

**Freedom of Expression & Digital Activism for Human Rights: An
Evaluation of Online Participatory Politics in the Ethiopian Context**

*A Thesis Submitted in Partial Fulfillment for the Requirements of the Degree
of Master of Laws (LL.M) in Human Rights Law,*

School of Law and Governance,

Addis Ababa University

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February 2016

Addis Ababa, Ethiopia

DECLARATION

I, Biniam Abate, hereby declare that the thesis entitled “*Freedom of Expression & Digital Activism for Human Rights: An Evaluation of Online Participatory Politics in the Ethiopian Context*” submitted by me for the award of the Degree of Master of Law (LL.M.) in Human Rights Law Stream at Addis Ababa University, School of Law and Governance, is an original work and it hasn’t been presented for the award of any other Degree, Diploma, Fellowship or other similar titles in any other university or institution.

Biniam Abate

February 2016

Addis Ababa

CERTIFICATION

I certify that the Thesis entitled “Freedom of Expression & Digital Activism for Human Rights: An Evaluation of Online Participatory Politics in the Ethiopian Context” is a bona-fide work of Mr. Biniam Abate who carried out the research under my guidance. I certify further, that to the best of my knowledge the work presented herein does not form part of any other thesis, report or dissertation on the bases of which a degree or award was conferred on an earlier occasion on this or any other candidate.

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List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
BBC	British Broadcasting Corporate
CIA	Central Intelligence Agency
CNN	Cable News Network
CPJ	Committee to Protect Journalists
CSO	Civil Society Organizations
EBA	Ethiopian Broadcasting Authority
EBC	Ethiopian Broadcasting Corporate
FDRE	Federal Democratic Republic of Ethiopia
GNI	Gross National Income
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICT	Information Communication Technologies (ICTs)
IDEA	International Debate Education Association
INSA	Information Network Security Agency
IPI	International Press Institute
ISP	Internet Service Providers
ITU	International Telecommunication Union
Mbps	Megabits per Second
MFA	Ministry of Foreign Affairs
NGO	Non-Government Organizations
OLF	Oromo Liberation Front
ONI	Open Net Initiative
SNS	Social Networking Sites
TPLF	Tigray People's Liberation Front
UDHR	Universal Declaration of Human Rights
UK	United Kingdom

UN	United Nations
UNESCO	United Nations Educational, Scientific, and Cultural Organization.
UPR	Universal Periodic Review
USD	United States Dollar
WAN-IFRA	World Association of Newspapers and News Publishers

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Chapter One

1.1 Background of the Research

Ethiopia is a party to major international and regional human right instruments, *intra alia* the Universal Declaration of Human Rights (UDHR)¹, the International Covenant on Civil and Political Rights (ICCPR)², and the African Charter on Human and Peoples' Rights (the African Charter)³. Freedom of expression is set out as one of the fundamental rights in these multinational human rights instruments. These instruments guarantee an individual's freedom to hold his/her own opinion and expression, to seek, receive and impart information and ideas of any kind regardless of frontiers. In addition, one of the major objectives aspired to be reached by the African Union is the promotion of democratic principles and protection of human and people's rights.⁴ A Declaration⁵ adopted by the African Commission on Human and Peoples' Rights (ACHPR) further classifies freedom of expression as an 'indispensible component of democracy'.

¹ Though the UDHR, as a UN General Assembly Resolution, is not directly legally binding on State Parties, many of its provisions are widely acquired as a customary international law. However, as per Article 13 of the FDRE Constitution, the fundamental rights and freedoms recognized under Chapter Three of the FDRE Constitution shall be interpreted in a manner conforming to the principles of the UDHR and the two human rights covenants adopted by Ethiopia. Article 19 of the UDHR guarantees the right to freedom of expression by stating, "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

² Article 19 of the ICCPR, which Ethiopia ratified on June 1993, impose legal obligation on State Parties. The article elaborate the same article of UDHR by stating "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive orally, in writing or in print, in the form of art or through any other media of his choice."

³ Article 9 of the African Charter guaranteed the right in a more restrictive manner as the right to express and disseminate one's opinion is to be entertained 'within the law'.

⁴In its Constitutive Act, the African Union (AU) states among its objectives, the wish to "promote democratic principles and institutions, popular participation and good governance; promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.

⁵ The Declaration of Principles of Freedom of Expression in Africa was adopted by the African Commission at its 32nd Ordinary Session in Banjul in 2002. The Declaration reaffirms the

Article 29(2) of the FDRE Constitution, which is the supreme law of the land, uses similar terminology to describe the essence of the right. The Constitution guarantees freedom of the press and other mass media by specifically prohibiting any form of censorship. It also provides legal protection for the press, as an institution, in the interest of the free flow of information. However, Ethiopia enacted other subsidiary laws, such as the Anti-Terrorism Proclamation No. 652/2009, the Telecom Fraud Offences Proclamation No. 761/2012, the Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 (the Press Law) and the Charities and Societies Proclamation No. 621/2009 (the CSO law), imposing restricting legislative measures towards the right of freedom of expression.

Free expression of ideas has always been the cornerstone of social, political and scientific progress. The prospect and ability of an individual to freely express his/her own idea is a way to move the society forward. However, freedom of expression is not an absolute right. It is subject to restrictions in accordance with the law, for reasons such as public safety, political stability and public moral.⁶ Nevertheless, any limitation must remain within strictly defined parameters.

The right to freedom of expression and peoples' right to seek and receive information cannot have a meaningful application unless the media plays its key role in a democratic society.⁷ The media, in a contemporary world, is the main source of information and act as a 'watchdog' to ensure government officials and organs are acting in proper ways. One form of media that has the capacity to make a notable contribution for the promotion of human rights and democratization of a nation is the Internet.

fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedom.

⁶ Article 29 (6) of the FDRE Constitution provides for the grounds of limitation of the right of freedom of expression in the following terms: "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 honor and reputation of individuals". The ICCPR also under Article 19(3) provides grounds for limitation of the right such as the rights and reputations of others, protection of national security or of public order, or public health or morals.

⁷ Article 19, *The Legal Frame Work of Freedom of Expression in Ethiopia*, online at: <http://www.article19.org/data/files/pdfs/publications/Ethiopia-legal-framework-for-foe.pdf> (visited March 3, 2015).

The Internet has features that allow one to share thoughts with speed and accessibility in different online platforms. It has become a space through which democracy and human rights activists mobilize and call for political, social, and economic reform. The emergence of social media has dramatically changed our method of communication.⁸ This relatively new form of media is facilitating a more open space for the exchange of information and mobilization of social actors, called digital activists.

Digital activism is an Internet-based communication techniques or social networks to create and/or manage any form of activism to bring about social and political change.⁹ Internet-based or online participation overcomes challenges of the past where power, wealth and geographical limitations confine an individual's access to take part in social and political affairs.¹⁰

In 2010, nearly 2 billion people worldwide- over one quarter of the world's population- used the Internet.¹¹ In the wake of 2015, this figure reached to 3 billion. Although the number of Internet users and access to the Internet is growing fast, various forms of limitations persist in some countries. For instance, Ethiopia is ranked as one of the countries with lowest Information Communication Technology (ICT) use or Internet penetration in Africa. Currently, the number of Internet users in Ethiopia is estimated to be under 2 million¹², which is less than 2% of the population.¹³ According to World Bank and CIA World Fact-book, 39% of Ethiopians are living below the poverty line. Low income remains a challenge for a large segment of Ethiopians to

⁸ *Freedom of Expression: Digital Freedoms*, (International Debate Education Association), online at: <http://digitalfreedoms.idebate.org/digitalfreedoms/freedom-of-expression>, (visited February 24, 2015).

⁹ See Melanie Galindo, "Social Media and Digital Activism, How and Why Social Media is Reinventing Activism?" Online at: https://storify.com/melanie_galindo/social-media-and-digital-activism, (visited February 24, 2015).

¹⁰ Manuel Castells and Gustavo Cardoso, *The Network Society: From Knowledge to Policy* (USA: Johns Hopkins University, 2005).

¹¹ William H. Dutton, et al., *Freedom of Connection - Freedom of Expression: The Changing Legal and Regulatory Ecology Shaping the Internet* (UK: Oxford Internet Institute, 2010).

¹² According to the World Bank, Internet users (per 100 people) in Ethiopia were last measured at 1.48 in 2012. *see also* <http://www.tradingeconomics.com/ethiopia/internet-users-per-100-people-wb-data.html>, (visited March 13, 2015)

¹³ *See* <http://www.internetworldstats.com/africa.htm>, (visited March 13, 2015).

afford the cost of a smart phone or computer and that of the Internet service.¹⁴ Despite the low Internet penetration rate and its slow improvement, Ethiopia still refuses to privatize the telecommunication sector. Furthermore, the Government continues to enact laws of restrictive nature and establish institutions to ensure their effective implementations. Although the Government claims such acts are being taken in response to the growing threat of cybercrimes, its reactions are found to undermine the constitutionally protected right of free speech.

Although it is undeniable that the use of Internet is vulnerable to various Internet-based crimes and transmission of malicious information, the Internet is a neutral playground as it is in the discretion of the user to do good or harm with it. The availability of the Internet could be a means to enhancing one's life and at the same time, it could be a safe heaven for criminals. States often regulate online speech, for various reasons such as the protection of children from pornography or sexual exploitation.¹⁵

1.2 Statement of the Problem

The recently adopted laws with restrictive nature on the right to freedom of expression, particularly the Anti-Terrorism Proclamation No. 652/2009, continue to be a huge apprehension for social and political activists as journalist and bloggers have been subject to constant accusations and even criminal prosecutions. Furthermore, the Telecom Fraud Offences Proclamation No. 761/2012 presents fundamentally flawed contents in addressing freedom of expression and extend the extensive scope of the Anti-Terrorism Proclamation by posing restrictions on electronic communications. Similarly, the Freedom of Mass Media and Access to Information Proclamation No. 590/2008 (the Press Law) has been a source of controversy since the initiation of its first draft in 2002. Incompatibility of the Proclamation with international human rights standards and even with the FDRE Constitution has been widely criticized by media practitioners and international human rights organizations.

¹⁴ Offline and Falling Behind: Barriers to Internet Adoption, *Technology, Media and Telecom Practice* (August 2014).

¹⁵ *Digital Dangers: Identifying and Mitigating Threats to Human Rights in the Digital Realm*, Human Rights and Business, (Institute for Human Rights and Business 2015), online at: <http://www.ihrb.org/our-work/digital-dangers.html>, (visited May 3, 2015)

The Ethiopia Government is under a continuous scrutiny from human rights groups and the international community for the poor human rights condition in the country. Activists who criticize human rights violations in the country are said to be targeted by the Government security forces. Ethiopia's human rights record is abysmal by all accounts and continues to deteriorate.¹⁶ The continual threat of being charged under the Anti-Terrorism law hangs over journalists and activists who are critical of the country' human rights situation.¹⁷ The broad application of the Anti-Terrorism Proclamation and the wide range of prosecution on bloggers and journalists create a culture of "fear" among activists.

The fear of journalists and online activists is justifiable considering the recent actions of the Government to charge, notably, the *Zone 9*¹⁸ bloggers with terrorism based on their online and offline critics on the Ethiopia's human rights situation and the government's harsh intolerance for any criticism. The arrest of Zone 9 bloggers has had a wider chilling effect on freedom of expression in the country, elevating the level of fear among bloggers and online activists who increasingly fear posting critical commentary on *Facebook* or other social media platforms.¹⁹ The international community has also been scrutinizing Ethiopia for its disregard to freedom of expression and the vague and broad interpretation of the Anti-Terrorism Proclamation and the Charities and Societies Proclamation (CSO Law). It is now an established fact that Ethiopia ranks second in Africa in the detention and arrest of journalists. According to CPJs (Committee to Protect Journalists) research, in 2014, at least 30 journalists flee from the country and 17 others

¹⁶ *ETHIOPIA: Ethiopian Women's Human Rights Alliance's UPR Submission, 2009* online at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ET/EWHRA_ETH_UPR_S06_2009.pdf, visited April 15, 2015.

¹⁷ Human Rights Watch, *They Know Everything We Do: Telecom and Internet Surveillance in Ethiopia*, March 2014, online at <http://www.hrw.org/reports/2014/03/25/they-know-everything-we-do>, visited on December 2014, p.12

¹⁸ *Zone 9* is a group of bloggers and social media activists established by journalists and intellectuals with the slogan "we blog, because we care". Six members of the group together with three other journalists were arrested in April 2014 and charged with terrorism. Many other journalists and online activists were also convicted of similar offences.

¹⁹ Human Rights Watch, *Journalism Is Not a Crime: Violation of Media Freedoms in Ethiopia*, January 20, 2015, online at <http://www.hrw.org/reports/2015/01/20/journalism-not-crime>, visited on March 12, 2015.

were in prison.²⁰ Hence, many journalists opt for self-censorship instead, avoiding issues of human rights violations and topics deemed politically sensitive.²¹

Telecom privatization is far from a reality in Ethiopia as *Ethio-Telecom* is the only telecommunication service provider in the country. The Ethio-Telecom then controls any access to and communication through the Internet. Government's complete control over the telecom system gives unlimited access to call records of all telephone users in Ethiopia, including communications made via the Internet. Abuse of surveillance power by the Ethiopian security service is a huge concern for online activists and it is a violation of one's freedom of expression. While Ethiopia has legitimate national security concerns, the Government's use of surveillance primarily focus on individuals deemed to be political, rather than a security threat.²² Whereas there is no contestation that the Government should set aside national security, it is essential to strike a balance between national security and limitation on free expression. The problem lies on where to draw that fine line.

Despite the low Internet penetration in Ethiopia, we still can find few but vibrant digital activists who constantly share their ideas, information and perspectives to the online Ethiopian community. However, digital activism is not a walk in a park with slow and unreliable Internet. Logging into an email account and opening a single message could take as long as six minutes at a standard cybercafé with broadband in Addis Ababa.²³ According to May 2014 Akamai's "*State of the*

²⁰ See Jacey Fortin, "Conflating Terrorism and Journalism in Ethiopia" in Attacks on the Press: Journalism on the World's Front Lines, 2015 Edition, (CPJ, Bloomberg Press, 2015), p.65

²¹ Ibid. at 16.

²² Human Rights Watch, *They Know Everything*, *supra* note 17.

²³ Kebena, *Internet Access in the Capital of Africa, Addis Ababa*, (EthioTube, posted June 19, 2010), online at <http://www.ethiotube.net/video/9655/Internet-Access-in-the-Capital-of-Africa-Addis-Ababa>, (visited February 12, 2015),

Internet" report, Ethiopia has an average connection speed of 1.2 Megabits per second (Mbps)²⁴, compared to a global average of 3.9 Mbps.²⁵

Above all, in September 2012, the Open Net Initiative (ONI), conducted technical tests of Internet filtering. The test found out that Ethiopia continued to block online political and news contents, including the blogs and websites of a number of recently convicted journalists and bloggers.²⁶ Nevertheless, the Ethiopian Government is under continuous accusations of restricting online activities by monitoring, filtering and even blocking websites with contents of political nature. The Human Rights Watch, in its March 25, 2014 report accused the Ethiopia Government of using sophisticated technologies to conduct surveillance on opposition political party officials, independent activists and journalists, both in Ethiopia and abroad. Concerns are growing over how legal and regulatory developments might be constraining online freedom of expression.

1.3 Review of Literature

The topic of digital activism and human rights has an extensive coverage in reference to Western frameworks and perspectives. Thus, the researcher in this section wants to put a great emphasis on domestic literature and shift the focus back to home. In doing so, the researcher uncovers recent literature trends as the paper brings about contemporary issues that were inconceivable to the Ethiopian context a few years back. As freedom of expression is highly interlinked with issues of mass media, the Constitution and human rights, indirect literatures that has laid a greater foundation in mainstreaming the concept will be discussed. Although the review of literature focuses on contemporary research, a small portion is assigned to literature of the past to navigate through recent advancements and analyze the progressive nature of legal literatures.

²⁴ Megabits per second (Mbps) refers to data transfer speeds as measured in megabits. The term is commonly used in communications and data technology to demonstrate the speed at which a transfer takes place.

²⁵ Akamai, "Average Connection Speed: Ethiopia" map visualization, *The State of the Internet Q1* (2014), online at <http://www.akamai.com/stateoftheinternet/soti-visualizations.html#stoi-map>

²⁶ Open Net Africa: *State of Internet Freedoms in Ethiopia in 2014: An Investigation Into The Policies And Practices Defining Internet Freedom in Ethiopia*, (CIPESA, May 2014)

Many pieces of literatures on freedom of expression carry notions of activism via non-digital and formal broadcasting agents. Digital activism and the presence of bloggers is a recent phenomenon that has yet to gain a bigger momentum in local political and human rights arena. Thus, research works such as ‘*Can it Tweet its Way to Democracy: The Promise of Participatory Media in Africa*’, introduce progressive outlooks and contemporary trends in dealing with freedom of expression. In the same paper, among others, Abiye T. Megenta deals with Ethiopian bloggers and recognizes major setbacks in pursuing other broadcasting options.

