tamirat, supra note at 334

³⁴⁶ Knife Michael Yilma , supra note at 11, page 360

the young and old alike.³⁴⁷ Thus incorporating media and information literacy into the civic curriculum and information technology lessons of students could contribute in creating a more resilient and informed generation in the future.

An anti-disinformation strategy through widening access to information and improving media and digital literacy of the public accepts that governments cannot practically expunge misleading information from the public sphere entirely. Instead, by recognizing that citizens would still be able to access both true and false information in their day-to-day activities, such an approach will be dedicated to empowering recipients of the information with the capability to assess the validity of that information as well as the requisite means to verify such information when needed.

4.4. Self-Regulation of the Media

Another important tool to combat disinformation one finds within the media proclamation is self-regulation, whereby the media itself will be entrusted with the role of regulating itself instead of a governmental authority such as the EMA. This alternative to government regulation is however subject to evaluation by the EMA on its effectiveness and strength.³⁴⁸

Although encouraging steps have recently been taken in laying the ground work towards making self-regulation of the media a reality in Ethiopia, it is still at an infant stage. The Ethiopian Media Council (EMC) is the main institution in charge of the operationalization of media self-regulation in the country. Established in 2016 and officially registered in 2019 The Ethiopia media Council is a voluntary, self-regulatory body for the media industry in Ethiopia. Its goal is to promote ethical practices within the media industry and to serve as a forum for complaints from and/or against government, public and its members.³⁴⁹

Comprised of more than 66 members of media houses and journalist associations, the Council has been registered as a non-profit organization in accordance with the amended Civil Societies Proclamation Proc. No. 1113-2019. It has 20 independent complaint commission members selected from the public and media organizations supporting the Council. A code of ethics has since been drafted and ratified by the body which consists of some provisions which could be

³⁴⁷ Special rapporteur on Disinformation and freedom of opinion and expression, supra note at 15, para 94, p 18-19

³⁴⁸ Media Proclamation, Article 73(2)

³⁴⁹ Ethiopian Media Council, information available at <https://ethiopianmediacouncil.org/about-us/> (Last accessed January 8, 2023).

employed in the regulation of disinformation. For instance, Article 4 of the code of ethics titled “Honesty” provides:

“The public have the right to receive accurate, balanced and complete information. Thus, the media and journalists:

- 1. Must be careful not to publish / distribute inaccurate, misleading or distorted information, including images and sound.

2. Where they discover that they have made or distributed significant errors, misleading statements or distorted information, [the media & journalists] should correct and publish or make appropriate written apologies³⁵⁰

Unlike court decisions that combine justice with sanctions, the decisions of self-regulatory bodies are corrective, upholding journalistic standards and defending the rights of the public to receive objective information. Self-regulation will hopefully become a reality in Ethiopia conferring a less restrictive method of combating disinformation although a number of challenges will undoubtedly face the new council. Currently government interference, lack of finance, lack of commitment and cooperation, media polarization, conflict of interests as well as distrust among media society are just some of the major challenges facing the council in promoting and sustaining freedom of expression and media freedom.³⁵¹

4.5. Self-Moderation within Social media companies

Social medias have become an important tool of the day to day social and political discourse of mankind while at the same time providing a new way of accessing news, information and opinions. In such a way the internet in general as well as social medias in particular can be said to have contributed positively to the way we communicate. However, at the same time advent of social media has allowed for disinformation to rapidly proliferate in society at a scale never seen before. Thus a disinformation combating strategy that doesn't involve those technological giants as stakeholders would be far from effective.

³⁵⁰ Ethiopian Media Council, Code of Ethics, Article 4 emphasis added

³⁵¹ Bereket Shimeliss, Sustainability and Roles of the Ethiopian Media Council, (2017, Unpublished, AAU Law Library)

In Ethiopia although the internet penetration rate is relatively low, youth in urban areas are regular social media users and the role of social medias like Facebook and Twitter as sources of news and information as well as agenda setters of sorts cannot be underestimated.

Given their increased role in the way people communicate at present, there are growing expectations that online platforms should not only comply with legal obligations under [international] and national laws, but also act with appropriate responsibility in view of their central role, so as to ensure a safe online environment to protect users from disinformation, and to offer users exposure to different political views.³⁵² This emanates from the belief that social media platforms whose business model is closely tied with their user base's engagement owe a certain level of responsibility towards mitigating the impact of disinformation and hate speech to their active user base.

Accordingly, regardless of whether they have received complaints or takedown notices from the government, social medias are attempting to take measures against users using their platform to distribute content that doesn't meet their community standards. This responsibility is especially more important in countries where the population's digital literacy level is low.

This was the case in 2019 Ethiopia, when the volatile nature of the situation in the country made Facebook reclassify the country to "Temporary high risk location" which is allotted to those territories which are, in Facebook's opinion, at the highest risk for conflict and violence. As a result of the classification, Facebook has implemented an internal policy requiring the removing of content calling for people to bring or carry weapons to specified locations or to take up arms, as well as those containing veiled threats of violence. The company has also reported it has been removing harmful misinformation when there was a risk of contributing to physical harm in accordance with this classification.³⁵³

According to Facebook, misinformation in the Ethiopian context has also included deliberate action from abroad, as a result of which, the company had taken action against a network of

³⁵² European Commission, Communication from the Commission to the European parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: Tackling online disinformation: a European Approach, COM(2018) 236 final, Pg 7

³⁵³ Meta, By Mercy Ndegwa, Public Policy Director East Africa & Mark Smith, Director, Global Content Management, An Update on Our Longstanding Work to Protect People in Ethiopia, available at <https://about.fb.com/news/2021/11/update-on-ethiopia/> (Last accessed January 8, 2023).