He recognized that print-based media was met with consistent suppressions resulting in low quality of work and circulation level. Consequently, it was no surprise that the print-based media failed to evolve into a mature and fully-fledged public sphere. He noted that the private media failed to provide a platform for democracy and political participation.²⁷ The constant harassment made journalist more conscious of their work and many were forced to change their agenda. As intimidation and persecution of journalist continued, many popular newspapers and political platforms retreated. Despite this and other limitations, a few vocal journalists and citizens of other professions find a way to sustain the political and human rights dialogue in a new platform. Against great technical and geographical odds, advocacies were conducted through emails, e-newspapers and other types of online publications including blogs.

The author notes that the blossoming of political blogosphere resulted in many joining the conversation. To this end, social media has mainstreamed a broadcasting outlet by providing an open forum for the general community. As the Internet is not free from harassment and consistent filtration procedure, the author credits social media outlets, as they are less susceptible to censorship.

Although direct literatures on Internet political participation and freedom of expression are close to non-existent, many literatures coincide with the above research in dealing with on-ground practice. For instance, Gedion T. Hessebon, in his LL.M thesis ‘*An Apologetics for Constitutionalism and Fundamental Rights: Freedom of Expression in Ethiopia*’ dealt with freedom of expression from

²⁷ Abiye T. Megenta, “Can it Tweet its Way to Democracy: The Promise of Participatory Media in Africa” (Reuters Institute for the Study of Journalism: Oxford, Report, 2011).

constitutional law point of view. He highlights on the experience of other countries by pointing out gaps and rooms for improvement for Ethiopia. He notes that Freedom of Expression has the best of legal protection and foundation under the FDRE Constitution. However, the promise falls short on ground interpretations that are inconsistent with the paper. He then went on to discuss specific aspects of these inconsistencies. Among these flows, discussions regarding ‘Freedom of Press’ and ‘The Criminal Prosecution of Journalist and Freedom of Press’ are relevant.

Although the legislative coverage is tolerable, the practice and the broad base limitations found in subsidiary legislations and reinforced through the criminal justice system have undermined the very existence of these rights. He argues that past trends in the criminal prosecution of those who have exercised their constitutional rights has created a chilling effect and a decline in the number of articles (publications) that are critical of the Government. Thus, ultimately resulting in shrinking spheres of public debates on political matters and political oppositions.²⁸

In a similar fashion, many academic literatures including thesis works, focused on the gaps between the broad base protection on paper and the subtle on ground censorship and limitations. In his senior thesis, Addisu Hailegebriel, highlighted that democracy and political participation is most responsive and efficient in the presence of exchange of information and opinion and freedom of critics towards the Government and political actors. Furthermore, as the bulwark of democracy, freedom of press and other media outlets foster ideas and create a mechanism of informal check and balance methods.²⁹ He too recognized the need for an independent public media and trusts that electronic media has an attribute of independence and diversity.

Similarly, Ayantu Bacha, recognizes that freedom of expression is a necessary 'threat' in every democratic society. In addition, Ayantu said the practice of censorship although limited in legislations, has the worst of manifestations in practice under the EPRDF regime. Unlike many, she focused on censorship in both government and privately owned print and broadcast media.

²⁸ Gedion T. Hessebon, "An Apologetics for Constitutionalism and Fundamental Rights: Freedom of Expression in Ethiopia, A Comparative Study" (Master's thesis, Central European University, 2009).

²⁹ Addisu Hailegebriel, "Critical Evaluation of the Prohibition of Political Organizations from Undertaking Broadcast under the Broadcast Service Proclamation of 533/2007 in light of Freedom of Expression" (LL.B thesis, Addis Ababa University, 2009).

Consequently, uncovering a common practice of censorship with a staggering figure of 70% of the journalists in government owned media being placed under constant everyday scrutiny.³⁰ Through time, the political censorship has extended to online publications resulting in the blocking of many sites deemed too political.

A common ground for the above works of literature and many others seems the need for restructuring the media industry to represent a full range of dissent voices in a democratic way and in a democratic process. In conclusion, the above writings favored a media policy and practice that embraces diversity and dissent, thus, making a significant contribution to the promotion of a democratic public life in Ethiopian society.³¹ Therefore, the topic awaits for a responsive system in different branches of the Government through the exercise of their power and works of legal academicians.³²

1.4 Research Questions

- What principles of international human rights are justifying acts of the Ethiopian Government in applying limitations to online freedom of expression?
- Is digital activism a threat to the stability and national security interest of Ethiopia?
- Is digital activism in Ethiopia "active" and effective enough in pursuing social and political changes?
- What needs to be done to blossom digital activism in Ethiopia?
- Is the 'increasing technological ability of Ethiopians' a social benefit or a political threat for the Government?

³⁰ Ayantu Bacha, "Nature and Forms of Censorship under Ethiopian Laws: A Comparative Approach" (LL.B thesis, Addis Ababa University, 2007).

³¹ Berhane G. Mariam, "THEMEN: The Ethiopian Freedom of Mass Media Has Been Disregarded and Still Remains in On Uncertain Future." *Nord-Süd Aktuell: Vierteljahreszeitschr. Für Nord-Süd U. Süd-Süd-Entwicklungen* 16:4 (2002).

³² Gedion Timothewos, "Freedom of Expression: The Jurisprudential Dearth", *Mizan Law Review* 4:2 (2010), p. 231

1.5 Objectives of the Research

General Objective of the Research

The main objective of this research is to measure the effectiveness of digital activism for human rights protection and promotion in Ethiopia and assess the role it is currently playing. In addition, the research primarily aims to evaluate the essence of online freedom of expression in Ethiopia.

Specific Objectives of the Research

The specific objectives of the research include:

- To study the direct and indirect impacts of online participation on issues of human rights.
- To examine whether restrictive laws and policies regarding the Internet have suppressed freedom of expression in Ethiopia.
- To examine whether digital activism or digital activists are threats to the stability and constitutional order of Ethiopia.
- To assess whether monopoly of telecommunication affects freedom of expression.
- To measure whether freedom of expression has been facing unlimited restrictions through loose justifications and political motivation of the Government.
- To assess if the Ethiopian Government is defying principles of international human rights in limiting freedom of expression through the digital media.

1.6 Research Methodology

In the study, both primary and secondary data collection methods will be used. Interviews and observations will be used as primary sources. The researcher will collect and analyze case laws together with relevant legislations. The FDRE Constitution, the 2005 Criminal Code of Ethiopia, the 2008 Freedom of the Mass Media and Access to Information Proclamation No. 590/2008, the 2012 Telecom Fraud Offence Proclamation No. 761/2012 and the 2013 Information Network Security Agency Re-establishment Proclamation No.808/2013 are the main primary sources. Secondary sources such as books, journal articles and other written commentaries on the legislations and case laws will also be in use. Additionally, reports, websites and thesis will be

consulted as secondary sources. The researcher will use theoretical legal research method by providing analysis of the law and its development. The research will primarily follow library research method and examine different books and articles. A qualitative data gathering method will be undertaken.

1.7 Significance of the Research

It is believed that this research will play an enormous role by assessing the impact of the Press law, Anti-Terrorism Proclamation and the Telecom Fraud Offences Proclamation on freedom of expression through digital media. It is also believed that the study is important to disclose the deep challenges that digital activists are facing in the country and make possible policy recommendations. Moreover, the study will be a stepping-stone for further study to be made in the area of legal framework governing digital media and online activism and freedom of expression in advocating human rights.

1.8 Scope of the Research

Though we can identify different means of communication, the scope of this research is on communications through the Internet, specifically digital activism. The study is particularly limited to evaluate freedom of expression through blogging and social media and assessing the magnitude of online activism for political participation and the promotion and protection of human rights in Ethiopia.

1.9 Limitations of the Research

Lack of adequate literature on this recently emerging topic is among the different factors constraining the depth and width of this research. The politically sensitive nature of the topic is expected to restrict cooperation from participants at a time of data collection and interviews. Self-censorship is also expected to be another challenge on acquiring information from research participants. Considering nature of the issue at hand and allegations of human rights study groups on the Government of Ethiopia in participating similar studies, finding a secondary data from governmental institutions would be a possible limitation on the research.

1.10 Ethical Consideration

The researcher to the best of his ability will limit his subjective opinion to enhance opportunity for impartiality on the subject. Participation in the research will be on voluntarily bases and participants will be with a clear understanding that they are under no obligation to participate. Confidentiality and anonymity of participants will also be given due consideration. The researcher may eliminate or minimize any reasonable possibility of harm arising on participants as well as subjects of the research. Furthermore, faulty data-gathering procedures and data interpretations will be avoided in full.

1.11 Organization of the Paper

The paper will be organized in five chapters. The first chapter will be an introductory part that deals with the points as to why and how the research is to be conducted.

The second chapter will expound the concept of freedom of expression and the limitations set by national, regional and international laws. The chapter will also show the direct link between the Internet and freedom of expression.

The issue of digital activism will be discussed under the third chapter. The chapter will critically analyze the role digital activists are playing in protecting and promoting human rights. The issue of political participation, national security and public disorder as compared with digital activism will be discussed.

Chapter Four will specifically dealt with digital activism in Ethiopia and its main challenges. The role of digital activists in the Ethiopian politics will be discussed. Dangers of online speech and the participatory potentials of bloggers will be evaluated under this chapter.

Finally, after analyzing the impact of the laws on online participation, Chapter five of the paper will present a summary of the research and concluding remarks with possible recommendations.

Chapter Two

Theoretical and Legal Framework of Freedom of Expression in the Ethiopian Context

2.1 Theoretical Framework: Meaning, Scope and Working Definition of Freedom of Expression

Freedom of expression has a long history that predates modern international human rights instruments.³³ Its origin can be traced back to the 6th century BC in the ancient Athens' Democracy. After centuries of evolution, today, freedom of expression achieved recognition as a multifaceted right in international and regional human rights law. The current quest of freedom of expression evolved through many developments and in the contemporary context, it encompasses not only the right to express oneself but also the right to seek, receive and impart information and ideas through any media and regardless of frontiers.³⁴

Understanding the concept of free expression is a starting point in assessing why freedom of expression is valued as a fundamental right in all democratic societies. As freedom of expression encompasses the right to form an opinion: an essential private right³⁵ and the right to freely express views: a more public right, many consider it to be a cornerstone of democracy.³⁶ Important in its own right, it is also an essential condition for the enjoyment of many other rights including the

³³David Smith and Luc Torres, "Timeline: A History of Free Speech," *Guardian* (London), February 5, 2006, <http://www.theguardian.com/media/2006/feb/05/religion.news>, visited on May 7, 2015.

³⁴ Universal Declaration of Human Rights (UDHR), December 10th, 1948, Article 19, U.N. Doc. A/810, U.N.G.A. Resolutions 217 (III), p. 71

³⁵Paul Sturges, "Limits to Freedom of Expression? Considerations Arising From the Danish Cartoons Affair." *IFLA Journal*, 32 (2006): 2

³⁶ UNESCO (2015), *Training Manual: Freedom of Expression and Public Order*, p.13

right to receive information and disclose the same, the right to freedom of association, and the right to form political parties.³⁷

Exploring the theoretical basis of freedom of expression is instrumental in order to underscore the importance of the right. As any other right, freedom of expression has a legitimate base in its progression. However, as all rights carry certain limitation and responsibilities, we found theories that justify its limitation and others in support of its existence without much interference. Thus, the researcher will cover both aspects and in different sections. As the limitations will be discussed in forthcoming chapters and later sections, it is essential to consult some dominant theories presented in defense of the right. Hence, the research will only address widely known justifications that are relevant to the theme of the thesis. As presented below, the main arguments presented in favor of the protection of free expression are, the promotion of tolerance, individual autonomy and search of truth, and the need of free expression to meaningfully participate in a democratic system- all eventually argue that free expression is to be valued not for its own sake, but because it will lead to some other outcome we think desirable.³⁸ From here onwards, the researcher will discuss the arguments separately in favor of protection of the right.

1. As an instrument for enhancing individual Autonomy and for the search of Truth.

John Stuart Mill is one of the firm advocates for the protection of freedom of speech on grounds that it enhances individual liberty or autonomy.³⁹ *Autonomy* relates to the mental process that allows one to form her/his own thoughts, values and arguments to back up the same. For Mill, the liberty to express views and ideas are interlinked to a man's very existence. It is an integral part of an individual's wellbeing. Thus, it will eventually result in self-fulfillment and personal development.

³⁷ Ibid.

³⁸ Helen Fenwick, Civil Liberties and Human Rights, 3rd ed., (London: Routledge-Cavendish, 2002).

³⁹ Brenda Businge Kamulegeya, "Freedom of Expression on the Web: Examining the Restrictions to Publishing by News Websites in Uganda" (Master's thesis, University of Oslo, 2012).

Mill also makes the argument that a consequential further benefit of having individuals express themselves freely is for the truth to be realized.⁴⁰ In his pamphlet, *Areopagitica*, published in 1644, John Milton presented one of the earliest and well-known defenses of freedom of expression. Milton defended freedom of expression as a prerequisite for the already discovered truth to thrive and for an undiscovered truth to be discovered.⁴¹

J.S Mill further develops the theory of the search for truth in his famous work '*On Liberty*'. He asserts that people must be allowed the unfettered pursuit of truth in all areas of life if they are to achieve the realization of their characteristically human talents, the free exercise of which constitutes happiness in the fullest sense.⁴²

Mill makes a very bold statement in the defense of free expression by saying "If the arguments of the present chapter are of any validity, there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered."⁴³ Thus, he is arguing that however immoral or harmful an opinion might be, it should be taken into consideration. Mill argues that no person has the authority 'to decide the question for all mankind and exclude every other person from the means of judging'⁴⁴ Hence, no one can be certain that their own belief is absolutely correct.⁴⁵

2. As an instrument to meaningful democratic participation

The proponents of this view claim that democracy, as a system of self-governance requires that citizens be well informed of issues of public interest so they could make informed and intelligent decisions taking into account all available alternatives.⁴⁶ The argument is that citizens cannot

⁴⁰ Ibid., at 21.

⁴¹ Ibid.

⁴² Alan E. Fuchs, "Further Steps Toward a General Theory of Freedom of Expression," *William & Mary Law Review* 18:2, (1976): 335

⁴³ John Stewart Mill, *On Liberty*, (Indianapolis: Hackett Publishing, 1978), 15

⁴⁴ Ibid.

⁴⁵ Jeeshan Gazi, "An Introduction to Freedom of Expression", *Richmond Journal of Philosophy*, (2002).

⁴⁶ Timothewos, *Freedom of Expression*, *supra* note 32.

participate fully in a democracy unless they have a reasonable understanding of political issues; therefore, open debate on such matters is essential.⁴⁷

Barendt describes this theory as 'probably the most attractive of the free speech theories in modern Western democracies' and concludes that 'it has been the most influential theory in the development of 20th century free speech law'.⁴⁸

Thus, scholars who advocate for this theory argue that freedom of expression benefits society as the toleration and sustenance of dialogues and free expression of diverse ideas complement democratic frameworks. Furthermore, citizens who are guaranteed such rights have the ability to rule, make informed and wise decisions and hold those in power accountable.⁴⁹

3. For Promotion of Tolerance

John Locke is a classic advocate for the promotion of tolerance with a greater focus in religious tolerance. Although his work can be extended to cover other aspects of tolerance as well.⁵⁰ In his work *Epistola de Tolerantia*,⁵¹ Locke highlighted that free speech is valuable because it is deemed to result in tolerance of diverging views by individuals.⁵²

Furthermore, scholars like Bollinger argue that when individuals are exposed to views contrary to those they hold, they will eventually adapt high tolerance to views contrary to their own.⁵³ Although such arguments have their own flaws, the tolerance argument is vital in societies characterized with differences; beliefs, values, ideals and way of life.⁵⁴

⁴⁷ Fenwick, *Civil Liberties and Human Rights*, *supra* note 38, at 203.

⁴⁸ *Ibid.*, at 303.

⁴⁹ Petäjä, Ulf. "What is the value of freedom of speech?" In Anine Kierulf and Helge Rønning (eds.). Freedom of Expression Abridged; Cultural, Legal and Philosophical Challenges. (Gothenburg, Sweden: Nordicom, 2009).

⁵⁰ Kamulegeya, *Freedom of Expression*, *supra* note 39, at 21.

⁵¹ *Epistola de Tolerantia* was published in 1689 and translated in English to *A Letter of Toleration* in 1690.

⁵² *Ibid.*

⁵³ Lee C. Bollinger, *The Tolerant Society*, (New York: Oxford University Press, 1986).

⁵⁴ Kamulegeya, *Freedom of Expression*, *supra* note 39, at 21.

2.2 The Legal Framework Governing Freedom of Expression in Ethiopia

2.2.1 Freedom of Expression under the 1995 Ethiopian Constitution

Freedom of expression has been given a constitutional recognition in Ethiopia for more than half a century now. The 1931 Constitution, the first written Constitution in Ethiopia, failed to recognize freedom of speech as a constitutional right.⁵⁵ The 1955 Revised Constitution of the Empire of Ethiopia was the first national instrument to give freedom of expression a juridical recognition in the country.⁵⁶ The right was also given recognition in the 1974 Draft Constitution⁵⁷. The 1987 Constitution of the Peoples' Democratic Republic of Ethiopia (PDRE) also gave recognition to freedom of expression.⁵⁸ Consequently, freedom of expression has a well-founded constitutional root in Ethiopia.

Freedom of expression was stipulated in the 1995 FDRE Constitution⁵⁹ in the most elaborate manner.⁶⁰ The third chapter of the FDRE Constitution which provides for fundamental rights puts freedom of expression under the category of democratic rights. Although much debate is entertained in the two categories under chapter three i.e. Human Rights and Democratic Rights, no jurisprudence has been developed on the significance and need of the classification.⁶¹ Thus, the researcher will not put much emphasis on the distinction.

Article 29 of the FDRE Constitution contains safeguards for the right. It provides everyone with the right to hold opinion without interference, thoughts and free expression. Particularly, it protects freedom of expression without interference including the freedom to seek, receive and impart

⁵⁵ Christopher Clapham, *Haile-Selassie's Government*, (New York: Frederick A. Praeger, 1969).

⁵⁶ See the 1955 *Revised Constitution of the Empire of Ethiopia*, Article 41

⁵⁷ The Draft Constitution provides that 'Every Ethiopian has the right to express any idea through the media of speech, press or any other medium. He has the right of access to the expression of others too.'

⁵⁸ Timothewos, *Freedom of Expression*, *supra* note 32, at 204-205.

⁵⁹ Article 29 of the FDRE Constitution, adopted 8 December 1994, in force 21 August 1995 (Federal Negarit Gazeta, 1st Year No. 1)

⁶⁰ Timothewos, *Freedom of Expression*, *supra* note 32, at 204-205.

⁶¹ *Ibid.*, at 213.

information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice.⁶² It also affords freedom of the press and the mass media by ensuring the opportunity for access to information of interest of the public and prohibiting censorship.⁶³ Additionally, the Constitution stipulates that the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.⁶⁴ Hence, the Constitution not only acknowledges the existence of free press to operate in its full capacity without any influence, but also it guarantees a legal protection.

Based on the above assessment, it is clear that the Constitution affords a generous interpretation and protection to the right of freedom of expression. Furthermore, the Constitution's own explicit adoption of a comparative interpretation of the fundamental rights⁶⁵ opens a door for a robust interpretation and a strong guarantee of the same right.⁶⁶ In other words, Ethiopia considers the major international human rights instruments as an essential element of its constitutional corpus.⁶⁷

In defining the bounds of limitations, article 29(6) provides that limitations can only be imposed through laws and to protect the wellbeing of the youth, honor and reputation of individuals and human dignity. Thus, violation of any legal limitations, as Article 29(7) stipulates, results in a liability under the law. Basically, the Constitution provides that all limitations on freedom of expression have to be effected only through laws which are parallel with the guiding principles enshrined under the same article.

⁶² Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, Article 29(2)

⁶³ Ibid., at Article 29(3).

⁶⁴ Ibid., at Article 29(4).

⁶⁵ Ibid., at Article 13(2).

⁶⁶ Hessebon, *An Apologetics for Constitutionalism*, *supra* note 28, at 15.

⁶⁷ Ibid.

- The FDRE Constitution provides that "All international agreements ratified by Ethiopia are an integral part of the law of the land." Thus, once ratified by the Ethiopian parliament, international conventions carry the force of law within national context.

2.2.2 Freedom of Expression under Major Human Rights Instruments Ratified by Ethiopia

Ethiopia is signatory to many international and regional human rights instruments that address the issue of freedom of expression, including the UDHR, the ICCPR and the ACHPR.

The Universal Declaration of Human Rights (UDHR)

The UDHR contains the most widely accepted formulation for the right under its Article 19, thus, making it a natural starting point of freedom of expression.⁶⁸ It guarantees the right to freedom of expression in the following terms:

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

Furthermore, the preamble provides “...and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”. Hence recognizing the very foundation of such instruments relies on providing rights such as this. Therefore, it is essential to read article 19 in conjunction with the rationale set under the preamble to understand the concept in its fullest sense.

UDHR served and continues to serve as an international guiding force for many soft and binding international principles.⁶⁹ Thus, showing both historical significance of the right and the need for progressive and detailed approach as time goes on.

⁶⁸ Sturges, *Limits to Freedom of Expression?* *supra* note 35, at 182.

⁶⁹ For example, The Commission on Human Rights Resolution 1998/42⁶⁹ starts with an indication that it is guided by UDHR, which affirms the right to freedom of opinion and expression. Although guided by instruments such as UDHR, the resolution built on its foundation by encompassing contemporary issues such as the task of assessing the advantages and challenges of new telecommunications technologies, including the Internet. Thus, the focus of this research and many scholarly works before it, owe their foundation to instruments like UDHR that opened up forums of discussion in the international arena.

The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is a major international instrument to impose a formal legal obligation on State parties to respect the right to freedom of expression. Article 19(2) of the Covenant elaborates the rights included under the UDHR. It states that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice".

The right to freedom of expression, although explicitly set, is not absolute. It carries certain limitations in the form of special duties and responsibilities. As evident under article 19(3) of ICCPR, such restrictions can only be provided "by law and should be necessary".⁷⁰

The African Charter on Human and Peoples' Rights (ACHPR)

The African Charter, which Ethiopia ratified in 1998, provide a legal framework for the promotion and protection of human and peoples' rights in Africa. Under Article 9, the African Charter⁷¹ guarantees "every individual the right to receive information" and "to express and disseminate his/her opinions within the law".⁷²

⁷⁰ Furthermore, it prescribes circumstances that justify legislative impositions such as the respect of the rights and reputation of others and the protection of national security or order and public health or morals.

⁷¹ The ACHPR was established under the African Charter on Human and Peoples' Rights in 1987. The Commission is an autonomous treaty body within the framework of the African Union to promote human and peoples' rights and to ensure their protection in Africa. It consists of 11 part-time commissioners and is based in Banjul, Gambia, has emphasized with equal force the importance of the right and the role of media to human rights.

The African Commission at its 32nd Ordinary Session adopted the Declaration of Principles on Freedom of Expression in Africa. The Declaration sets out regional norms guaranteeing free expression. The Declaration in its preamble reaffirms that "the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms". Article 1 of the Declaration uses similar terminologies with the ICCPR and extends the role of the right as an 'indispensable component of democracy'. Furthermore, the Declaration states that "No one shall be subject to arbitrary interference with his or her freedom of expression and any restriction on the right should be provided by law, serve a legitimate interest and be necessary in a democratic society".

⁷² African [Banjul] Charter on Human and Peoples' Rights (the African Charter), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

2.2.3 Other Subsidiary Laws

As discussed above, the mere fact that freedom of expression has guaranteed a constitutional protection does not mean that the right is fully protected. Practical enjoyment of the right, and all rights and freedoms in general, entirely depend on the subsidiary laws enacted to interpret the theories of the rights. Hence, it is important to consult other subsidiary laws in order to have the full image of the right to freedom of expression and its implementation in the Ethiopian context.

The Freedom of Mass Media and Access to Information Proclamation No. 590/2008

One of the several laws regulating media in Ethiopia is the 2008 Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 ("Press Law"). The Press law reaffirms the constitutional protection provided for the right and the prohibition of censorship. Under its preamble, it states, "the Proclamation removes structural and institutional impediments that hinder the independent operation of the media in Ethiopia."⁷³ Furthermore, the Ethiopia Ministry of Foreign Affairs (MFA) explained that this "extremely liberal introduction and preamble" exemplified the Proclamation's aim to implement values of accountability and transparency in government activities.⁷⁴

Proclamation No. 590/2008, in its preamble, further recites the constitutional limitations and highlights the prohibition of censorship. It also recognizes the value of a free, independent and diverse mass media in building the nation's democratic order. To further elaborate on this, Article 4 of the Proclamation affirms that "freedom of the mass media is constitutionally guaranteed. Censorship in any form is prohibited." Additionally, article 12 of the same Proclamation grants "all persons the right to seek, obtain and communicate any information held by public bodies"

⁷³ Freedom of Mass Media and Access to Information Proclamation No. 590/2008, *Federal Negarit Gazeta*, Year 14, No. 64, 4 December 2008.

⁷⁴Tracy J. Ross., "A test of Democracy: Ethiopia's Mass Media and Freedom of Information Proclamation," *Penn State Law Review* 114:3, (2010): 1058

parallel to constitutional terms and went on to impose limitations on the same right as “expressly provided by this Proclamation.”⁷⁵

The Proclamation contains several loopholes and heavy prerequisites that threaten access to public information.⁷⁶ Furthermore, it contains elements such as defamation and false accusation against “constitutionally mandated legislators, executives and judiciaries will be a matter of the Government and prosecutable even if the person against whom they were committed chooses not to press charge.”⁷⁷ Discounting the very reason of the need for such proclamation as prescribed under its preamble that is, among others, creating transparent and accountable government affairs.⁷⁸

The Broadcasting Service⁷⁹ Proclamation No. 533/2007

The right to broadcast is one of the principal means of guaranteeing freedom of expression in our Constitution.⁸⁰ Governments regulate the broadcast media on the rationale of the scarcity of the resource and frequencies stating, "Only a limited number of frequencies are available and the number of stations that may transmit at one time without causing interference is also limited."⁸¹ However, in the Ethiopian context, with limited broadcasting service providers, the need for regulation is focused on audience reach and the safety of the public and the nation at large.

⁷⁵ See Article 12 of Proclamation No. 590/2008

⁷⁶ See Arts 16-27, also Article 40 of Proclamation No. 590/2008, right of reply or correction provide for broad provisions that demand the publication of apologies or corrections without providing a clear definition of the limits of this requirement.

⁷⁷ Human Rights Watch, *Journalism is not a Crime*, *supra* note 19, at 58.

⁷⁸ See the Preamble, Proclamation No. 590/2008

⁷⁹ “Broadcasting service” is defined as a radio or television transmission program conducted to educate, inform or entertain the public. (*see* Article 2(2) of Broadcasting Service Proclamation No. 533/2007)

⁸⁰ Hailegebriel, *Critical Evaluation*, *supra* note 29, at 39.

⁸¹ Gebru Kahsay Kiflu, "Broadcast Speech and the State of Broadcasting with Reference to Ethiopia, A Review," *New Media and Mass Communication* 34, (2015): 40

Under its preamble, the Broadcasting Service Proclamation No. 533/2007⁸² states the major role of the broadcasting service in bringing about political, economic and social development. It further recognizes its use in the exercise of constitutional rights such as freedom of expression and access to information. Thus carrying the constitutional promise to a more practicable and detailed terms. However, as the powers granted are broad in nature, licensing and regulation of the broadcast media in Ethiopia is prone to politicization and undue interference from the Government.⁸³

The Anti-Terrorism Proclamation No. 652/2009

The Horn of Africa has been one of the world's most conflict-ridden regions, experiencing over 200 armed conflicts since 1990.⁸⁴ Besides, it is a well-known fact that Ethiopia has been a victim of a number of bombings and other attacks targeting civilian in recent years. Based on the threats of terrorist attacks and the need to fill the gaps in its existing criminal law⁸⁵, Ethiopia adopted the Anti-Terrorism Proclamation No. 652/2009 in 2009. Like many other national anti-terrorism laws, the Ethiopian Anti-Terrorism Proclamation has set restrictions on freedom of expression.

⁸² The Proclamation also establishes The Ethiopian Broadcasting Authority (EBA) by replacing the then Ethiopian Broadcasting Agency formed under the previous Proclamation No. 178/1999. The Authority formed now is an autonomous federal regulatory body with various powers and duties, including to issue, suspend, and revoke broadcasting licenses and with the main objective of ensuring the expansion of high standard, prompt and reliable broadcasting service which contributes to the political, social and economic development of the country. (*see* Gebru Kahsay, *Broadcast speech*, *supra* note 86, at 39.) This grants the EBA a broad base power with greater discretion. Moreover, as the authority is legally accountable to the Ministry of Information, which serves as the government's communication office, the extensive power can be used to serve current administrative needs as tailored by the Government's interest.

⁸³ Human Rights Watch, *Journalism is not a Crime*, *supra* note 19, at 60.

⁸⁴ Paul D. Williams, *Horn of Africa: Webs of Conflict & Pathways to Peace*, (Washington DC: The Wilson Center, 2011), online at:

<https://www.wilsoncenter.org/sites/default/files/Horn%20of%20Africa%20Conflict%20Mapping%20Doc-%20FINAL.pdf>

⁸⁵ The preamble specify that terrorism is a serious threat to the peace and security of the country and the world at large; and the laws presently in force in the country are not sufficient to prevent and control terrorism.

Proclamation No. 652/2009 provides a broad definition of "terrorist acts", which can include acts of peaceful protest, non-violent political dissent, and various other activities.⁸⁶ The term "terrorist act" lack the precision required for an individual to regulate his/her conduct or to constrain the discretion of law enforcement.⁸⁷ Furthermore, Article 6 of the Proclamation states, "whosoever incites, publishes or causes a publication of a statement... as a direct or indirect encouragement of terrorism is punishable."⁸⁸ Here, the term 'encouragement of terrorism' is found to be vague and open to a broader interpretation. The expression undermines the right as any form of expression in 'favor' of "terrorist acts" or interviewing a supporter of an armed opposition group could be deemed to be "encouraging" and punishable with a 10 to 20 years imprisonment.⁸⁹

The Telecom Fraud Offence Proclamation No. 761/2012

The 2012 Telecom Fraud Offence Proclamation No. 761/2012⁹⁰ specifically addresses the use of Internet and mobile technologies. Under its preamble, the Proclamation states that, telecom fraud is a serious threat to national security beyond economic losses and it is encumbering the telecom industry from playing its role in the implementation of peace, democratization and development programs.⁹¹

Article 6(1) of the Proclamation extends the Anti-Terrorism law and the Criminal Code into online activity by criminalizing the use of telecom network or apparatus to disseminate any terrorizing or obscene message. However, the Proclamation failed to define "terrorizing messages" leaving wide open for plain interpretation of any electronic message to be criminalized under the Anti-Terrorism Proclamation. Sub-Article 6(2) further tightens, prohibiting the use of telecom service or infrastructure for illegal purpose. Here, again, what constitutes "illegal purpose" is not addressed in

⁸⁶ See *Human Rights Watch* Submission on Ethiopia, 2012 Report of the UN Special Rapporteur on human rights defenders to the General Assembly.

⁸⁷ Article 19, *Ethiopia: Proclamation on Telecom Fraud Offences*, August 2012;

⁸⁸ Article 6 Anti-Terrorism Proclamation No. 652/2009

⁸⁹ Human Rights Watch, *Analysis of Ethiopia's Draft Anti-Terrorism Law*, (June 30, 2009); see also Article 6 of Proclamation No. 652/2009

⁹⁰ Telecom Fraud Offence Proclamation No. 761/2012, *Federal Negarit Gazeta*, Year 18, No. 61, 4 September 2012.

⁹¹ See Telecom Fraud Offence Proclamation No. 761/2012

the definition section. Hence, the bounds of the right fall in the discretionary hands of the law interpreter.

The Proclamation, apparently designed to prevent and control telecom fraud, imposes prison sentence of up to eight years and a fine of up to 80,000 birr for any communications that would disseminate a “terrorizing message,”⁹². The punishment could also extend to journalists and activists who employed methods of circumvent state surveillance, interception, or Internet censorship during their investigative work and could result in a prison sentence of up to 15 years.⁹³

Generally, the lack of definitions for "national security" and "illegal purpose"⁹⁴ gives the law uncertain scope and may encourage limitations on legitimate expressions. The Proclamation is, therefore, likely to undermine rather than advance its stated aims of promoting "peace, democratization and development" in Ethiopia.⁹⁵

The 2004 Criminal Code of Ethiopia

The Criminal Code⁹⁶ of 2004 contains provisions that do not comply with international standards on the right to freedom of expression and information, as some of its articles are susceptible to abuse and broad definition backed by other specific laws. For instance, Article 613 and 615 of the Criminal Code contains offences for various forms of defamation and calumny. The Criminal Code again incorporates provisions protecting the State and National and other Emblems from insult or abuse of defamation.⁹⁷ The protection further extends its scope to foreign States and inter-State institutions or organizations.⁹⁸

⁹² Article 6 (2) of Proclamation No. 761/2012

⁹³ Pen International, Committee to Protect Journalists and Freedom Now, "*Joint Contribution on Ethiopia to the 19th session of the Working Group of the Universal Periodic Review*" (September 2013): at 10.

⁹⁴ For the purpose of understanding better what constitutes "illegal purpose", it is important to consult the 2005 Criminal Code of FDRE

⁹⁵ Article 19, *Ethiopia: Proclamation on Telecom Fraud Offences*, 06 August 2012, online at: <https://www.article19.org/resources.php/resource/3401/en/ethiopia:-proclamation-on-telecom-fraud-offences>, last accessed 23 July 2015.

⁹⁶ Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414 of 2004

⁹⁷ see Article 244, 613 and 615 of the Criminal Code

⁹⁸ see Article 244, 264, 265 and 266

Journalists have been facing charges under articles including; defamation and calumny (article 613), attacks against the State (article 244), inciting the public through false rumors (article 486), provocation and preparation (article 257) and outrages against the Constitution or the Constitutional Order (article 238).⁹⁹ Punishments can even extend to death penalty under the stated provisions.¹⁰⁰

Information Network Security Agency Re-establishment Proclamation No. 808/2013

The Information Network Security Agency (INSA) is an autonomous federal government agency created in 2011 by the Ethiopian Parliament. In 2013, INSA was re-established by Proclamation No. 808/2013 having its own personality. The re-establishment was necessitated by, as illustrated under the first article of the preamble, the advancement of critical infrastructures and industries of the country that are or going be at the risk of attack due to their reliance on computer.¹⁰¹ A national security threat through cyberspace is also another justification for the expansion of its mandate.¹⁰² The Agency is further mandated to destabilize electronic attacks on critical computer based infrastructure as well as to take counter measures in self-defense,¹⁰³ if needed.