accounts linked to an Egyptian marketing firm which used 17 Facebook accounts, six pages and three Instagram accounts to post information targeting Ethiopia and two other countries.³⁵⁴

Despite this, disinformation is still a prevalent problem in the Ethiopian social media sphere,³⁵⁵ and Facebook's failure in taking appropriate measures against "bad" content has been severely criticized for having tragic real life consequences and grave human rights abuses in Ethiopia. An Analysis by the Bureau of Investigative Journalism (TBIJ) and the *Observer in 2022* alleged Facebook was letting users post content inciting violence through hate speech and misinformation despite being aware it helps directly fuel tensions, prompting claims of inaction and indifference against the social media giant.³⁵⁶ A Facebook whistleblower's testimony to US senators the same year, has in fact, sternly criticized Facebook's role in fanning violence and instability in Myanmar and Ethiopia³⁵⁷

The UN Guiding Principles on Business and Human Rights which was endorsed by The Human Rights Council in its resolution 17/4 of 16 June 2011 state that the responsibility to respect rights extends to all businesses, wherever they operate, regardless of their size, sector, operational context, ownership and structure.³⁵⁸ Thus social media enterprises as businesses are considered to fall within this umbrella, having responsibilities to avoid causing or contributing to adverse human rights impacts through their own activities, and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services³⁵⁹ This instrument can be said to have given a human right dimension to the responsibility of social media companies in combating disinformation.

³⁵⁴ Meta, March 2021 Coordinated Inauthentic Behavior Report, available at <https://about.fb.com/news/2021/04/march-2021-coordinated-inauthentic-behavior-report/> (Last accessed January 8, 2023).

³⁵⁵ Besufkad Dawit, supra note at 5

³⁵⁶ Jasper Jackson , Lucy Kassa , Kathleen Hall and Zecharias Zelalem, Facebook accused by survivors of letting activists incite ethnic massacres with hate and misinformation in Ethiopia, available at <https://www.thebureauinvestigates.com/stories/2022-02-20/facebook-accused-of-letting-activists-incite-ethnic-massacres-with-hate-and-misinformation-by-survivors-in-ethiopia> (Last accessed January 8, 2023).

³⁵⁷ The Guardian, Facebook's role in Myanmar and Ethiopia under new scrutiny, available at <https://www.theguardian.com/technology/2021/oct/07/facebooks-role-in-myanmar-and-ethiopia-under-new-scrutiny> (Last accessed January 8, 2023).

³⁵⁸ Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, HR/PUB/11/04, (2011) guiding Principle 14

³⁵⁹ Ibid, Guiding Principle 13

Befekadu Hailu, executive director of CARD Ethiopia, likens the current status of the spread of misleading information in social medias in Ethiopia to wild fires; noting that the lack of adequate fact checking initiatives as well as the lack of culture of using fact checked information common among a vast majority of Ethiopian social media users have contributed to the problem. This has resulted in false information having a reach well above verified information shared in the same mediums/platforms.³⁶⁰ He especially finds YouTube to be the most responsible for dissemination of false information in the country. For him the motive behind actors engaged in such deceitful activities online could be either for the purpose of setting a particular political or social agenda whereby backing is provided by different actors or in some cases related with commercial motives whereby the use of clickbait and outrageous titles to increase clicks and views is used to increase profits.³⁶¹

Although social media companies undoubtedly bare certain responsibilities in the fight against the spread of disinformation, with the sheer amount of content entertained in those platforms it is quite unlikely they can censor each and every misleading information posted there. For instance, approximately 500 hours of content is uploaded to YouTube each passing minute reaching more than 2 billion viewers per month,³⁶² it will thus be practically impossible to review all content posted on the site as truthful or misleading given the extremely large volume of content that passes through the companies servers.

The problem is further complicated when the content posted on such social medias can be posted in various languages in different geographical locations. Regardless, social media enterprises are not best suited to be arbiters of truth and often enter into partnerships with local fact checking initiatives to assist them to filter through clear falsehoods posted on their platforms. For example, Facebook is partnered with AFP Fact Check and PesaCheck to verify authenticity of content posted in or about Ethiopia. Whenever those partner factcheckers review and rate a piece of content as false, Facebook reduces its distribution so fewer people see it and sometimes add a warning label with more information for anyone who happens to view it.³⁶³

³⁶⁰ Interview with Befikadu Hailu, supra note at 275

³⁶¹ Ibid

³⁶² Forbes, As YouTube Tries To Fight Controversial Content, It's Giving Top Creators New Ways To Make Money, available at <https://www.forbes.com/sites/jilliandonfro/2019/07/11/youtube-announces-new-ways-for-video-creators-to-make-money/?sh=40124f924e43> (Last accessed January 8, 2023).

³⁶³ Mercy Ndegwa, How Facebook is Preparing for Ethiopia's 2021 General Election available at

Unfortunately, the two initiatives are not based within Ethiopia, instead relying on fact checkers they employ within the country to go through content posted in different local languages.³⁶⁴ However, having a combined 6 full time employees the initiatives can certainly be said to be overburdened to monitor content posted by millions of Facebook users in Ethiopia. Given the prevalence of disinformation and hate speech on social medias in Ethiopia platforms need to invest more resources and manpower capable of meeting the needs of their users.

And while the absence of any legally registered fact checkers in Ethiopia currently may have understandably contributed to the decision of Facebook to outsource the service elsewhere, a long term solution to the problem would surely lie with domestic fact checkers who will be more in tune with the population's needs. Partnerships with locally based fact checkers would thus be imperative as it would have impacts on the selection of news stories chosen to be fact checked as well as overall users trust.