Practically, the broadened scope of the Proclamation provides INSA the power to have unlimited access to any computer or computer network in the country. Generally, INSA is increasingly integrated with Ethio-Telecom and other departments with information management mandates.¹⁰⁴ The 2013 Proclamation authorize INSA to investigate computers, networks and social media for possible damage to the country's social, economic, political and psychological well-being. Hence, INSA is accused of filtering and blocking prominent blogs and websites containing critical voices against the Government.

⁹⁹ Human Rights Watch, *Journalism is not a Crime*, *supra* note 19, at 61.

¹⁰⁰ Article 238 (2) of the Criminal Code.

¹⁰¹ See Information Network Security Agency Re-Establishment Proclamation No. 808/2013, *Federal Negarit Gazeta*, Year 20, No. 6, 2 January 2014

¹⁰² *Ibid.*

¹⁰³ Article 6(4) of Proclamation No. 808/2013

¹⁰⁴ Human Rights Watch, *They Know Everything*, *supra* note 17.

2.3 Limitations to Freedom of Expression Provided Under International, Regional and Domestic Laws

Freedom of expression is vital in protecting and promoting human rights and in building a democratic society. It is in everyone's interest that it should be upheld, provided that this is not at the expense of other important rights. All rights, however, carry responsibilities, especially when those exercising them have the potential to affect other people's lives. For instance, in some cases, communications may cause harm or bring disrepute that is greater than the value of protecting the expressive activity of the right. States may impose limitations on freedom of expression. This however does not mean that States are given a free hand in deciding how and when they restrict the right. International law noted that the legitimacy of any limitation to this fundamental right should be assessed in accordance with international human rights standards.

International instruments such as the UDHR, ICCPR and the African Charter, although in different terminologies, propose a "three-part test" to determine the legitimacy of restrictions on freedom of expression.¹⁰⁵ In the UDHR article 29(2), there is a specific affirmation that the restriction be only "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society", While on the other hand article 19(3) of the ICCPR states that the restriction should be "provided by law" and "necessary for respect of the rights and reputation of others," and for the protection of "national security" or "public order", or "public health and morals".

Furthermore, the Johannesburg Principles¹⁰⁶ states that no restriction on freedom of expression on the grounds of national security may be imposed unless the Government can demonstrate that the

¹⁰⁵ Amira Abdel Fatah Hussein, "Freedom of the Press in Egypt", (Master's thesis, The American University in Cairo, 2008)

¹⁰⁶ The *Johannesburg Principles: National Security, Freedom of Expression and Access to Information* was adopted by a group of experts on October 1, 1995. Their goal was to set authoritative standards clarifying the legitimate scope of restrictions on freedom of expression on grounds of protecting national security. The Principles have been widely endorsed and relied upon by judges, lawyers, civil society actors, academics, journalists and others, all in the name freedom of expression. (see Toby Mendel, "National Security Vs. Openness: An Overview and Status Report on the Johannesburg Principles")

restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.¹⁰⁷ In the following section, the researcher will discuss each elements of the three-part test.

2.3.1 The restriction must be provided by Law

The primary part of the "three-part" test requires that restrictions on the freedom of expression must only be prescribed by law. Thus, the right cannot be limited at the whim of a public official and the legislature, the elected representatives of the public is the only legitimate body to set a limitation on the right merely for a legitimate reason.¹⁰⁸ Other public actors such as the police, government or military officials may not limit freedom of expression unless they are acting pursuant to the law.

2.3.2 Protection of a Legitimate Interest

There must be a legitimate aim to limit the right to freedom of expression. Article 19(3) of ICCPR exhaustively lists the legitimate aims that justify restrictions to the right. The list provides respect for the rights and reputations of others, national security, public order, public health or morals. Hence, only these interests can justify a restriction on free expression and other interests cannot be qualified as legitimate to limit the right. Interests that have been rejected by international courts as illegitimate include getting people to vote in an election¹⁰⁹, praising the enemy¹¹⁰ (which was not deemed to threat national security) and promoting a strong economy.¹¹¹

¹⁰⁷ See The Johannesburg Principles on National Security, Freedom of Expression and Access to Information: Principle 1.2 Protection of a Legitimate National Security Interest

¹⁰⁸ The legitimacy of a law or regulation is measured based on its standard of clarity and precision. Vaguely worded provisions, whose scope is unclear, will not meet the standard of a legitimate regulation. Legitimately prescribed laws are important to bring fairness and avoid chilling effects.

¹⁰⁹ *Svetik v. Belarus*, 8 July 2004, Communication No. 927/2000 (UN Human Rights Committee)

¹¹⁰ *Kim v. Korea*, 3 November 1998, Communication No. 574/1994 (UN Human Rights Committee)

¹¹¹ *Sohn v. Korea*, 19 July 1995, Communication No. 518/1992 (UN Human Rights Committee)

2.3.3 Necessity

Any limitation set on the right to freedom of expression must be to the fullest degree necessary. The mere fact that a limitation is in accordance with the law and is for a legitimate interest is not good enough to restrict the right in a democratic society. This part of the test is complex and takes into account a number of elements to measure a restriction is whether 'necessary' or not.¹¹² According to UNESCO's training manual on Freedom of Expression and Public Order, the term 'necessary' includes a number of specific requirements:¹¹³

- i. **Pressing Social Need-** First, the measure must respond to a pressing social need. Restrictions on free expression, even if they serve one of the legitimate interests noted above, are not warranted if the harm to the interest is minor, insignificant or speculative.
- ii. **Least intrusive-** the Government should choose the measures that are most conducive to freedom of expression. If a less harmful measure would effectively secure the legitimate aim, it is not necessary to employ the more intrusive measure.
- iii. **Not overbroad-** "the restriction must not be overbroad" in the sense of ruling out legitimate as well as harmful speech.¹¹⁴ The restriction should only impair harmful but not legitimate expressions.
- iv. **Proportionate-** the restriction must be proportionate in the sense that the benefits of protecting the legitimate aim outweigh the harm to freedom of expression. The Government should use no more restrictive means than are absolutely necessary.

The lawfulness of government restrictions on speech and the dissemination of information are thus subject to considerations of proportionality and necessity. Generally, the UN HRC, in its General Comment No. 34 on the Right to Freedom of Expression, states that the restrictions specified in

¹¹² The vast majority of international cases are decided on this part of the test. This is because this element of the test is confusing and subject to interpretation. (see UNESCO, *Training Manual: Freedom of Expression and Public Order*, (2015))

¹¹³ See UNESCO, *Training Manual: Freedom of Expression and Public Order*, (2015)

¹¹⁴ UN Human Rights Committee, "General Comment No. 34", Article 19, *Freedom of Opinion and Expression*, CCPR/C/GC/34 (2011)

Article 19(3) should be interpreted narrowly and that the restriction 'may not put in jeopardy the right itself.'¹¹⁵

2.4 Limitation of Freedom of Expression under the FDRE Constitution

The FDRE Constitution lays down the guiding principles and grounds for limitations of the freedom of expression. Article 29(6) of the Constitution noted that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed.¹¹⁶ On the other hand, the article identified the protection of the well-being of the youth, and honor and reputation of individuals as legitimate grounds for legal limitation of the right.¹¹⁷ Furthermore, the Constitution provides that any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.¹¹⁸

As Article 29(6) clearly stipulates, the first part of prohibition on the limitation of freedom of expression is based on "content" of the expression. The second part of prohibition is limitation of freedom of expression based on the "effect of the viewpoint expressed". This contention is filled with troubles since the *effect* of a viewpoint is different from the *viewpoint* itself.¹¹⁹ This prohibition raises a question whether or not an expression that has the ability of creating religious or ethnic conflict could be limited. This is a two-edged sword as a rough decision on this question may result a question of constitutional validity (if limited) or sanctioning violence for the sake of free expression (if not limited).¹²⁰

In view of that, the Constitution provides legitimate grounds of limitation of freedom of expression: to protect the well-being of the youth and the honor and reputation of individuals. These two grounds could have been drawn to reflect the importance attached to human dignity and

¹¹⁵ Ibid.

¹¹⁶ Article 29(6) of the FDRE Constitution.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Timothewos, *Freedom of Expression*, *supra* note 32, at 214.

¹²⁰ Ibid., at 216.

peace by the framers of the Constitution.¹²¹ Additionally, the Constitution leaves out some grounds of limitation that are usually considered as legitimate grounds of limiting free speech such as national security.¹²² In the contemporary world, it has become essential to strengthen and prioritize national security at the expense of free expression. The claim that free expression must be sacrificed is typical during times of war and crisis.¹²³ For this reason, the Constitution also envisages the prohibition of propaganda of war and expression of opinion intended to injure human dignity.¹²⁴

2.5 Freedom of Expression and the Internet

The Internet¹²⁵ can be defined as 'a global pool of information and services, accessible locally through a personal computer or a smart phone that is each part of a global system of interconnected computer networks.'¹²⁶ The Internet is independent of physical geography and is open in the sense that no single entity; academic, corporate, governmental or non-profit organization administers it.¹²⁷ It has created a platform that allows the exchange of information quicker and cheaper between individuals from different corners of the world, something very challenging in the pre-Internet era. This digital revolution places freedom of expression at a different level from other broadcasting technologies.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Douglas M. Fraleigh and Joseph S. Tuman, "National Security and Freedom of Expression" in Freedom of Expression in the Marketplace of Ideas, (Thousand Oaks, California: SAGE Publications, 2010), 87

¹²⁴ Timothewos, *Freedom of Expression*, *supra* note 32, at 205.

¹²⁵ An array of terms used to describe the Internet, a relatively new technology. These include terms such as "the Net", "cyberspace", "the Information Superhighway" and the "World Wide Web (WWW)".

¹²⁶ Edward F. Halpin, Steven Hick, and Eric Hoskins, "Perspectives of Human Rights on the Internet" in Human Rights and the Internet, Steven Hick, Edward F. Halpin, and Eric Hoskins (eds.), (Great Britain: Macmillan Press LTD, 2000): 9.

¹²⁷ Rikke Frank Jorgensen, "Internet and Freedom of Expression" (Master's thesis, Raoul Wallenberg Institute, 2001).

The Internet helps us look at freedom of expression from a different perspective.¹²⁸ This is not because digital technologies fundamentally change what freedom of expression is; rather it is because digital technologies change social conditions in which people express their ideas.¹²⁹ The Internet empowers freedom of expression by providing individuals with new means of expression. It expands the possibility of transferring an individual's opinion to the public and enables the establishment of communication networks, i.e. social networks.¹³⁰ Hence individuals from all walks of life, from every corner of the world flocked to the Internet since its introduction.

Nunziato characterized Internet as 'a great vehicle for speakers and publishers to express themselves to worldwide audience at very low cost'.¹³¹ He further argued that, to a much greater extent than traditional mediums, the Internet facilitates a true marketplace of ideas that is not dominated by few wealthy voices who are able to express themselves via the traditional media.¹³²

Being utilized to obtain, communicate and disseminate information, it has become a tool for the promotion and protection of human rights. It also allows human rights defenders to educate, organize and get information about human rights violations out to the international community.¹³³ It is also a great vehicle and tool for democratization and a force for individual and community empowerment.

Through different Internet tools such as email, online discussion groups, real-time chat and video conferencing, it is now easy to contact individuals from different locations simultaneously. This character of the Internet benefited human rights groups and other digital activists to create social networks and work together. Hence, an interconnected network of actors are now better placed

¹²⁸ Jack M. Balkin, "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society," *New York University Law Review*. 79:1, (2004): 2

¹²⁹ Ibid

¹³⁰ Beatrice Zuell, "The Vision of Global Internet Freedom," *International Journal of Computers and Communications* 8, (2014): 120

¹³¹ See Dawn C. Nunziato, "Freedom of Expression, Democratic Norms, and Internet Governance" *George Washington University Law School* 52, (2003).

¹³² Ibid.

¹³³ Lloyd Axworthy, "The Mouse is Mightier than the Sword" in Human Rights and the Internet, eds. Steven Hick, Edward F. Halpin, and Eric Hoskins, (Great Britain: Macmillan Press LTD, 2000): 19.

than ever to promote and defend rights and liberties, shape political debates, and influence policy implementations around the world.¹³⁴

On the other hand, the relationship between freedom of expression and the Internet is not always a positive combination. The Internet has also provided those who might wish to abuse and violate human rights of others with an efficient medium to disseminate their abusive material.¹³⁵ Throughout the world, governments for the same reasons to that of traditional mediums increasingly restrict freedom of expression on the Internet. However, restrictions on access to the Internet and online expression limit many of the freedoms considered to be basic human rights, as recognized by international bodies such as the UN. Hence, in July 2011, the UN HRC adopted General Comment 34 to Article 19, states that means of expression including the Internet and all forms of audio-visual and electronic and Internet-based modes of expression are essential for the promotion and protection of human rights.¹³⁶

¹³⁴ Tamy Guberek & Romesh Silve. "Human Rights and Technology: Mapping the Landscape to Support Grant making", *PRIMA- Partners for Human Rights Information, Methodology & Analysis*, (2014), p.9

¹³⁵ Axworthy, *The Mouse is Mightier*, in Human Rights and the Internet, *supra* note 133, at 9.

¹³⁶ See HRC General Comment No. 34.

Chapter Three

The Digital Activism Environment in Ethiopia

3.1 Digital Activism and its Implication on Freedom of Expression in Ethiopia

A diverse medium of communication is important in order to facilitate the exchange of opinions, ideas and information and to fully realize the right to freedom of expression. Therefore, free expression activists have given a great deal of attention to the structure and regulation of the media environment as it provides a principal platform for public expression, ranging from print to digital media.¹³⁷

Digital technologies do not fundamentally change what freedom of expression is; rather, they change the social conditions in which people express their views.¹³⁸ Certainly, the introduction of the Internet and other digital media platform would not inherently redefine the concept of the right; however, it has greater implications in the use of the right.

In earlier decades, the ability to communicate ideas to a large audience was dependent upon being able to publish or broadcast. Anyone's work was therefore moderated through an established system with rules and guidelines. Any expression through publication or broadcasting was subject to a rigorous way of editing and censorship. Thus, the introduction of the Internet has facilitated for a more lenient free expression. Moreover, the Internet has transformed freedom of expression from a largely private phenomenon into a predominantly public one.¹³⁹ It constitutes a free

¹³⁷ Andrew Puddephatt, "Mapping Digital Media: Freedom of Expression Rights in the Digital Age," *Open Society Foundations Reference Series* 6 (2011): 6

¹³⁸ Balkin, *Digital Speech*, *supra* note 128, at 2.

¹³⁹ Freedom of Expression, "*idea Digital Freedoms Project*", online on: <http://digitalfreedoms.idebate.org/digitalfreedoms/freedom-of-expression>, last accessed on June 17, 2015

participatory forum for free expression of unprecedented scope and width.¹⁴⁰ It empowers each of us to speak our mind, to learn from others and to promote our views.

The Internet enables individuals to use all manners and forms of expression- text, images, voice, audio and video and communicate among each other with no geographical barrier.¹⁴¹ It accommodates diversity well in that it allows not only people who are affiliated with mass media organizations but also people from diverse social, economic and political stands to create their own audience and engaged with the masses.¹⁴²

The Internet networked world's population and has grown from millions to billions in the last decade. Over the same period, social media has become a fact of life for civil society worldwide, involving many actors- regular citizens, activists, national and International NGOs and governments.¹⁴³ Increasingly, Ethiopians continue to join popular social networking sites (SNSs) like *Facebook* and *Twitter* that are characterized by their user-participation and user-friendly features. Social media has expanded the arena to exercise individual freedom of expression, and Ethiopians are indeed finding some breathing space to express their views.

The technological evolution of free expression is not simply limited to the emergence of some popular social media channels like *Facebook* and *Twitter*. Anyone can easily set up a blog and start communicating with a potential audience of over two billion people.¹⁴⁴ Blogging plays a priceless role in the free flow of information worldwide. It enables a true exchange of information in ways that traditional media did not in the past. It allows an immediate sharing of information to a diverse audience with interactive sharing and commenting tools. Digital activism represents an alternative form of media and citizen journalism and a sound manifestation for the realization of freedom of

¹⁴⁰ Nunziato, *Freedom of Expression*, *supra* note 131, at 3.

¹⁴¹ Dawn C. Nunziato, "Speech and Censorship on the Internet" in *Virtual Freedom: Net Neutrality and Free Speech in the Internet Age*, (California, Stanford University Press, 2009), 1.

¹⁴² Jack M. Balkin, "The Future of Free Expression in a Digital Age" *Pepperdine Law Review* 36:427, (2009): 436

¹⁴³ Clay Shirky, "The Political Power of Social Media", *Foreign Affairs* 90:1, (2011):28

¹⁴⁴ Vinton Cerf, " 'Father of the Internet': Why We Must Fight for its Freedom," CNN, last accessed on June 17, 2015, online at: <http://edition.cnn.com/2012/11/29/business/opinion-cerf-google-internet-freedom/index.html>

expression.¹⁴⁵ The notion that social media have a strong effect on the prospects of social and political mobilization has become more widely accepted across different disciplines including the human rights arena and has led to a great deal of enthusiasm.¹⁴⁶

3.2 The Role of Digital Activism in Promoting and Protecting Human Rights

Information Communication Technologies (ICTs) are becoming increasingly influential in the promotion and protection of human rights. In the struggle to the realization of the same, ICT is being used as the main means of communication and spreading out of information. Most significantly, SNS are often used as an instant and affordable means to widely spread news of human rights abuses and seek a speedy response on violations. It has rapidly become a key tool for the human rights movement, evolving from the more traditional methods of human rights work, which always relied upon well-developed communications strategies.¹⁴⁷

The increase in capacity and reach of the Internet has attracted new actors, i.e. digital activists, for human rights advocacy and mobilization. It also makes interactive communication possible between the various components of the human rights movement, with local groups being able to contact their international partners directly without the need for intermediaries.¹⁴⁸ It also enables activists to communicate directly with their intended audience all over the world at once.

Digital human rights activists attempt to protect and promote human rights by providing information on human rights abuses, by mobilizing the online society to the common good and instigating for cumulative action. Through the Internet, human rights activism becomes quicker, effective and less expensive. The geographically borderless nature of the technology allows human

¹⁴⁵ ARTICLE 19, *The Right to Blog*, available on <https://www.article19.org/data/files/.../3733/Right-to-Blog-EN-WEB.pdf>, at 7.

¹⁴⁶ Arne Hintz, *Introduction in "Challenging the Digital Gatekeepers: International Policy for Free Expression," Journal of Information Policy* 2 (2012):128.

¹⁴⁷ Halpin, Hick and Hoskins, *Perspectives of Human Rights on the Internet* in Human Rights and the Internet, *supra* note 126, at 8.

¹⁴⁸ *Ibid.* at 8, 9.

rights organizations and online activists to reach a much broader audience and garner international support than the traditional media.¹⁴⁹

In the contemporary Ethiopia, active participation of vibrant human rights activists on social media is on the rise. *Facebook* and *Twitter* has enabled Ethiopians to share human rights violations in the country and trigger both local and international responses. The overwhelming response to the attack on Hanna Lalango¹⁵⁰ is a particular illustration for the increasing consideration and significance of digital activism for human rights in Ethiopia. The online campaign *#JusticeForHanna* took the matter to the public itself and helped to strengthen the basis of human rights activism and maximize the sustainability of the advocacy for the cause.

It is usually a particular incident as Hanna's¹⁵¹ which cause and fuel a human rights activism through the Internet. In this specific incident, activism on the social media played an important role in mobilizing 'ordinary' citizens in the human rights advocacy and provided individuals the chance to participate in the movement. Where the 2009 Ethiopian Charities and Societies Proclamation No. 621/2009 seriously restrict the effectiveness of local NGOs, online activists have the gap filling role left void by the limited capacity of local NGOs. This mobilization of individuals without the need for professional organizations¹⁵² eradicates the distance between professionalized human rights works and the public at large.¹⁵³

In the contemporary Ethiopia, the Ethiopian Human Rights Commission (the Commission), local NGOs, and individual activists are taking a central role in the promotion and protection of human rights. The Commission, as a governmental organ and a primary duty bearer of international human rights obligations, has the sense of duty and the responsibility to use the media as a vehicle

¹⁴⁹ Michael Katz-Lacabe and Margarita Lacabe, *Doing Human Rights Online: The Derechos' Cyberbirth* in *Human Rights and the Internet*, 68-69.

¹⁵⁰ A 16 year old student, *Hanna Lalango*, is a victim of abduction, gang-rape and left for dead in early October 2015 in Addis Ababa. Her story spread among a large number of the social media society and brought a strong emotional response from the public.

¹⁵¹ Hanna Lalango as mentioned above.

¹⁵² Some scholars argued that the strict professionalism of local and international human rights organizations distances them from the people on whose behalf they work. As a consequence, this weaken a broaden support for the cause from the public.

¹⁵³ Molly Beutz Land, "Networked Activism," *Harvard Human Rights Journal* 22, (2009): 211

in its effort to the promotion and protection of human rights. As Article 6 of Proclamation No. 210/2000¹⁵⁴ affirmed, the Commission has the mandate to educate the public using the mass media and other means with a view to create sufficient awareness regarding human rights. However, many have criticized the effective usage of the medium by the Commission.

Generally, although online activism is unlikely to replace some of the functions served by human rights organizations, efforts to create synergies between traditional and online activities have the potential to provide avenues for real, meaningful and effective citizen participation in human rights advocacy.¹⁵⁵

3.3 Digital Activism as a political venue/ Digital activism vis a vis Political Participation

With the development of ICTs, politically motivated activists adjust their movement into the social media, to attain their long-established goals. The new public sphere and scope for political organizations provided by the social media offer great potential for political democratization and for resistance against authoritarian rule.¹⁵⁶ As the communication landscape gets denser, more complex, and more participatory, the networked population is gaining greater access to information, more opportunity to engage in public speech, and an enhanced ability to undertake collective action.¹⁵⁷ The Arab Spring is a typical evidence to demonstrate the increasing influence of social media and digital activists on the political reform of States. The release of *WikiLeaks*¹⁵⁸ is also another important development exhibiting the capacities of social media and online activism to advance freedom of expression and introduce social and political concepts to the public.

¹⁵⁴ Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000, 6th Year No. 40, Addis Ababa, 4th July, 2000.

¹⁵⁵ Ibid. at 206.

¹⁵⁶ Christopher Coenen, Wolfgang Hofkirchner and Jose Maria Diaz Nafria, "New ICTs and Social Media in Political Protest and Social Change" in New ICTs and Social Media: Revolution, Counter-Revolution and Social Change, Rafael Capurro et al., (eds). *International Review of Information Ethics* 18, (2012): 2.

¹⁵⁷ Shirky, *The Political Power*, supra note 143, at 29.

¹⁵⁸ *WikiLeaks* is an international, non-profit, journalistic organization founded by Julian Assange in 2006, which publishes secret information, news leaks and classified media from anonymous sources.

In the Ethiopian context, the Internet is gradually becoming a wider space to discuss Ethiopian politics and it fosters Ethiopians' political participation. The foundation of digital activism in Ethiopia can be traced back to activism works in the late 1990's. In 1998, an anonymous Ethiopian writer under the name '*Dagmawi*'¹⁵⁹ established the most important political website.¹⁶⁰ It was a personal web page linked to authoritative scholarly articles, news and opinions about the Ethio-Eritrean war (1998-2000).¹⁶¹

Consequently, Ethiopians in the Diaspora launched platforms such as *Ethiopian Review*, *Nazret* and *Ethiomed* to discuss Ethiopian politics.¹⁶² In the years preceding the 2005 General Election, the Ethiopian blogosphere hit the peak. At the time, the number of political or quasi-political websites with multidirectional participatory platforms reached at least 57.¹⁶³ Bloggers like *Enset* were influential commentators from the Diaspora, while others like *Ethio-Zagol*, *Urael*, *Dina*, and *Adebabay Ze'Ethiopia* were contributing to the online political debate from Addis Ababa.¹⁶⁴

However, the era of enlightenment for digital activism in the Ethiopian politics did not last long. Feeling the heat, the Ethiopian Government blocked some blog-hosting websites entertaining critical views on the Government.¹⁶⁵ Since then, most filtering targeted independent media, blogs

¹⁵⁹ Dagmawi's site was a milestone in the genesis of Ethiopia's participatory media and an authoritative voice on the significant political issue without being a member of the established media or appearing in a traditional media outlet.¹⁵⁹

¹⁶⁰ Megenta, *Can it Tweet*, *supra* note 27, at 66.

¹⁶¹ *Ibid.*

¹⁶² Iginio Gagliardone, "New Media and the Developmental State in Ethiopia," *African Affairs* 113:451, (2014): 285.

¹⁶³ Abiye T. Megenta 'Ethiopian Press: Hope and Challenge', *Addis Neger* (Addis Ababa, 15 Nov. 2007), 4th edn, Feature sec.: 2-3.

- and Dagnennet Mekonnen 'African Bloggers Come of Age', *Meznagna* (Addis Ababa, 10 Nov. 2005), News Feature sec.: 6.

¹⁶⁴ *Ibid.*, See also Megenta, *Ethiopian Press*, Addis Neger

¹⁶⁵ According to the *Freedom on the Net 2011*, the Ethiopian Government instituted a blanket block on the domain names of two popular websites at the time, *Blogger* and *Nazret.com*. The 2014 edition of the report also list Ethiopia as one of the first African countries to censor the Internet beginning in 2006 blocking opposition blogs. Hence, Ethiopia institute one of the few nationwide Internet filtering system in Africa.

and political reform and human rights sites.¹⁶⁶ As a result, the Ethiopian political blogosphere had been shrunk considerably and prominent bloggers and web publishers ceased their online political activities.¹⁶⁷

Once again, having understood the role of social media in the Arab uprisings, Ethiopians turned their faces to the platform for alternative voices as pro-government and government media dominate Ethiopia's traditional media landscape.¹⁶⁸ Justifiably, blogs are being used as alternative sources of political opinions and enable citizens to demonstrate their personal views. Ethiopians and the Diaspora is intermediating this increasingly huge blogging community with more frequent critical writings.

Nevertheless, online political participation in Ethiopia is not an easy ride. On top of the very poor infrastructure on the telecommunication sector, the Government responded to online critical voices by limiting the online sphere. Restrictions on the Internet freedom is worsened in Ethiopia due to increasing restrictions on access to social media and communications tools, such as *Storify*¹⁶⁹, and the temporary blocking of *Facebook* and *Twitter* in July 2013.¹⁷⁰ Furthermore, the 2013 Information Network Security Agency (INSA)¹⁷¹ Re-establishment Proclamation No. 808/2013

¹⁶⁶ Freedom on the Net 2014 report states that majority of blocked websites feature critical news and opposition viewpoints run by individuals and organizations based mostly in the Diaspora. Surveillance of mobile phone and Internet network is systematic and widespread, enabled by Chinese-made technology that allows for the interception of SMS text messages, recording of phone calls and centralized monitoring of online activities. See *Freedom on the Net 2014*, "Tightening the Net: Governments Expand Online Controls," Ethiopia, 288

¹⁶⁷ Megenta, *Can it Tweet*, *supra* note 27, at 67.

¹⁶⁸ Endalkachew Chala, "An Incomplete Guide to Ethiopians Blog," *Endalk's Blog*, February 15, 2012 <https://endalk.wordpress.com/2012/02/15/an-incomplete-guide-to-ethiopian-blogs>.

¹⁶⁹ *Storify* is a social network service that lets the user create stories or timeline using social media such as *Twitter*, *Facebook* and *Instagram*. It was launched in September 2010 and has been open to the public since April 2011.

¹⁷⁰ Freedom on the Net 2014, *Tightening the Net: Governments Expand Online Controls*, (2014): 288

¹⁷¹ INSA was established in 2006 by the Council of Ministers Regulation No. 130/2006 and re-established in 2011 by Council of Ministers Regulation No. 250/2011 and Proc. No. 808/2013. Now INSA is the sole cyber security organ in Ethiopia with the objective to ensure that information and computer based key infrastructures are secured, so as to be enablers of national peace, democratization and development programs. (see INSA Re-establishment Proc. No. 808/2013, Article 5)

provides the Agency (INSA) the power to track private online communications and investigate electronic tools. Consequently, Ethiopian authorities frequently present intercepted emails and phone calls as evidence during trials against politically bound journalists and bloggers.¹⁷²

3.4. Digital Activism and Other Competing Interests

The globally accepted human rights instruments recognized that freedom of expression must be exercised with due regard to the rights of others. ICCPR attested that although expression is a fundamental freedom, it is subject to restriction on certain grounds like the rights and reputations of others. The matter of national security is another acceptable ground straining the absolute nature of the freedom. Believing in absolute freedom of expression with no accountability, could mean we believe it is acceptable to lie and to defame someone for personal gain or risk the security of a State.¹⁷³ In order to sustain accountability for online expression, one need to show a 'responsible' conduct and set a boundary on his expressions that may undermine national security, provoke violence, threaten individual's rights and harm public morals.¹⁷⁴ Accordingly, it is imperative to closely examine the three main interests that come toe-to-toe with online expression in Ethiopia.

3.4.1 Digital Activism and National Security

The pursuit of national security and human rights are often pitted against one another in practice. In recent years, Ethiopia increasingly became a target of terrorist attacks. For this, the issue of national security became the focal agenda for the Ethiopian Government. One of the major fronts which online expression is restricted in Ethiopia is in connection with the national security of the State.¹⁷⁵ While digital activists perceive their missions as a legitimate protest in the online

¹⁷² Freedom on the Net 2014, *Tightening the Net*, *supra* note 170, at 296.

¹⁷³ David Gordon and John Michael Kittross, *Controversies in Media Ethics*, (New York: Longman, 1999): 46.

¹⁷⁴ See Article 29(5) of the FDRE Constitution; and INSA Re-Establishment Proclamation No. 808/2013

¹⁷⁵ The Telecom Fraud Offence Proclamation No. 761/2012, which is an extension of the Anti-Terrorism Proclamation and the Criminal Code for digital communications states that telecom fraud is a serious threat to the national security. The Proclamation, under its Section 6, imposes a criminal liability on whosoever uses or causes the use of any telecom network to disseminate any

medium, the targeted government organ occasionally regard their action as online security breach or a threat to national security. However, there is no a clear-cut demarcation when an expression of idea is legitimate or not. The vague nature of this interaction and consequences can be very hazardous for human rights activists to campaign for human rights and defend their actions in the court of law.

3.4.2 Digital Activism and Public Disorder

In pursuing the public interest, governments often regulate speakers to ensure that they do not cause a nuisance.¹⁷⁶ Contents of an online expression may cause nuisance if it is offensive or provocative. Most usually, it occurs when it violates the legitimate activities of others. An online expression is prone to lose its constitutional protection from criminal prosecution when designated to a particular target for illegal activity and likely to cause imminent danger.¹⁷⁷

Sometimes people use the social media to advocate for illegal, dangerous or violent activity.¹⁷⁸ For instance, a post on *Facebook* calling for illegal or violent resistance to government policies holds a clear and present danger to the Constitution. In such situations where expressions of the speaker violate the legitimate interests of a third party and the wellbeing of the public at large, the Government has the responsibility to intervene provided that it carries a legitimate objective. It is,

terrorizing message connected with a crime punishable under the Anti-Terrorism law and the Criminal Code.

¹⁷⁶D.F.B. Tucker, Law, Liberalism and Free Speech, (USA: Rowman & Allanheld Publishers, 1985): 27.

¹⁷⁷ Edward A. Cavazos and Gavino Morin, Cyberspace and The Law: Your Rights and Duties in the On-Line World, (The MIT Press Cambridge, London): 74

¹⁷⁸ Here it is rational to assess some dominant *Facebook* social groups in order to obtain a clear picture of activities of Ethiopians on the social media. *The Ethiopian Revolution 2011* was founded in 2011 by a group of young Ethiopian activists. The group claimed it has been inspired by the pro-democracy movement in North America and aimed bring freedom and democracy to Ethiopia by removing the dictatorship through peaceful resistance. In its description, a long-standing public group *Nitro Ethiopians* calls for the death of the Tigray People's Liberation Front (TPLF), Oromo Liberation Front (OLF) and their supporters. *The Voice of Freedom* is another public group choosing the revolutionary means to overthrow the Government and its wish extend the Arab Spring to Ethiopia.

however, illiberal to censor online expression aiming to prevent reasoned arguments or genuine legal activities.

3.4.3 Digital Activism and Public Morals

Cyberspace is a global community that often plays little attention to the boundaries and borders of the physical world.¹⁷⁹ It potentially reaches a wide range of audience, involves enormous numbers of communities, and penetrates a considerable amount of cultures. The varying of moral standards in different communities is a practical challenge in digital communications. It makes little sense to assume that there is a generally acceptable common moral standard.¹⁸⁰ An expression enjoying a free ride in the western community could face a question of morality in communities with more restrictive culture like Ethiopia.

This volatile nature of moral standards creates an inevitable challenge to digital activists in freely expressing their views through online platforms. Thus, in dealing with these competing claims, restoring the balance and keeping the restrictions limited is necessary not to compromise the very existence of freedom of expression.

¹⁷⁹ Cavazos and Morin, *Cyberspace and The Law*, *supra* note 177, at 94.

¹⁸⁰ Tucker, *Law, Liberalism and Free Speech*, *supra* note 176, at 101.

Chapter Four

Challenges and Prospects of Digital Activism in Ethiopia

4.1 Online Participatory Politics¹⁸¹ for Human Rights in Ethiopia

The Internet differs from other forms of mass media because it represents a two-way network for communication and a medium for information. As such, it is capable of fostering discussions through chat rooms, e-mail and information gathering through online news. The sharing and discussion of human rights information lead to the formation of opinions that ultimately translate into political participation.¹⁸²

The rise of digital platform for self-expression has afforded activists in Ethiopia another means to voices their opinions. Many have expressed hopes that online media like *Facebook*, *Twitter* and blogs can generate public participation for social causes.¹⁸³ Digital politics has the potential to affect public affairs either through the mobilization of new groups or the reinforcement of those who would participate through traditional media. The social media may serve to inform, organize and engage those that are currently marginalized from the existing political system- such as the

¹⁸¹ Participatory politics is an interactive, peer-based act through which individuals and groups seek to exert both voice and influence on issues of public concern. Formal institutions do not lead these acts. Examples of participatory political acts include starting a new political group online, writing and disseminating a blog post about a political issue, forwarding a funny political picture or video to one's special network, or participating in a poetry slam. It can reach large audiences operating with greater independence and mobilize networks online on behalf of a cause. Participatory politics provide a greater creativity and voice and afford individuals the capability to reach a sizable audience and mobilize others through their social networks in an easy and inexpensive manner. Generally, participatory politics are an addition to an individual's engagement rather than an alternative to other social or political activities. (see Cathy J. Cohen and Joseph Kahne, "Participatory Politics: New Media and Youth Political Action", *Youth and Participatory Politics Research Network*, (June 2012)).