In addition to fact-checking partnerships, social media companies have also been taking other steps to mitigate the spread of disinformation on their platforms. These include content moderation, promoting authoritative sources, and user education and awareness. Despite these efforts, disinformation remains a significant challenge in many contexts, and social media companies need to continuously adapt and refine their approaches to address the problem. Overall, social media enterprises should be cognizant of the important roles their platforms play in countries such as Ethiopia where the digital literacy of their average user is low and take appropriate steps to reduce the spread of disinformation through increasing the effectiveness of moderation tools in proactively identifying, filtering, and removing misleading content.

<https://about.fb.com/news/2021/06/how-facebook-is-preparing-for-ethiopias-2021-general-election/>

(Last accessed January 8, 2023).

³⁶⁴ CNN, Facebook knew it was being used to incite violence in Ethiopia. It did little to stop the spread, documents show, available at <https://edition.cnn.com/2021/10/25/business/ethiopia-violence-facebook-papers-cmd-intl/index.html> (Last accessed January 8, 2023).

Chapter Five

5. Conclusion and Recommendations

5.1. Conclusion

The spread of misleading information, both online and offline has become a formidable challenge throughout the world, leading governments everywhere to take several measures intended to curb its spread. Ethiopia is no exception to this, as disinformation has led to a number of multifaceted real-world consequences with notable societal impacts.

Despite this, researches on the impacts of disinformation and ways to combat it are relatively scant in the Ethiopian context. While time and financial constraints as well as lack of case law under proclamation 1185/2020, which is the primary law intended to address the problem, has limited the study's scope, an attempt has been made to address the diverse approaches currently being applied in the country to combat disinformation. In terms of methodology, the researcher primarily relied on examination of international, regional and national instruments pertaining to freedom of expression in general and disinformation in particular. Interviews with professionals also contributed to refining the data used in the thesis. The research has also benefited from academic writings, researches, news reports as well as a number of online sources.

The study found that disinformation can be detrimental to peace and security of the public and serve to sow distrust among society. Thus certain limitations on freedom of expression may indeed be warranted for the sake of protecting the public against wide disinformation, provided the limits fulfill the requirements of legality, proportionality and necessity in a democratic society.

Accordingly, the study enumerated several measures currently being applied in Ethiopia to combat the ills of disinformation, emphasizing their compatibility to the country's responsibility under international human rights law. While all of the methods discussed in this thesis can in one way or another be applied in the fight against disinformation, the research has found that disinformation as a social ill does not have a simple catch-all solution. Instead a delicate balance is needed to be struck between protecting freedom of expression on the one hand and reducing the impact of disinformation on the other. Thus steps intended to curb the distribution and transmission of misleading information should not come at the expense of violating fundamental rights of citizens and the media.

A particular challenge in attempts to regulate and restrict disinformation is the risk of abuse and misuse, whereby valid criticisms and complaints against the government are silenced on the guise of regulation. After all, it is not the government's role to play the part of an Orwellian "ministry of truth" dictating what is true and what is false; combating disinformation should not mean staying inside government talking points, especially when it comes to politics. Both citizens and journalists alike should be free to be critical of the government, if democratic governance is to become a reality. Nobel Laureate Amartya Sen's astute observation that "no major famine has occurred in any country with a democratic form of government and a relatively free press" can serve to show the delicate balance governments need to keep in mind when taking steps against disinformation.

Ethiopians need look no further than their own experiences just a few years back in the previous EPRDF administration during which legitimate criticisms against government actions were swept under the rug or in some cases even criminalized and restricted for being 'false'. For instance, allegations of arbitrary detention, torture, and other ill-treatment at the hands of Ethiopian police in detention centers such as *Maekelawi* were dismissed as mere defamatory statements made by "neo-liberals" and those with their own ideological and political agendas intending to destabilize the country. Despite this, one of the first things prime minister Abiy's administration did after seizing power is admitting and apologizing for the gross human right violations that were committed by government forces, which he in fact characterized as 'terrorist acts' in his address to the parliament on June 18, 2018. Criminal legal action has even been brought against 36 suspects from police and intelligence offices in relation to the gross human right abuse that fell on deaf ears at the time, now admitted to have included acts like torture, rape and other barbaric acts in seven secret prisons in the capital and other parts of the country.

Such experiences demonstrate the risks of using restrictive measures to silence dissenting voices about government actions, as it may have negative impacts on citizens' human rights, if the criticisms turn out to be true. At the same time, failing to address disinformation can also have detrimental effects on citizens' lives. For instance, wide spread unrest and ethnic conflicts which led to the death of hundreds in and around the capital in the aftermath of the murder of a prominent artist in 2020, were said to have been exasperated by hate speech and disinformation. Thus it is widely believed today that governments need to take positive action in response to the

legitimate challenges brought about by widespread disinformation. Simultaneously, knee-jerk reactions such as internet shutdowns or the predominant use of criminal law will not be adequate to quell the dangers posed by disinformation in today's connected world. Instead, the findings of the thesis reveal that a human right based approach is best suited to combating the impacts of disinformation.