¹⁸² Karen Mossberger, Caroline J. Tolbert and Ramona S. McNeal, Digital Citizenship: The Internet, Society and Participation, (London: MIT Press, Cambridge, 2008): 69

¹⁸³ Paula Millar, 'Social Media for Social Good', *The Evolution of Revolution blog*, 24 March 2010, <https://theevolutionofrevolution.wordpress.com/tag/digital-activism/>, last accessed 10 September 2015

youth, citizens abroad or fringe political minorities disaffected by the traditional system.¹⁸⁴ Hence, a more open and connected world is imminent as social network hit 1 billion user milestone.¹⁸⁵ This astonishing number is a testament for the actual potential of the social media to connect the world.

As fraction of this global medium of communication, Ethiopian *netizens*¹⁸⁶ have created or joined hundreds of social media groups to promote their ideas and facilitate open discussions. The multitude of online activists groups focuses more on the politics; and these politics-centered groups get more audiences. However, there are still few activities on the cyberspace for human rights in Ethiopia. Human rights-focused virtual groups also entertain their fair share of audience on the most popular SNS- *Facebook* and *Twitter*.

There are few epic examples of participatory politics in which Ethiopians used the social media to exercise their voice on human rights matters. At the end of 2014, a group of young Ethiopian activists launched an online campaign called *BecauseIamOromo*¹⁸⁷ on *Facebook*. *JusticeforHanna* is another classic online movement for human rights cause. Following the kidnapping, brutal gang rape and death of schoolchild Hanna Lalango, digital activists call for justice for the victim and have used the uprising to highlight their concern for the rights of women in Ethiopia.

One of the most persistent and well-organized social media campaigns that mobilized a large portion of Ethiopia's online community in the last year-and-half is the *#FreeZone9Bloggers*.¹⁸⁸ Following the arrest of the *Zone 9* bloggers and the independent journalists, digital activists started a social media campaign in the summer of 2014 using the *#FreeZone9Bloggers* and began posting

¹⁸⁴ Pippa Norris, Digital Divide: Civic Engagement, Information Poverty and the Internet Worldwide, (UK: Cambridge University Press, 2001).

¹⁸⁵ Mark Zuckerberg, posted on his *Facebook* account that one in seven people on Earth used *Facebook*, after one billion users logged in to *Facebook* on August 24, 2015

¹⁸⁶ *Netizen* is a term used to describe a habitual user of the Internet. It is derived from two terms 'net' & 'citizen'.

¹⁸⁷ According to the campaign's information page, the campaign name followed the 2014 Amnesty International report on gross human rights violations on the youths of the Oromo ethnic group.

¹⁸⁸ Mahlet Fasil, Ethiopia Drops Infamous Terrorism Charges Against All Bloggers, posted on 16 October 2015, available at: <http://addisstandard.com/breaking-ethiopia-drops-infamous-terrorism-charges-against-all-bloggers/>, last accessed 17 October 2015

articles and pictures displaying support of the jailed bloggers and journalists. The campaign had attracted the attention of advocacy organizations around the world. International organizations like *Human Rights Watch*, *Article 19* and *Electronic Frontier Foundation* had organized campaigns and written articles calling for their release. Although the researcher randomly chose three social media movements, there are also other cyber-sphere movements with regard to the human right situations in Ethiopia.¹⁸⁹

4.2 Challenges to Digital Activism in Ethiopia

In discussing the potential and significance of the digital activism, one needs to keep in mind its efficiency is relied on some preconditions. Digital activists in Ethiopia specify that they are facing legal barriers and practical obstacles in managing their activities. Below the researcher will discuss four major challenges digital activists are facing.

4.2.1 Access to the Internet: Financial, Infrastructure and Illiteracy

The means to access to the Internet captures both the affordability of the Internet devices such as computers or mobile phones as well as the ease with which available Internet infrastructure can be accessed.¹⁹⁰ While Ethiopia is putting its great effort on the development of infrastructure,¹⁹¹ its telecom capacities still drift further behind the rest of the world. As of 2014, 20.5 million mobile

¹⁸⁹ One of the well-known social media movements is the "*Free Birtukan Mideksa*" campaign. Following the imprisonment of most popular opposition political party leader Birtukan Mideksa in December 2008, for allegedly violating terms of a pardon she had been granted, a young political activist Kassahun Addis launched a '*Free Birtukan Mideksa*' Facebook page. The page attracted thousands of people including politicians, journalists and artists and became a forum for discussing the ordeals of prisoners of conscience in Ethiopia. (see also Megenta, *Can it tweet its way to democracy?*).

¹⁹⁰ Dalberg, *Impact of the Internet in Africa*, (April 2013): 16

¹⁹¹ Ethio Telecom targets to boost mobile network access to 113 million in the second Growth and Transformation Plan (GTP II). According to Andualem Admassie (CEO, Ethio Telecom), the company currently provides mobile telephone service to approximately 50 million subscribers. (see also Ethio Telecom aims mobile phone access to reach to 113 million, *capital*, July 06, 2015 http://www.capitalethiopia.com/index.php?option=com_content&view=article&id=5274:ethio-telecom-aims-mobile-phone-access-to-reach-113-million&catid=35:capital&Itemid=27)

phone subscribers represent 24% of the about 90 million populations.¹⁹² Despite being the 14th most populated country in the world, just about 2% of Ethiopians have access to the Internet.¹⁹³ About 98% of Ethiopians are still offline. The penetration rate of *Facebook* is even worse as just 1% of the population accessed the online media.¹⁹⁴

For over a decade, Ethiopia reported a double-digit economic growth. The prospect of Ethiopians is improving with the extreme poverty rate decline from 62% in 1990 to 30% in 2010.¹⁹⁵ However, despite decreasing the number of people living in poverty by half, Ethiopia remains one of the world's poorest countries with a per capita income of USD 550.¹⁹⁶ For this reason, the capacity to afford Internet service and devices remain as a major challenge for much of the population.

Majority of Internet users are concentrated in Addis Ababa, which accommodates less than 4% of the approximately 90 million populations in Ethiopia.¹⁹⁷ Given this inequality of access to the Internet, there is an evident anxiety that many are stranded behind the technological advancement thus the voice of the majority left unheard. It is also an obstacle for activists to educate and mobilize their fellow citizens. Moreover, with a national literacy rate of 39%,¹⁹⁸ the technological capacity of Ethiopians to access the Internet and utilize the social media in communicating, self-expressing and organizing a mass movement is minimal. Hence, the non-connectivity of the 98% Ethiopians coupled with other problems deprives many of the potential benefits of digital activism as a venue for social change.

¹⁹² See ITU, Mobile Cellular Subscriptions, <http://www.itu.int/ITU-D/ict/statistics>

¹⁹³ see 2015 CIA World Factbook and other sources available on

http://www.theodore.com/wfbcurent/Ethiopia/Ethiopia_people.html

¹⁹⁴ see http://www.economywatch.com/economic-statistics/Ethiopia/Facebook_Penetration_Rate

¹⁹⁵ World Bank, *Urbanization: Challenge for Some, Opportunity for Other?* posted on 21 May 2013, available on: <http://www.worldbank.org/en/news/feature/2013/05/21/urbanization-challenge-for-some-opportunity-for-others>, last accessed 1 October 2015, last accessed on 1 October 2015.

¹⁹⁶ The World Bank, *Economic Review*, last updated on 23 September 2015, available on: <http://www.worldbank.org/en/country/ethiopia/overview> last accessed 1 October 2015.

¹⁹⁷ Based on the May 2007 National Population and Housing Census of Ethiopia, the Central Statistic Agency of Ethiopia estimated the total population of Ethiopia, by 2015, to become 90,078,005 of which 3,273,000 are in Addis Ababa. The report also shows only 19.38% of the Ethiopian population is living in urban areas.

¹⁹⁸ Index Mundi: Ethiopia Literacy available on:

<http://www.indexmundi.com/ethiopia/literacy.html>, Last Accessed 17 September 2015.

The extremely low rate of Internet penetration is pulling back human rights activism and other developments in Ethiopia. According to the *2013 Web Index Report*, Ethiopia placed 80 out of 81 countries for Internet's contribution to development and human rights.¹⁹⁹ Hence, we are yet to see the full potential of the Internet in Ethiopia.

4.2.2 Legal Barriers

Although the Mass Media Proclamation No. 590/2008 recalls the constitutional guarantee for the promotion of free mass media by prohibiting censorship, there are so many legal barriers restricting the mass media from collecting and disseminating information particularly that of a politically sensitive nature. The Proclamation has shortcomings in protecting the media from engaging actively in sensitive issues that may discomfort the authority. Article 43(7) of the Proclamation provides that false accusation and defamation against constitutionally established legislative, executive and judicial authority will be prosecutable even if the person against whom they were committed chooses not to press charge.

Since the adoption of the Anti-Terrorism Proclamation No. 652/2009, the Ethiopian Government is accused of utilizing the law to arbitrarily arrest and prosecute oppositions, journalists and human rights activists. The UN High Commissioner for Human Rights expressed concern that the "overly broad definitions in the legislation result in criminalizing the exercise of fundamental rights." Hence, calling a peaceful demonstration can be consolidated with "encouraging terrorism" where as a critics on the Government might "likely encourage or induce terrorism"²⁰⁰ which is punishable by 10-to-20 years of imprisonment.²⁰¹

Particularly, in dealing with communications through the Internet, the 2012 Telecom Fraud Offences Proclamation No. 761/2012 extends the reach of the Anti-Terrorism Proclamation to digital communications. Article 6 of the Telecom Fraud Proclamation criminalizes using any telecom network to spread "terrorizing message connected with a crime punishable under the Anti-

¹⁹⁹ *2013 Web Index Report*, World Wide Web Foundation, November 2013

²⁰⁰ PEN International, CPJ and Freedom Now, *Joint Contribution*, *supra* note 92, at 6.

²⁰¹ Article 6 of Anti-Terrorism Proclamation No. 652/2009.

Terrorism Proclamation". However, the undefined '*terrorizing message*' lacks precision for an individual to regulate his/her conduct on the social media.²⁰²

The 2012 decisions by the Federal High Court on Award-winning journalist and blogger Eskinder Nega to 18-years imprisonment;²⁰³ and the 14-years sentence on another Award-winning columnist Reeyot Alemu,²⁰⁴ which was reduced to five years on appeal, proves the far-reaching effect of the anti-terrorism law. The two journalists and bloggers were prosecuted along others for "acts of terrorism" under the Anti-Terrorism proclamation. Eskinder was convicted for allegedly calling an "Arab Spring" in Ethiopia in his online and offline articles, an act deemed inciting terrorism. On the other hand, evidences brought against Reeyot consisted her articles on the *Ethiopia Review* website on activities of opposition groups; and intercepted emails and wiretapped telephone conversations she had about peaceful protests. Many journalists and digital activists cite those decisions have a chilling effect²⁰⁵ on their activities and have forced them to self-censor.

4.2.3 Censorship

Historically, the media in Ethiopia had not been free from strict control of the Government. Apart from political influences of authorities, strong censorship laws bar the media from sensitive human rights, political and other social issues. Throughout its history, the media remained a voice of its regimes and a tool for propaganda. It was somewhat relaxed with the coming into power of the current regime in 1991. With the introduction of privately owned publications, the issues of human rights were able to acquire little room.

²⁰² Article 19, *Ethiopia: Proclamation on Telecom Fraud Offences*, London, (August 2012): 17

²⁰³ Eskinder Nega was found guilty of, *inter alia* other charges, disseminating calls for terrorism and violence, collecting information that directly passed to Ginbot 7 and indirectly to the enemy the Eritrean Government and other terrorist organizations.

²⁰⁴ In September 2011, Reeyot Alemu and Wubishet Taye were charged with "conspiracy to commit terrorist acts and participation in a terrorist organization" under the Anti-Terrorism Proclamation.

²⁰⁵ When the Anti-Terrorism law is applied to prosecute and sanction journalists while reporting on political, human rights and social issues, or when severe sanctions are imposed on journalists and online activists, or when journalists are prohibited to no longer to exercise their profession.

The FDRE Constitution guaranteed the media the freedom from censorship in any form and the right to access to information of public interest.²⁰⁶ Prohibition of censorship has also been recognized by the Freedom of the Mass Media and Access to Information Proclamation. Despite this constitutional acknowledgment, the right lacks full practical recognition that is reflected in the presence of active censorship and a legal landscape which inhibits the ability of journalists to inquire freely.²⁰⁷ Unsurprisingly, with the increasing power of the Internet and social networks, censorship extends from the print and broadcasting media to the digital media.

The failure of governments to recognize the role played by citizen journalism in the development of human rights is the most challenging obstacle to the media freedom.²⁰⁸ There are two kinds of censorship that have been commonly brought up in relation with the digital media; online censorship and self-censorship.

Online Censorship

Online censorship is the filtering or blocking circulation of contents of an online expression put in place by governments or Internet Service Providers (ISPs). Internet censorship and limitations on online voices are an unpleasant fact around the world.²⁰⁹ Since 2006, Ethiopia engages in the widespread blocking and filtering of websites. It has now become more regular and pervasive to be the first sub-Saharan country to block websites and opposition blogs.²¹⁰ Reporters without Borders ranked Ethiopia 5th out of the 19 countries enlisted as "Enemies of the Internet" in 2014.²¹¹

Reports indicate Ethiopia is using different approaches to impose control on access to information on the Internet. One approach is *exclusion filtering* which restrict user's access by blocking

²⁰⁶ Article 29(3) FDRE Constitution

²⁰⁷ Seble Tewedebirhan, "The Role of Media in the Promotion of Human Rights in Ethiopia", (LL.M thesis, Addis Ababa University, 2011): 31.

²⁰⁸ International Federation of Journalists, *The role of Media in Promotion of Human Rights and Democratic Development in Africa*, (1999, Brussels), p17.

²⁰⁹ Idata, "This Infographic shows the Scope of Internet Censorship Around the Globe", published on 29 Mar 2015, available on <http://www.ethiopianopinion.com/this-infographic-shows-the-scope-of-internet-censorship-around-the-globe/>, last accessed 9 September, 2015.

²¹⁰ Human Rights Watch, *They know Everything*, *supra* note 17, at 53.

²¹¹ See <http://en.rsf.org/enemies-of-the-internet-2014-11-03-2014,45985.html>

selected websites listed on the 'blacklist'.²¹² Another approach is *content analysis* that controls access to information based on its content. This approach restricts user's access by analyzing its content and blocks the site that contains forbidden keywords, graphics or other specific features.

Although, many governments²¹³ worldwide implement sophisticated systems for blocking and filtering Internet contents mainly for legitimate purposes, the Ethiopian Government is accused of using recently developed expensive technological tools to silence criticism. The sort of websites and blogs that are blocked is very broad and ranges from websites of Ethiopian political parties to religious and human rights blogs.²¹⁴ Reasons behind the blocking and filtering of the websites are national security, moral standard and well-being of the society. However, the Ethiopian Government has been accused of invoking national security to clamp down on core freedoms and human rights.²¹⁵

In 2013, Ethiopia adopted the INSA Re-Establishment Proclamation No. 808/2013 to ensure the security of critical infrastructures and industries of the country and to protect the cyberspace so as not to be a national security threat. The Proclamation empowered INSA to monitor the social media for possible psychological attack on citizens'.²¹⁶ This allows the Government to scrutinize

²¹² Ronald J Deilbert and Nart Villeneuve, "Firewalls and Power: An Overview of Global State Censorship of the Internet" in Human Rights in the Digital Age, (London: Glasshouse Press, 2005): 112.

²¹³ Although Western nations generally allow their citizens to freely browse social networks and majority of other sites, many of them experienced some form of online censorship in recent times. Both the United Kingdom and United States were listed as "Enemies of the Internet" by RWB in 2014. The UK was even dubbed the "world champion of surveillance". See also <http://en.rsf.org/enemies-of-the-internet-2014-11-03-2014.45985.html>

²¹⁴ See Zelalem Kibret, "A List of Different Websites, that is NOT 'ACCESSIBLE' in Ethiopia," (December 2012). The list incorporates more that 120 websites that were not accessible until December 2012. According to a study conducted by the University of Toronto's Citizen Lab and Human Rights Watch, 171 different websites were blocked on the Ethio Telecom network in July and August 213. Although majority of the sites are still 'NOT ACCESSIBLE' until September 2015, the researcher were able to access few of them.

²¹⁵ Human Rights Watch, "Ethiopia: Hacking Team Lax on Evidence of Abuse," (New York 13 August 2015), available on <https://oromianeconomist.wordpress.com/tag/ethiopia-and-internet-censorship>, last accessed on: 28 August 2015.

²¹⁶ See Article 2 of Proclamation 808/2013.