The human right based approach to combating disinformation discussed in the thesis, recognizes that the problem of disinformation has no quick fixes, instead requiring a long-term engagement with various actors and stakeholders. Short-term interventions such as criminalization, injunction orders, internet shutdowns etc. may indeed reduce the immediate problem; however, a long-term solution to the complex challenges brought about by disinformation will require significant resources and effort from a broad range of stakeholders. At the same time, measures taken under a human right based approach will essentially need to comply with the state's obligations under international human right law, thus, should be capable of meeting the three-part test of legality, proportionality and necessity in a democratic society. Accordingly, the main recommendations of the study are summarized as follows:

5.2. Recommendations

For the Ethiopian Government and Regulatory Bodies:

1. **Legal Reforms:** The Ethiopian government should review and amend existing laws and regulations that could potentially be used to stifle freedom of expression, such as Articles 257(e), 337, and 485 of the criminal code, and Article 14 of Proclamation 958/2006. At the very least, the government should ensure that no other laws that are inconsistent with the disinformation proclamation can be deemed applicable with respect to matters covered within it.
2. **Limit Criminal Measures:** The use of criminal measures to combat disinformation should be limited to only the most egregious cases where the disinformation was intentionally committed and believed to cause serious damage to the safety of the population. The government should refrain from misusing criminal laws to target individuals for expressing dissenting views or critical opinions.

3. **Improve Access to Information:** The government should make freedom of information a reality by implementing a practical Freedom of Information law that allows citizens and members of the media to request and access government-held information easily and in a cost-effective manner. The government should also refrain from engaging in propagandistic behavior and ensure publicly owned and government-owned media provide trusted information instead of transmitting misleading information favorable to the sitting government.
4. **Support Professional Media:** The Ethiopian government should support a robust professional media that can play the role of watchdog over governmental actions while at the same time informing the public. This will contribute to giving the general public easy ways of verifying information from trusted sources, making it less vulnerable to disinformation. The government should also refrain from arbitrarily imposing restrictions on the internet and foreign-based media and ensure that any restriction on access to the internet and phone services strictly adheres to the principles of legality, proportionality, and necessity and is subject to independent oversight.
5. **Legal Recognition:** The Ethiopian government and the EMA should take due consideration of the important role fact checkers play in today's world and give legal recognition to such initiatives through registration.

For Civil Society:

1. Work together to create awareness campaigns aimed at educating the public about the dangers of disinformation and the importance of accurate and reliable information in making informed decisions.
2. Strengthen engagement with members of the media through trainings to improve professionalism in reporting, verification of information, and assessing sources.
3. Provide support and technical assistance to the Ethiopian government in addressing the challenges of disinformation and promoting media freedom and access to information.
4. Self-regulation scheme of the media in the country should be strengthened and the work of initiatives such as the Ethiopian Media Council (EMC) should be supported.

For Social Media Enterprises:

1. Enhance Moderation Tools: Social media enterprises should take necessary steps to reduce the spread of disinformation on their platforms by increasing the effectiveness of their moderation tools.
2. Review Content in Local Languages: Social media enterprises should enhance their capacity to review content posted in local languages.
3. Work with Fact Checkers: Social media enterprises should work with locally-based fact-checkers to verify the accuracy of content posted on their platforms.

For Educational Institutions:

1. Digital Literacy Lessons: Educational institutions should incorporate digital literacy lessons in the curriculum to ensure students are equipped with the necessary skills and knowledge to identify disinformation in the digital age.
2. Engage with Media: Educational institutions should strengthen engagement with members of the media through training to improve professionalism in reporting, verification of information, and assessing sources.

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H. Interviews

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3. Interview with owner of a book store (Name Confidential), October 19, 2022
4. Interview with Elias Meseret, Journalist and Factchecker, November 9, 2022
5. Interview with Mrs Konjit Tamirat, director of legal affairs at the EMA, November 11, 2022

ANNEXES

Annex One: The Ethiopian Herald, March 9, 2021 edition (front page)

Annex Two: Written Notices by Ethiopian Media Authority (EMA) to Cable News Network (CNN) and British Broadcasting Corporation (BBC) dated 19 Nov, 2021

Annex Three: Federal Public Prosecutor vs Yayesew Shimelis. Criminal File No 284141, Federal First Instance Court, criminal charge and judgement



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Axum massacre neither occurred nor substantiated

• *USAID investigation confirms no victim or burial place*

BY BILAL DERSO

ADDIS ABABA - The intensified efforts that the Ethiopian government has been exerting to counter the defunct-TPLF associates disinformation campaigns and what the government described it as "their habitual lies" seems to have persuaded the latter to absurdity.

One of the sympathizers of the crushed faction, Deputy Africa Director of Human Rights Watch Ida Sawyer, recently tweeted that 'hyenas had eaten the corpses' on May Qusho, Tigray State with a view to justifying why they had not shown a single body or burial place from the alleged 'Axum massacre.'

It was recalled that USAID's investigation team recently deployed in Axum town could neither find a single burial place nor meet with relatives of the 'dead people,' one of the TPLF affiliated media said last Thursday.

The investigation team led by Anselash (PhD) met with the deputy administrator of Axum's St. Mary of Zion Church following Amnesty International's massacre on the alleged incident in Axum.

According to him, the church representatives failed to show the burial grounds of the 'victims' to the investigation team claiming



Ida Sawyer

that they buried the bodies in different places and at churches of Axum. The investigators desire to meet families of the 'dead' was

also unfulfilled. Illogically, Sawyer still stated that she has
See Axum ... page 3

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UN's non-interference principle should faithfully be observed: China
BY STAFF REPORTER

ADDIS ABABA - Chinese State Councilor and Foreign Minister Wang Yi said that non-interference in each other's internal affairs is an explicit principle in the Charter of the United Nations and a basic norm governing international relations, which must be faithfully observed by all countries.

Speaking about China's foreign policy and external relations including China-Africa
See UN3 non... page 3

Ethiopians to demand UNSC, U.S., EU not to meddle in Ethiopia's internal affairs
BY ABDUREZAK MOHAMMED

ADDIS ABABA - Ethiopians living abroad are going to hold demonstrations in various cities next Wednesday and Thursday to urge the United Nations Security Council (UNSC), the U.S. and the EU not to make decisions based on fabricated information and not to take unfounded allegations for granted.



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
 THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
 FEDERAL FIRST INSTANCE COURT



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 ቀን 08..... 9.2
 አዳስ አበባ/Addis Ababa



ኮ/መ/ቁ 284141

ቀን 15/09/2014 አ/ም

የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት

የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት

ልደታ ምድብ 11ኛ ወንጀል ችሎት

ዳኛ:- አይናሰም ደረጀ

ከሳሽ:- የፌ/ጠ/ 9ቃቤ ህግ - ደግፈው ባንቴ ቀረቡ

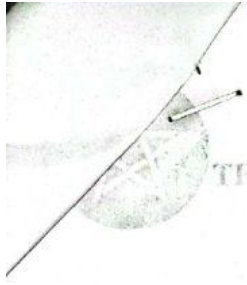
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መዝገቡ ለሃሬ የተተጠረው መርምሮ ፍርድ ለመስጠት ሲሆን ተመርምሮ ተከታቱ ፍርድ ተሰጥቷል።

ፍርድ

ከሳሽ 9/ህግ ሚያዝያ 13 ቀን 2012 ዓ.ም ዕፎ ባቀረበው ክስ ተከሳሽ የጥላቻ ንግግርን እና የሀሰተኛ መረጃ ስርጭትን ለመከላከልና እና ለመቆጣጠር የወጣውን አዋጅ ቁጥር 1185/2012 አንቀጽ 5 እና 7/4/ ስር የተመለከቱትን ድንጋጌዎች በመተላለፍ ተከሳሽ መረጃው ሀሰት የሆነ የመረጃውን ሀሰተኛነት እያወቀ ወይም ካለበት አጠቃላይ ሁኔታ አንጻር የመረጃውን አወነተኝነት ለማጣራት በቂ ጥረት ሳያደርግ በቀን 17/07/2012 ዓ/ም በኮረና ቫይረስ ጋር በተያያዘ መንግስት 200 ሺህ ሰዎች ስለሚሞቱ ይህንኑ ያክል የመቃብር ቦታዎች ይሰጋጁ ብሎ ትዕዛዝ የሰጠ በማስመሰል በራሱ ስም በሚጠቀመው የመሀበራዊ ሚዲያ ለማካኝነት የጠና ማኒስቴር የሆኑትን ፎቶግራፍ በመለጠፍ 200 ሺህ የመቃብር ቦታዎች እንዲሰጋጁ መንግስት እዘዝ በማለት በፅሁፍ የሀሰት መረጃን ያሰራጨ በመሆኑ በፈጸመው የሀሰት መረጃን ማሰራጨት ወንጀል ተከሷል በማለት በማስረጃዎች የሰነድ ማስረጃዎችን ለያይዞ ለቅርብሃል።





የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
 THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
 FEDERAL FIRST INSTANCE COURT



ቁጥር.....
 No.....
 ቀን ፳፻..... ዓ.ም
 አዲስ አበባ/Addis Ababa

ተከላሽ የቀረበባቸው ክስ እና ማስረጃ እንዲደርሳቸው ተደርጎ በችሎት ከተነበባቸው እና እንዲረዱት ከተደረገ በኋላ የክስ መቃወሚያ ካላቸው ተጠይቀው ተከላሽ ሐምሌ 16 ቀን 2012 ዓ/ም የተጻፈ የክስ መቃወሚያ አቅርበው ፍ/ቤቱ የተከላሽን መቃወሚያ ባለመቀበል በ28/12/2012 ዓ/ም በዋለው ችሎት ብይን ሰጥቶበት አልፏል።

በመቀጠልም ተከላሽ የእምነት ክህደት ቃላቸውን እንዲሰጡ ሲጠየቁ የወንጀሉን ድርጊቱን አልፈፀምኩም ጥፋተኛ አይደለሁም በማለት በመከራከራቸው ፍ/ቤቱ የዓ/ህግን የሰነድ ማስረጃዎች መርምሮ ተከላሽ የተከሰሱበትን ድንጋጌ በመቀየር ተከላሽ በአዋጅ ቁጥር 1185/2012 እንቀጽ 5 እና 7/6/ ስር እንዲከላከሉ በወ/መ/ሥ/ሥ/ሀ/ቁ 142/1/ መሰረት ብይን ሰጥቷል።

በተሰጠው ብይን መሰረት ተከላሽ የመ/ምስክርችን አቅርበው ያለሙ ሲሆን በተጨማሪም የሰነድ ማስረጃዎችን አቅርበዋል።

ፍ/ቤቱም ተከላሽ በዓ/ህግ በኩል የቀረበባቸውን ክስ እና ማስረጃዎች ባቀረቧቸው መ/ማስረጃዎች ተከላክለዋል ወይስ አልተከላክሉም የሚለውን ጭብጥ በመያዝ መዝገቡን ከቀረቡት ማስረጃዎች እና ከህጉ ጋር በማገናዘብ መርምሯል።