Internet users and their every activity online. The surveillance power of the Government results in the arrest and mistreatment of human rights defenders, journalists and *netizens*.²¹⁷

*Self-Censorship*²¹⁸

Not all of the methods of controlling contents of the Internet involve sophisticated software. In some countries, regulatory measures create a climate of 'self-censorship' among media practitioners.²¹⁹ Self-censorship is widespread in Ethiopian media practices in the private and State-owned media, in new or old media, during times of tension and peace.²²⁰ Reports suggested that private media are often reported to have put constraints on themselves for fear of legal or political reactions from the Government. While self-censorship had been a matter of state-owned and private print and broadcasting media, it tends to be an issue with digital activists as well.

An online political activist, who asked to remain anonymous, claims, "Fear of prosecution under the Anti-Terrorism law is a major impediment to speak out my mind." He further asserted that the fear factor within the online society is one blockage to witness the full power of social media in Ethiopia. Another online activist adds, "I feel like somebody is watching my every click. I feel insecure while accessing the Internet and posting on my *Facebook* wall. I have no option but to restrain myself."

Although the Anti-Terrorism Proclamation has been used mostly against print media journalists, online activists are increasingly becoming subject to the law. Meanwhile, the arrest and prosecution of journalists and online activists who have published contents deemed "a moral support to terrorist" or "a conspiracy against the Constitution and Constitutional order" has a

²¹⁷ Reporters without Borders, "Enemies of the Internet- Ethiopia: full online powers", posted on 6 March 2014, available on <http://12mars.rsf.org/2014-en/2014/03/06/ethiopia-full-online-powers/>, last accessed 19 September 2015.

²¹⁸ *Self-censorship*, in a journalistic work, could be caused by selection and de-selection while reporting news. However, for the purpose of this discussion, the term '*Self-Censorship*' focuses on the intentional exclusion of information by an online activist because of fear of threats by government authorities.

²¹⁹ Deilbert and Villeneuve, *Firewalls and Power*, *supra* note 212, at 115.

²²⁰ Terje S. Skjerdal, "Justifying Self-censorship: A Perspective from Ethiopia", *Westminster Papers in Communication and Culture*, 7:2, (2010): 99.

significant effect on free speech in Ethiopia. In the aftermath of the arrest of Eskinder Nega, Zone 9 bloggers toned down their critics on the Government and consequently remained silent for several months.²²¹ Many complain that the arrest of journalists for several reasons, the seriousness of the punishments for the violation of both the Mass Media, and Telecom Fraud Offence Proclamations, and the discretionary Anti-Terrorism Proclamation No. 652/2009 are the main reasons for the self-censorship.²²² Pressuring a media to self-censorship is one form of censorship under the FDRE Constitution that prohibits 'any form of censorship'.²²³

4.2.4 Surveillance²²⁴ and Privacy

As our contemporary means of communication shifts towards the Internet and other telecommunication technologies, there is a desire from States to exercise control and obtain access to communication of their citizens.²²⁵ The stated reason for this access and control are to prevent or investigate crimes, and to protect national security.²²⁶ Consequently, police and intelligence services are as expected concerned about preventing or investigating crimes committed *on* or *via* the Internet by gathering information from citizens communications through the medium.

The use of Internet surveillance almost unavoidably carries with it the risk of infringing on individual rights to privacy and freedom of expression on the cyber-sphere.²²⁷ Many Internet

²²¹ Soliyana Shimelis, Interview with Al Jazeera, available on:

https://www.google.com.et/?gws_rd=ssl#q=interview+with+soliana+on+resuming+blogging

²²² Seble Tewoldebirhan, "Media Self-Censorship: Has it Gone Too Far in Ethiopia?" 28 August 2011, available at: <http://www.ezega.com/News/NewsDetails.aspx?NewsID=3033> last accessed on 13 July 2015. (.)

²²³ However, some strongly argue that the Government should not take all the blame for this. The media seems to have drawn a line by itself and created a danger zone and refuse to cover many critical matters. (*see* also Seble, IMedia Self-Censorship).

²²⁴ Surveillance is any kind of information gathering that exists in all society. It could be presented as a positive and negative phenomenon. A positive aspect of surveillance is in relation with fighting crime by collecting online information or even alerting the police while crime via the Internet is on progress. A negative concept of surveillance is linked to information gathering for the purpose of domination, violence and coercion.

²²⁵ Joss Wright, "Necessary and Inherent Limits to Internet Surveillance", *Internet Policy Review: Journal on Internet Regulation* 2:3, (UK: Oxford Internet Institute, 2013)

²²⁶ See Information Network Security Agency Re-establishment Proclamation No. 808/2013

²²⁷ Wright, *Necessary and Inherent*, *supra* note 225.

surveillance powers currently use two approaches of Internet surveillance: surveillance of communications of targeted individuals; and surveillance of large-scale population without suspicion.²²⁸ While it is helpful to gain access to digital communications of targeted individuals on well-founded grounds, using the same technology on the large portion of Internet users without transparency and limitation undermines the right to privacy of *netizens*. Hence, human rights organizations too often criticize the Ethiopian Government for its random use of the technology to monitor and control communications of its citizens.

*Online Surveillance*²²⁹

Speed of communication via the Internet and its range of purpose have undeniably affected the way Ethiopians interact and express themselves. However, it also poses a growing number of challenges to national security and well-being of the society. Critical national infrastructures are vulnerable to cyber-attacks and the global economy is exposed to the threats of cyber-crime.²³⁰ Recognizing the forthcoming of the danger into the nation, the Ethiopia Government proclaimed a law to re-establish the INSA in 2013.²³¹

Proclamation No. 808/2013 is for the most part established to address the concerns of national security. The Agency is mandated to protect the country's computer-based critical infrastructures including telecom infrastructures, electromagnetic systems, industrial control systems and military infrastructures from electronic attacks. Furthermore, it also addresses the rights of the citizens. For that matter, Article 6(8) of the Proclamation empowers the Agency to conduct digital surveillance on computers and infrastructures that are "purported to be attacked" or "sources of attack" without

²²⁸ Ibid.

²²⁹ Communication surveillance is the monitoring, interception, collection, preservation and retention of information that has been communicated, relayed or generated over communications network to a group of recipients by a third party. (see Privacy International, available on <https://www.privacyinternational.org/?q=node/10>)

²³⁰ Andrew Liaropoulos, "Cyber-Security: A Human-Centric Approach" in Proceedings of the 14th European Conference on Cyber Warfare and Security, ed. Nasser Abouzakhar, (UK: Academic Conferences and Publishing International Limited Reading, 2015): 189

²³¹ INSA Re-establishment Proclamation No. 808/2013.

court warrant.²³² Hence, the Agency is empowered to monitor every computer, networks, the Internet, broadcasting media and social media for possible attack on the State and psychological attack on citizens.²³³

This excessive power of the Agency brought strong criticism on the Government from citizens, human rights organizations and foreign powers. A HRW report says that the Ethiopian Government is using imported technology to spy on the phones and computers of its perceived opponents.²³⁴ The report accuses the Government of trying to silence dissent, using software and kit sold by European and Chinese companies.

Ethiopia is one of the primary clients of Gamma Group and was the only African State by 2011.²³⁵ By then Ethiopia bought an intrusion and surveillance software called *FinFisher* from European-based organization,²³⁶ Gamma Group International.²³⁷ *FinFisher* spyware is incredibly persistent and is available exclusively to governments and police agencies. The spyware is capable of extracting data from networked computers or smart-phones and deliver to surveillance operators.²³⁸ It therefore left every communication via the Internet in Ethiopia under the total surveillance of INSA. The surveillance by the Government has extended to Ethiopians living abroad. Ethiopians living in the USA and UK have accused the Government of planting spy

²³² Article 6(8), Proclamation No. 808/2013

²³³ Reporters without Borders, *Enemies of the Internet*, *supra* note 217.

²³⁴ See Human Rights Watch, "They Know Everything We Do: Telecom and Internet Surveillance in Ethiopia"

²³⁵ Jacob Kastrenakes, "Surveillance software FinSpy discovered in 25 Countries", *Verge* available on <http://www.theverge.com/2013/3/13/4098592/spying-software-finspy-finfisher-25-countries-human-rights-concerns>, last accessed 26 August 2015.

²³⁶ *Ibid.*

²³⁷ *Gamma Group* is an international manufacturer of surveillance & monitoring systems with technical and sales offices in Europe, Asia, the Middle East and Africa. It provides advanced technical surveillance, monitoring solutions and advanced government training as well as international consultancy to National and State Intelligence Departments and Law Enforcement Agencies. (see <https://www.gammagroup.com/>)

²³⁸ See https://www.finfisher.com/FinFisher/products_and_services.html

software on their computers.²³⁹ The Government denies claims of overseas surveillance and cracking down on opposition activists and journalists.

The practice of INSA undermines the existing legal framework protecting the right to freedom of expression and the right to privacy in Ethiopia. However, Halefom Hailu²⁴⁰ agrees otherwise. He claims, "Internet users commit many crimes other than the obvious child grooming and pornography. Identity theft and cyber stalking are fast increasing in Ethiopia."²⁴¹ He argued that the Ethiopian Government cannot underestimate the dangers thus surveying the Net and filtering websites containing selected key words is in the best interest of the people.

Online Privacy

The development of the Internet and social media has presented both challenges and opportunities to privacy claims of individuals, family and the community at large.²⁴² With ever-increasing capacity of digital storage and retrieval, individuals and organizations are increasingly losing control of their private and intimate information.²⁴³

Privacy is crucial for the physical and moral well-being of an individual. The right to privacy possesses a constitutional protection in Ethiopia.²⁴⁴ Article 26(2) of the FDRE Constitution guarantees everyone the right to inviolability of his notes and correspondence including

²³⁹ BBC, "Ethiopia uses foreign kit to spy on opponents - HRW", *BBC*, posted on 25 March 2014, available at: <http://www.bbc.com/news/world-africa-26730437>, last accessed on 28 July 2015

²⁴⁰ Halefom Hailu Abraha is a Cyber Law and Policy Researcher and Deputy Director of Legal and Policy Affairs at INSA

²⁴¹ Interview with Ato Halefom Hailu, Conducted on June 17, 2015. Addis Ababa.

²⁴² Kinfe-Michael Yilma and Alebachew Birhanu, "Safeguards of Right to Privacy in Ethiopia: A Critique of Laws and Practices", *Journal of Ethiopian Law* 26:1, (2013): 94

²⁴³ *Ibid.*,

²⁴⁴ Article 26 states that (1) Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession. (2) Everyone has the right to inviolability of his notes and corresponding including postal letters, and communications made by means of telephone, telecommunications and electronic devices, (3) Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purposes shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others.

communication made by telecommunications and electronic devices. The illustrative nature of the article shows the right to privacy is broad enough to embrace other means of communications. The provision also requires public officials to refrain from violating the right to privacy of individuals except in compelling circumstances such as national security, public morality and the rights and freedoms of others. However, striking the balance between private freedom and public harm has not been an easy one to find.²⁴⁵

We have observed that unrestricted free expression poses certain problems for our community and a challenge for our legal system. In our 'social media life', the line between our private lives and our public actions becomes blurred.²⁴⁶ Hence, it becomes more difficult to find a balance between free expression and the right to privacy in the online sphere. Misuses and abuses of freedom of expression are higher in the social media than the traditional media. For example, in the case of Bethelhem Abera (Betty)²⁴⁷, the social media reacted in mass to defy the individual for her nude sex actions in the eighth season of Big Brother Africa (BBA) Reality TV show. Some responses overstep the free expression limits placed by the law. Comments and insults thrown against Betty via various social media were apparently ignorant of interests that Betty has against unfettered and unbridled media attention.²⁴⁸ In many cases, few Ethiopians continuously post many hate speeches, videos and images on the social media that violates personal rights of individuals in many ways.

²⁴⁵ Valerie Steeves, "Privacy, Free Speech and Community: Applying Human Rights Law to Cyberspace" in Human Rights and the Internet. (GB: Macmillan Press LTD, 2000): 188.

²⁴⁶ Ibid.,

²⁴⁷ Bethelhem Abera (Betty) is the Ethiopian who took part in the eighth season of Big Brother Africa (BBA) reality TV show. A eight-minute video of the reality TV show Betty having sex with a Sierra Leone housemate. The video has gone viral and creates a controversy and discussion on the social media. Two *Facebook* pages named "Betty did not Represent Ethiopia on Big Brother Africa" and "No Vote for Betty" were created to go up against her action. Most comments on the social media referred her actions as "pornography" and "prostitution", while others defend Betty demanding her right to privacy.

²⁴⁸ Kinfemichael Yilma, "Where Does the Right to Privacy End? Ethiopia's Betty incident triggers questions of privacy and limits of free speech", *Sodere*, last modified 8 July, 2013, available at: <http://sodere.com/profiles/blogs/where-does-the-right-to-privacy-end-ethiopia-s-betty-incident-tri>, last accessed on 2 September 2015

4.3 Dangers of Online Speech

The ability of the Internet to share information and coordinate action can also be used for destructive ends. Just as some digital activists used the Internet to fight injustice and defend human rights, others use the same infrastructure to orchestrate attacks on individuals, institutions and even States.²⁴⁹ As political parties use the social media to recruit their members and supporters, criminal organizations and terrorist groups do the same to take their share. The cyberspace is far from free of cyber criminals and sexual predators too. Hence, social media is not just a highly effective tool to promotion of human rights, but also a dangerous tool for promoting hate and crime ideology.

Some individuals use the social media for their criminal objectives such as harassment, making a threat, sexually abusing a minor and plot an attack. All of these offences rely on the transmittal of information in some form and may be committed without social media, but social media offers new, easy and powerful avenue for these offences, sometimes in new and more dangerous ways.²⁵⁰ In diverse communities like ours, this misuse of the social media has a potential to spark intolerance and hate among ethnic groups of the State. Few extremists turn their face to the 'less-regulated' social media to call for ethnic cleansing when they failed to find a place on other forms of media.²⁵¹

Hence, the Ethiopian Government also considers the right of its Citizens'. For instance, Telecom Fraud Offence Proclamation No. 761/2012 criminalizes the use of digital media to disseminate any terrorizing or obscene message.²⁵² On the other hand, the INSA Re-establishment Proclamation No. 808/2013 criminalizes computer-based psychological attack on citizens perpetrated by

²⁴⁹ Steven Murdoch, "Destructive Activism: The Double-Edge Sword of Digital Tactics" in Digital Activism Decoded: The New Mechanics of Change. (New York: International Debate Education Association, 2010): 139.

²⁵⁰ Catherine D. Marcum and George E. Higgins, Social Networking as a Criminal Enterprise, (Florida: CRC Press, 2014): p. 204

²⁵¹ Social media groups like *Nitro Ethiopians* have been used to create ethnic based tensions in the cyber. Occasionally, it calls to "clean Ethiopia from parasite Tigre". The group targeted other ethnic groups in different occasions and calls to "make justice" on one another.

²⁵² Article 6 of the Telecom Fraud Offences Proclamation No. 761/2012 states such offences shall be punishable with rigorous imprisonment from 3 to 8 years and with fine from Birr 30,000 to Birr 80,000.

different techniques.²⁵³ Thus, using social media with the intention to cause emotional distress to someone is subject to criminal penalties.

Social media eases to connect with and communicate with like-minded individuals, which may form a foundation for a conspiracy to commit a crime.²⁵⁴ There are a growing number of anti-Government sites and social media groups trying to organize a movement to resist the Ethiopian Government.²⁵⁵ The social media proves very useful because online forums offer an easy and inexpensive means to marshal attacks of any type on many parts of the world.²⁵⁶ In July 2015, US FBI reports that the two most feared terrorist groups in the world, *ISIS* and *Al-Qaeda*, are using the social media to reach to their recruits across the globe.²⁵⁷ Although there is no indication that connects Ethiopians with this claim, the capacity of *Facebook* and *Twitter* to distribute disruptive information that undermines citizens' rights and risks national security makes them a potentially dangerous tool in Ethiopia. Furthermore, some uses the social networking sites to transmit or display obscene and pornographic materials. Child sexual exploitations are also at the hazardous level in Ethiopia.²⁵⁸

Hate speech is also another viral practice in Ethiopia fast increasing on the social media. Over the last several years, we have seen extremists establishing themselves on the net and sending out their hate on different forms through the social media. Although individuals posting hate propaganda represent only insignificant proportion of the total Internet population, their voice is

²⁵³ See Article 2(2) of Proclamation No. 808/2013

²⁵⁴ Marcum and Higgins, *Social Networking as a Criminal Enterprise*, *supra* note 250, at 207.

²⁵⁵ In 2011 and afterwards, *Facebook* was flooded with *BEKA*, a slogan that calls for the end of the then Prime Minister Meles Zenawi and its regime. Hundreds of *Facebook* users had changed their profile pictures to posters that have the Amharic word "Beka" meaning, "Enough". Still, the slogan has been using in different designs to oppose the government.

²⁵⁶ Murdoch, *Destructive Activism*, *supra* note 245, at 142

²⁵⁷ According to the FBI, *ISIS* recruiters connect with teenagers and young people using social media and built their relationships slowly through online communications. They use the brainwashing technique by sending messages and reading materials to indoctrinating them with jihadist propaganda. (See also Pamela Engel, Here's the Manual that Al Qaeda and now *ISIS* use to brainwash People Online, posted on 2 July 2015, available at: <http://www.businessinsider.com/the-manual-al-qaeda-and-now-isis-use-to-brainwash-people-online-2015-7>, Last Accessed on 5 October 2015.