ከላሽ ዓ/ህግ በተከላሽ ላይ ክስ ያቀረበው ተከላሽ አዋጅ ቁጥር 1185/2012 እንቀጽ 5 እና 7/4/ ስር የተመለከተውን ድንጋጌ በመተላለፍ የሀሰት ወንጀል ማስራጨት ወንጀል ፈፅመዋል በሚል ሲሆን ተከላሽ ሐምሌ 16 ቀን 2012 ዓ/ም የክስ መቃወሚያ አቅርበው ፍ/ቤቱ ነሐሴ 28 ቀን 2012 ዓ/ም በዋለው ችሎት በተከላሽ የቀረበውን የክስ መቃወሚያ ውድቅ በማድረግ ብይን ሰጥቷል ተከላሽ የወንጀል ድርጊቱን አልፈፀምኩ በማለት ክደው የተከራከሩ በመሆን ፍ/ቤቱ ተከላሽ ከግሽ ባቀረባቸው የሰነድ ማስረጃዎች ላይ ጥቅምት 16 ቀን 2013 ዓ/ም ዕፈው ያቀረቡትን አስተያየት ወይም መቃወሚያ ባለመቀበል የሰነድ ማስረጃዎች በመቀበል ማስረጃዎችንም መርምሮ ጥር 27 ቀን 2013 ዓ/ም በዋለው ችሎት ተከላሽ የተከሰሱበትን ድንጋጌ በመቀየር ተከላሽ አዋጅ ቁጥር 1185/2012 እንቀጽ 5 እና 7/6/ ስር



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
 THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
 FEDERAL FIRST INSTANCE COURT



ቁጥር.....
 No.....
 ቀን ፳፻..... ዓ.ም
 አዲስ አበባ/Addis Ababa

የተመለከተውን ድንጋጌ በመተሳሰፍ በፈፀሙት የሀሰት መረጃ ማሰራጨት ወንጀል እንዲከላከሉ ብይን ሰጥቷል።

ተከላሽ ፍ/ቤቱ እንዲከላከሉ በሰጠው ብይን መነሻነትም በመ/ማስረጃነት ከዘረዘሯቸው 11 ምስክሮች ምስክሮች ውስጥ ተከላሽን ጨምሮ አምስት መ/ምስክሮችን አቅርበው አሰምተዋል ከመ/ምስክሮች በተጨማሪ የሰነድ ማስረጃዎች አቅርበውም በፍ/ቤቱም ትዕዛዝ እንዲቀርብ አስደርጓል።

ተከላሽ መ/ምስክሮች ያስረዳሉ በማለት ጭብጥ ያስያዙት ይህ የሀሰተኛ መረጃ ተሰራጭቶበታል የተባለው የፌስቡክ አካውንት በስማቸው የተከፈተ ሀሰተኛ አካውንት መሆኑን አሳቸው የማይጠቀሙበት የማይቆጣጠሩት በሌላ ሰው የተከፈተ አካውንት መሆኑን የአርሳቸው ትክክለኛ የፌስቡክ አካውንት በእንግሊዝኛ እና በአማርኛ ያየሰው ሽመልስ በሚል ስም የተከፈተ ፕሮፋይል ብላክ መሆኑን ይህ ሀሰተኛው አካውንት ግን በእንግሊዝኛ ብቻ ያየሰው ሽመልስ በሚል ስም የተከፈተ መሆኑን በዚህ ሀሰተኛ የፌስቡክ አካውንት ተከላሽ ታስረው እያለ ጭምር ሲጻፍበት የነበረ መሆኑን ከእስር ከተፈቱ በኋላ ይህ በሀሰት በስማቸው የተከፈተው አካውንት እንዲዘጋ ለፌስቡክ በጓደኞቻቸው እርዳታ ጭምር ሪፖርት ተደርጎ ከኋላ እንዲዘጋ የተደረገ መሆኑን እንዲሁም ከላሽ የቀረበባቸው ማስረጃዎችም ተገቢነት የሌላቸው ተከላሽ ብሏል ተብሎ በሪፖርት መልክ የቀረበው ሪፖርት አድራጊው በራሱ አረዳድ ተርጉሞ ያቀረበው መሆኑን ይህ አይነት ማስረጃም እንዲቀርብ ህጉ የማይፈቅድ መሆኑን ማስረጃው ተቀባይነት የሌለው መሆኑን ያስረዳሉ በማለት ነው።

ተከላሽ በሰጡት የተከላሽነት ቃል የሀሰት መረጃ ተሰራጭቷል የተባለበት የፌስቡክ አካውንት የራሳቸው አካውንት አመለሆኑን ትክክለኛ የፌስቡክ አካውንታቸው በእንግሊዝኛ እና በአማርኛ ቋንቋ ያየሰው ሽመልስ የሚል እና ፕሮፋይል ፒክቸር ብላክ መሆኑን አሁን የሀሰት መረጃ ተሰራጭቷል። የተባለበት አካውንት ግን በእንግሊዝኛ ቋንቋ ያየሰው ሽመልስ በሚል የተከፈተ መሆኑን ይህን አካውንት የማይቆጣጠሩት መሆኑን ታስረውም ሲጻፍበት



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
 THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
 FEDERAL FIRST INSTANCE COURT



ቁጥር.....
 No.....
 ቀን ፩፻..... ዓ.ም
 አዲስ አበባ/Addis Ababa

የነበረ መሆኑን በኃላ ለፌስቡክ አመልክተው እንዲዘጋ ያደረጉ መሆኑን ጉዳዩን ከአስር ከተፈቱ በኃላ ለአዲስ አበባ ፖሊስ ያመለከቱ መሆኑን ገልፀዋል።

2ኛ 6ኛ እና 7ኛ መ/ምስክሮች ተከላኝ ባስያዙት ጭብጥ መሰረት እና ተከላኝም ከሰጡት የተከላኝነት ቃል ጋር ተመሳሳይ በሆነ አመለካከር የተከላኝ ትክክለኛ የፌስቡክ አካውንት በእንግሊዝኛ እና በአማርኛ ቋንቋ ያየሰው ሽመልስ የሚል ፕሮፋይል ፐላክ የሆነ መሆኑን በዚህ ትክክለኛ አካውንትም ጓደኞች መሆናቸውን የሀሰት መረጃ ተፅፎበታል የተባለው አካውንት የተከላኝ አካውንት አለመሆኑን ተከላኝ ታዋቂ ስለሆነ የተለያዩ አካውንቶች ስዎች በስሙ የሚከፍቱ መሆኑን ይህ አካውንትም በስሙ በሀሰት የተከፈተ መሆኑን ይህን አካውንትም ተከላኝ የማይቆጣጠረው መሆኑን በአስር ቤት እያለ ጭምር ሲፃፍበት የነበረ መሆኑን ይህ ሀሰተኛ የሆነ በተከላኝ ስም የተከፈተው አካውንት እንዲዘጋ የፌስቡክ ኩባንያ ጓደኞቹን ሪፖርት እንዲያደርጉለት ተከላኝ በትክክለኛ አካውንት ጠይቆ በኃላ ጓደኞቹ ወዳጅ ዘመድ ፔጃ ሀሰተኛ እንደሆነ ለፌስ ቡክ ዕፈው በኃላ የፌስቡክ አስተዳደር የኮምፒውተር አስቸኳይ ምላሽ ቡድን ጉዳዩን አጣርቶ በሀሰት በተከላኝ ስም የተከፈተውን አካውንት የዘጋው መሆኑን በአይፒ አድራሻ ይህ አካውንት የት እንደተከፈተ የት ሆኖ ፈለገ እንደሚፃፍበት ማወቅ የሚቻል መሆኑን በዚህ መሰረት ሲጣራ አካውንቱ የተከፈተው ዱባይ ሀገር መሆኑን ተከላኝ ወደ ወጪ ሀገር ሄደው የማያውቁ እና የውጪ ሀገር የጉዞ ታሪክ የሌላቸው መሆኑን አስረድተዋል 4ኛው መ/ምስክር ዝርዝር ሙያዊ የምስክርነት ቃል በተለይም ከላኝ በማስረጃነት ተከላኝ በፌስቡክ ማሰንጀሩ ተፃዕኑል ተብሎ ከብሄራዊ መረጃ እና ደህንነት አገልግሎት ቢሮ ቀርቧል የተባለው ማስረጃ ማስረጃው ከተገኘበት ወይም እንዲገኝ ተደርጓል ከተባለበት የማስረጃ አቀራረብ ስርዓት ጀምሮ ማስረጃውን የተረበበት ሁኔታ ማስረጃውን አቅርቧል የተባለው አካል ማስረጃውን የማቅረብ ስልጣን ጨምሮ ህግን የተከተለ ወይም በህግ ስልጣን ያልተሰጠው ማስረጃው የተገኘበት መንገድ ከህገ መንግስቱ አንቀጽ 26 መሰረታዊ የሚጣረሰ መሆኑን ዋና ተባለ የተባለው ዕሁጽ ያልቀረበ እና ተባለ ተብሎ በፍርድ ቤቱ መልኩ የተጻፈው ነገር የተባለ ስለመሆኑ የሚያረጋግጥ ነገር ያልቀረበ መሆኑን በዝርዝር በመገለጫ ሙያዊ እና



ሰልጣን
 ቁጥር
 የቤት
 የገቢ

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
 THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
 FEDERAL FIRST INSTANCE COURT



ቁጥር.....
 No.....
 ቀን ፳፯.....፻፶፯
 አዲስ አበባ/Addis Ababa

ከልምድ ከትምህርት ጋር በተያያዘ ያላቸውን የምስክርነት ቃል ሰጥተዋል የመ/ምስክርቺ የሰጡት ሙሉ የምስክርነት ቃል ከመዝገቡ ጋር ተያይዟል።

እነዚህ የምስክርቺ ቃል በተጨማሪ የፌዴራል ኮሚሽን የኮምፒውተር ድንገተኛ ምላሽ ቡድን ሚያዝያ 1 ቀን 2013 ዓ/ም በተጻፈ ደብዳቤ በተከሰቱ ስም የተከፈተው አካውንት እንዲዘጋ ለተረጋገጠ ጥያቄ መሰረት ጉዳዩን አጣርቶ አካውንቱ እንዲዘጋ ያደረገ መሆኑን የሚገልፅ ሪፖርት የኢ.ፌ.ዲ.ሪ ብሄራዊ መረጃና ደህንነት አገልግሎት በቁጥር ደመ42/42/2014 ሚያዝያ 11 ቀን 2014 ዓ/ም በተጻፈ ደብዳቤ በዓ/ህግ በኩል የተረጋገጠ ማስረጃዎች ተቋሙ ያዘጋጀው በህግ በተሰጠው ስልጣን መነሻነት መሆኑን የሚገልፅ ይዘት ያለው ደብዳቤ ልኳል።

እነዚህን መ/ማስረጃዎች ስንመለከት ደግሞ ተከላሽ በክሱ ላይ ተፈፅሟል የተባለውን የሀሰት መረጃን የተሰራጨበት የፌዴራል ኮሚሽን የኮምፒውተር ድንገተኛ ምላሽ ቡድን ለሌሎች አካውንቶችው በአንግሊዘኛ እና በአማርኛ ቋንቋ ያየሰው ሽመልስ በሚል የሚታወቅ አካውንት መሆኑን መ/ምስክርቺ የመሰከሩ ሲሆን በሌላ በኩል ከዚህ የተከሰቱ አካውንት አይደለም በተባለ የፌዴራል ኮሚሽን የኮምፒውተር ድንገተኛ ምላሽ ቡድን ለሌሎች ላይ በክሱ ላይ የተገለፀው የሀሰት መረጃ ከተሰራጨ በኋላ ተከላሽ ስለዚህ ፅሁፍ ከሌሎች ሰዎች ጋር አውርተዋል ወይም ተጻፈዋል ተብሎ በማስረጃነት የተረጋገጠውን ሰነድ ተከላሽ ማስረጃው ተገቢነት የለውም የተገኘበት መንገድ ህጉን የተከተለ አይደለም በማለት 4ኛ መ/ምስክር ያስረዱ ቢሆንም የዚህን ማስረጃ አስረጅነት እና ተገቢነት በተመለከተ ግን ፍ/ቤቱ አስቀድሞ ጥር 27 ቀን 2013 ዓ/ም በዋለው ችሎት በሰጠው ብይን ገፅ አራት ላይ በግልፅ ማስረጃዎቹ ለዚህ ጉዳይ በማስረጃነት እንዳይቀርቡ የሚከለክል ህግ የለም በማለት አስቀድሞ ብይን ተሰጥቶበታል።