²⁵⁸ Interview with Ato Halefom Hailu.

disproportionate to their numbers.²⁵⁹ The doubt of the Ethiopian Government on the social media is born out of these facts and citizens' misuse or abuse of the Internet. As Internet-based activities penetrate most aspects of our lives, causing harm to oneself or others with misuse and abuse of the technology become greater in size. These facts necessitate the need of a monitoring and controlling mechanism for online expressions.²⁶⁰

Although the power of social media pages and personal blogs allow individuals to own their own media outlet, it is also the disadvantage of the media.²⁶¹ As most are not professional journalists and/or have little to lose, they lack objectivity and accountability on their online expressions.²⁶² Posting on social media or personal blog may create a number of legal issues including moral damage, defamation, copy right and national security. Hence, there is no question illegal or immoral online expression of citizens should be subject to regulation. However, the complication lies on setting a borderline on freedom of expression with respect to crime-intent speech.

Some question the ethical value of various expressions on the digital media. Media Communication Expert Netsanet Tesfaye claims, although the media becomes a forum for literature, negative materials and insulting remarks dominate the social media.²⁶³ He continued, "Individual's right to privacy is most violated in the social media."²⁶⁴ Cultural conquest is also another concern for Netsanet, "the social media introduces new challenge to the very existence of Ethiopian values and norms".²⁶⁵ According to Director General Teklebirhan Woldearegay, INSA have come across many revenge-based pornographic content leak claims from Ethiopians

²⁵⁹ Karen Mock, "Hate on the Internet" in Human Rights and the Internet, (UK: MacMillan Press LTD, 2000): 143.

²⁶⁰ Interview with Ato Halefom Hailu.

²⁶¹ Murdoch, *Destructive Activism*, *supra* note 249, at 144.

²⁶² Interview with Ato Berhanu Wondemagegne, Federal Prosecutor at Ministry of Justice. Conducted on October 1, 2015, Addis Ababa. (Prosecutor Berhanu is a well-known prosecutor from many of the famous terrorism charges brought against journalists and opposition political leaders, including the recent case of Zone 9 bloggers.)

²⁶³ EBC Documentary, "The Social Media Boom in Ethiopia", *Borkena* posted on 5 January 2014 <http://www.borkena.com/2015/01/05/documentary-amharic-social-media-boom-ethiopia/>, last accessed 25 September 2015.

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

online.²⁶⁶ Furthermore, there are many criminal and terrorist groups on the social media perpetrating psychological war against the public.²⁶⁷ Teklebirhan stresses that "unless the user is fully aware of what he is doing with it, social media is a dangerous place to play with."²⁶⁸

The use of the social media to organize a public demonstration is also another concern for the Government. Prosecutor Berhanu Wondemagegne stresses that calling for an Arab Spring-style uprising in Ethiopia is not by any means a lawful speech. He also accuses some online activists of damaging the image of the State and providing defamatory information through their online activities. "Their activities should be for the benefit of the country but not for foreign destructive forces,"²⁶⁹ he said. However, at the same time, the Government is also accused of extensively engaging in hate speech against the opposition and independent media practitioners.²⁷⁰

4. 4 Is Digital Activism a Contemporary Tool for Change?

The development of the Internet provides an expansive platform in the social media to breathe life into civil and political engagement for the Ethiopian community. However, the question whether digital activism can serve as a tool for social and political transformation in the country given the many challenges remains open. There is a concern over its competence given the pattern of unequal technological access, poor telecom infrastructure and the alleged intervention of the Government.

Optimists anticipate that social media and digital activism has the potential to allow Ethiopians become more knowledgeable about the human rights situations and more active in mobilizing their community. Some even assert that the influence of virtual social groups and their activities would suddenly enforce a social and/or political change in the country.

²⁶⁶ Teklebirhan Woldearegay (Major General), Director General of INSA, interview by EBC, January 2014.

²⁶⁷ Ibid.

²⁶⁸ EBC Documentary, *The Social Media Boom in Ethiopia*, *supra* note 263.

²⁶⁹ Interview with Prosecutor Berhanu Wondemagegn.

²⁷⁰ Michael Herz and Peter Molnar, *The Content and Context of Hate Speech: Rethinking Regulation and Responses*. (UK: Cambridge University Press, 2012): 371.

On the other hand, views that are more skeptical suggest that social media has been used primarily for the reinforcement of the already active and well-connected actors through the traditional media.²⁷¹ They believe that it is an exaggerated hope that digital activism would bring a real change in the lives of ordinary Ethiopians. This argument seems more concrete considering the low penetration rate of Internet in Ethiopia. They argue that the Internet empowers those with the resources and motivation to take advantage of them, leaving the disengaged further behind.²⁷²

The ability of the social media to bring a social change in Ethiopia is open to doubt among scholars and online activists. Tsegaye R. Ararssa²⁷³ questions the value of *Facebook* and *Twitter* as a forum for effective social or political change. He argued that 'digital activism is not close to being a tool for change even in countries where freedom of expression is better protected.'²⁷⁴ He even questioned the democratic capacity of the social media.²⁷⁵ Many scholars and activists share his argument. Malcolm Gladwell says social media cannot have the same impact on real-life change.²⁷⁶ He even dismissed social media activism as "slacktivism",²⁷⁷ activities that are low-key and easy to participate in, increasing the 'feel good' factor for participation.²⁷⁸

²⁷¹ Norris, *Digital Divide*, *supra* note 184.

²⁷² *Ibid.*

²⁷³ Tsegaye Regassa Ararssa is a former Assistant Professor of Law at the School of Law, Addis Ababa University and at the Institute of Federal Studies, Institute of Peace and Security Studies, and Institute of Human Rights of Addis Ababa University. Currently, currently he is active participant on the online media.

²⁷⁴ Tsegaye Regassa, (Online Activist and Professor of Law) in online discussion with the Researcher, 2 October 2015.

²⁷⁵ *Ibid.*

²⁷⁶ 'Is digital activism an effective medium for change?' *Global Development: Poverty matters blog* available on <http://www.theguardian.com/global-development/poverty-matters/2010/oct/06/digital-activism-facebook-twitter-gladwell>, published on 6 October 2010, last accessed on 29 September 2015.

²⁷⁷ In his article "Small Change", Gladwell argued that "Facebook activism succeeds not by motivating people to make a real sacrifice but by motivating them to do the things that people do when they are not motivated enough to make a real sacrifice."

²⁷⁸ Malcolm Gladwell, "Small change: Why the revolution will not be tweeted," *New Yorker* 4 October 2010, available at: http://www.newyorker.com/reporting/2010/10/04/101004fa_fact_gladwell, last accessed 25 September 2015

Endalkachew Chala also questions the effectiveness of digital activism in Ethiopia. He claims, "If there is any upheaval in Ethiopia, the social network and social media culture won't manage to evade detection by INSA in their infancy."²⁷⁹ They will get caught and crushed through blocking and filtering when they start to bud. Offline measures will not be ruled out as well.²⁸⁰ Ethnic-based division between Ethiopian bloggers is also a concern for Endalkachew. However, he remained confident that social media would increase the possibility of coordinated actions in the future.

Despite the exaggerated hopes of some optimists, the fact is on the ground, as evident in many challenges that impaired online activism from eradicating the deep-rooted human rights issues in Ethiopia. Many believe that although social media may not have the same influence as 'genuine' on-ground relationships, it is currently the best way to reach to the general masses given the repression on the traditional form of media by the Government. A journalist working on the State Television media, who asked to remain anonymous, argues, "human rights issues are sensitive by nature to be reported by government-owned media. Thus, social media is an alternative news source and a free forum for open discussion."²⁸¹ He asserted that digital activists are valuable to fill the void left by lack of institutionalized free media available for public discussion.

²⁷⁹ Endalkachew Chala, "Why Ethiopia will not be swept by the current Maghreb initiated social media driven revolution: A pragmatic analysis", *Endalk's Blog*, posted on 30 January 2011, <https://endalk.wordpress.com/2011/01/30/why-ethiopia-will-not-be-swept-by-the-current-maghreb-initiated-social-media-driven-revolution-a-pragmatic-analysis/>

²⁸⁰ Ibid.,

²⁸¹ Interview with Senior News Editor at Ethiopia Broadcasting Corporate (EBC) (anonymous), conducted on September 27, 2015.

Chapter Five

Summary, Conclusions and Recommendations

Summary

The overriding purpose of this study was to examine the role of digital activists on the development of human rights in Ethiopia and to assess the role digital activists are currently playing. The study also aimed at assessing freedom of expression on the online media in Ethiopia. To accomplish these goals, it became necessary to examine many books, scholarly articles, dissertations and reports. Additionally, interviews and online discussions were conducted with legal experts, online activists, media practitioners and government officials in order to study the facts from different perspectives. Literatures reviewed suggested that digital activism is a recent phenomenon and activism were conducted through the offline medium. Scholars also argued that the print and broadcast media were challenged by consistent suppressions by the Government and failed to embrace diverse and dissent voices. Standing on this foundation, the study evaluates freedom of expression on the Internet, challenges to online speech and the impact of the social media on citizens' political participation and human rights activism.

The study also examined the theoretical and legal foundations of freedom of expression in Ethiopia. The theoretical framework asserted that freedom of expression encompasses not only the right to express oneself but also the right to seek information regardless of frontiers. Main arguments - the promotion of tolerance, individual autonomy and search for truth were discussed to justify the protection of the freedom. The right has a long-rooted constitutional protection in Ethiopia. In this regard, the FDRE Constitution provides a constitutional protection for the right and it recognizes the freedom of the press and the mass media by ensuring the right to access to information and by prohibiting censorship.

Subsidiary laws such the Mass Media Proclamation No. 590/2008, the Broadcasting Service Proclamation No. 533/2007, the Telecom Fraud Offences Proclamation No. 761/2012, the Anti-Terrorism Proclamation No. 652/2009, the Criminal Code of Ethiopia and the INSA Re-establishment Proclamation No. 808/2013 were discussed to assess the legal interpretation and

practical enjoyment of the right. These instruments generally set "national security", "public order" and "public moral" as the legitimate grounds to confine the full implementation of the right. Hence, in time of conflict between such interests of the society and free expression of an individual, the right of an individual might be overridden to ensure the ultimate safety of the society.

With the development of the Internet, citizens flock to Internet-based user-friendly applications i.e. social media. The participatory competence of the medium provides individuals a means to express themselves to the world and establish an instant two-way communication regardless of geographical limitation. It introduces the conception of citizen journalism and digital activism in Ethiopia. Political and human rights discussions are fueled with the emergence of *Facebook* and *Twitter*.

Conversely, it also brings a challenge, as it is an efficient medium to disseminate abusive and hateful materials. Free expressions causing nuisance and undermining national security and the well-being of the society also found free ways to be propagated. Some online speeches enjoying free ride in other cultures also found to be immoral, illegal or abusive in a more restrictive culture of Ethiopia. Hence, it is important to strike a balance between free online speech and these competing interests. To such effect, the Ethiopian Government enacted laws that directly or indirectly govern online speeches. For instance, the Telecom Fraud Offence Proclamation No. 761/2012 tries to address free expression on the Internet. Article 6 of the Proclamation criminalize the use of telecom networks to disseminate any "terrorizing message" punishable under the Anti-Terrorism Proclamation No. 652/2009 or "obscene message" punishable under the Criminal Code. However, the Telecom Fraud Offence Proclamation No. 761/2012 left a gray area by leaving the phrase "terrorizing message" undefined. Furthermore, the expression "encouragement of terrorism" under Article 6 of the Anti-Terrorism Proclamation No. 652/2009 is found to be vague to interpret.

The study also assessed the prospect and challenges of social media to facilitate free speech in Ethiopia. The study found out that the potentials of the social media to empower citizens and facilitate social or political change is challenged by various impediments. The serious challenge is derived from the extremely poor telecom infrastructure in the country which provides an Internet service for only 2% of Ethiopians. To make matters even worse, the INSA has been using

sophisticated software to filter and block hundreds of sites critical of human rights and freedom of expression standards in the country. In addition to censoring contents of the Internet, the Ethiopian Government encourages self-censorship by deterring prominent digital activists either by imposing terrorism charges. This approach of the Government presents fear among *netizens* and significantly limits dissent voices.

The study also found out that INSA is conducting unlimited mass surveillance on telecom users in the interest of 'national security'. INSA has long been using aggressive software *FinFisher* to conduct Internet surveillance on targeted individuals and also a mass surveillance on Ethiopians with no primary target. The fact that the government-owned Ethio-telecom is the only Internet Service Provider (ISP) in Ethiopia makes *netizens* vulnerable to unrestricted Internet surveillance and every bit of their personal information under their total custody. On the other hand, as many digital activists are using the social media for constructive purposes, a small number of *netizens* use the media for exactly opposite purposes. The social media also serves as a forum for hate speech and a recruiting field for criminal and terrorist organizations.

The study also examined the potential of the social media and digital activists to bring about an instant social or political change in Ethiopia. The study explores conflicting arguments on the promise of the social media to facilitate public movement and possibly bring social change. Skeptical views suggest that poor telecom infrastructure, technological illiteracy and Government's intervention are challenging the prospective of the media. They believe digital activism is in its infancy to make a real impact on human rights development in Ethiopia and deliver democratization in the country. On the other hand, optimists argue that the social media is on the right track to empower and suddenly mobilize Ethiopians to enforce social and/or political change in the country.

Conclusion

Generally, the process of engaging ordinary people in actual movement is a huge contribution to human freedom. The protection and promotion of human rights need a medium, which is participatory, economically inclusive and ethically well-established. Hence, the emergence of social media and blogosphere is found to be priceless for free flow of information and citizens'

political participation. It paves the way to establish a grassroots movement for the development of human rights and citizens' political participation in Ethiopia. It made it easy for Ethiopians to publish news of hidden human rights abuses or to discourse dissent political opinion. We can also find dissent voices only on *Facebook* and *Twitter* walls.

The researcher argues that, although the social media is preserved for the technological elite, the democratization of the elite can trigger wider social movements. *#FreeZone9Bloggers* evidenced that the success of social media campaigns in Ethiopia are beyond the number of online citizens. Hence, the researcher is ultimately confident on the social media's transformational potential, mainly because it allows previously segregated groups such as the youth and the Diaspora to come into contact with one another online and stand for a common cause.

While it would be ignorant to undermine the unpleasant features that come up with the social media, the researcher believes that the Government exaggerates security threats and extends the notion of 'national security' to undermine freedom of expression and put a limit on online speech. The researcher believes that the dearth of the Anti-Terrorism Proclamations No. 652/2009 and the Telecom Fraud Offence Proclamation No. 761/2012 to draw a line that clearly demarcate "terrorizing message" or "statement encouraging terrorism" from legitimate expression significantly erodes the foundations of free expression in Ethiopia. Consequently, the gray areas are enabling the Government to invoke the Anti-Terrorism law in scrutinizing free expression and silence dissent voices. The researcher believes that criminalization of online expression should be restricted to expressions of intentional incitement and when there is a direct interrelation between the expression and the likelihood or occurrence of violence.

The monopolistic control of the telecom service by the Government-owned Ethio-Telecom seriously hampers Internet penetration rate and left every bit of *netizens'* information under the unlawful control of the Ethiopian Government. The wide range online surveillance of Internet users, blocking and filtering of Internet contents by INSA critically erodes the right to privacy and the right to access to information of citizens. It also violates the right to freedom of expression. Hence, it is the duty and responsibility of the Ethiopian Government to avail a safer and better quality telecom service to its citizens. It is in the belief of the researcher that privatizing the Ethio-Telecom would relieve the unlawful and unlimited control of the Government.

In spite of the few numbers of online Ethiopians, social media and digital activism has a strong potential to facilitate social change.

Recommendations

In light of the study concluded, the researcher puts forward the following recommendations:

1. Recognizing their serious impact on freedom of expression and citizens' right of access to information, the Ethiopian Government should end blocking of sites and filtering of Internet contents. Limitations on online expression must be strictly based on the three-part test recognized under the international law. i.e. i) The restriction must be provided by law; ii) the restriction must aim to protect a legitimate interest such as respect for the rights and reputations of others, national security, public order, public health and moral; and iii) The limitation must be to the fullest degree necessary.
2. The Ethiopian Government should amend the Anti-Terrorism Proclamation No. 652/2009; the Telecom Fraud Offence Proclamation No. 761/2012; and the Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 to ensure precise and unambiguous definitions of the acts covered by the Proclamations.
3. The Ethiopian Government should set legal safeguards to limit the extensive power of the Information Network Security Agency (INSA) in conducting unwarranted Internet surveillance on citizens. In investigating criminal activities, Internet surveillance should only be conducted with court warrant.
4. Unlimited access to individuals' personal information could be problematic as it opens a way for potential abuse or misuse by bodies that have access to it. Hence, mechanisms and policies of Internet surveillance should be subject to strict and legally enforceable standards of transparency and accountability.

5. Criminalization of online expression should be restricted to expressions of intentional incitement to initiate violence or commit terrorist acts and when there is a direct interrelation between the expression and the likelihood or occurrence of violence.

6. Recognizing the low level of penetration of the Internet cannot be improved without the introduction of competition on the telecom industry, the Ethiopian Government should unlock the telecom industry for the private sector.

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