ስለዚህም አሁን ይህ ማስረጃ ለጉዳዩ ተገቢነት የለውም ተቀባይነት ሊኖረው አይገባም በማለት መ/ምስክር የሰጡትን ቃል ፍ/ቤቱ አልተቀበለውም ማስረጃው ተቀባይነት አለው ከተባለ ደግሞ ይህን ማስረጃ የሚያስተባብሩ ማለትም በፅሁፍ ላይ ተከላሽ ብለው የተገለፀውን ነገር የሌለ ፅሁፍም በአካውንት ያልተጻፈ እንደዚህ አይነት ፅሁፍ የያዘውን ያልተሰጠ መሆኑን



2

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
 THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
 FEDERAL FIRST INSTANCE COURT



ቁጥር.....
 No.....
 ቀን ፳፻.....
 አዲስ አበባ/Addis Ababa

የሚያስረዳ አልቀረበም ተከላኝ በሰጡት የተከላኝነት ቃልም ሆነ መ/ምስክሮቹ በሰጡት የምስክርነት ቃል ይህን አላስረዱም።

ተከላኝ ይህን በብሄራዊ መረጃና ደህንነት አገልግሎት የቀረበውን እና በፍ/ቤቱም አስቀድሞ ተቀባይነት አለው የተባለውን ማስረጃ የሚያስተባብል ማስረጃ ካላቀረቡ ደግሞ የፌስቡክ እኩይነት ሀሰተኛ ነው ሀሰተኛ መሆኑንም ለፌስቡክ ኩባንያ ተገልጾ ተዘግቷል የሚለውን ጉዳይ ብቻ መ/ምስክሮች ማስረጃታቸው ብቻውን ተከላኝ በክሱ የማስረጃ ዝርዝርም ተራ ቁጥር 3 ላይ የተገለፀውን ሀሰተኛ መረጃ መጻፍ ስህተት መሆኑን በመግለፅ ፅፏል የተባለውን ፅሁፍ አለመጻፉን የሀሰተኛ መረጃውንም አለመሰራጨቱን ይህንም በመ/ምስክሮች በማስረጃነት በዓ/ህግ ክስ እና ማስረጃ ላይ ጥርጣሬን በመፍጠር ተከላክሏል ሊባል የሚችል ሆኖ ችሎቱ አላገኘውም።

በአጠቃላይ ተከላኝ በሰጧቸው መ/ምስክሮች እና በቀረቧቸው የሰነድ ማስረጃዎች በዓ/ህግ በኩል የቀረቡትን ክስ እና ማስረጃ ያለስተባብሱ በመሆኑ ፍ/ቤቱ ተከላኝ የጥላቻ የሀሰት መረጃ ስርጭትን ለመከላከልን ለመቆጣጠር የወጣውን አዋጅ ቁጥር 1185/2012 አንቀጽ 5 እና 7/6/ ስር የተመለከተውን ድንጋጌ በመተላለፍ በፈፀሙት የሀሰብ መረጃ ማሰራጨት ወንጀል ጥፋተኛ ናቸው በማለት በወ/መ/ሰ/ሰ/ሀ/ቁ 149/1/ መሰረት የጥፋተኛነት ፍርድ ሰጥቷል።

የቅጣት አስተያየት

ዓ/ህግ የቅጣት አስተያየት በዕሁፍ እንድናቀርብ ትዕዛዝ ይሰጠልን ብሏል።

ተከላኝ:- ተከላኝ ከዚህ በፊት በፖሊስ ለ27 ቀን ታስረዋል ተከላኝ ከዚህ በፊት ወንጀል ፈፀመው አያውቁም ተከላኝ የምርመራ ጋዜጠኛ ናቸው በሙያቸው ሀገራቸውን የሚያገለግሉ ናቸው ቅጣቱ እንዲገደብልን ማህበራዊ አገልግሎት መሰጠት አለባቸው የሚለውን ሀሰት ለሁን በሚገኙበት የካ ክ/ከተማ ማህበራዊ ተሳትፎ እንዲያደርጉ እንዲታዩባቸውን በሰጧል።





ቁጥር.....
No.....
ቀን ፳፯..... ፳፻፲፯
አዲስ አበባ/ሌላ/ፊት

ት ዕ ዛ ዝ

- ተከላኝ ጥፋተኛ የተባሉ በመሆኑ በፖሊስ ጣብያ እንዲቆዩ ታዟል።
- ዓ/ሀግ የቅጣት አስተያየቱን ዕሁፍ እንዲያቀርብ ታዟል። አስተያየቱን ከቀጠሮ ቀን በፊት ያያይዝ።
- ለቅጣት ቀጠሮ ለ17/09/2014 4:00

የማይነበብ የዳኛ ፊርማ አለበት

ጽ/ፅ

22/9/14

[Handwritten signature]

