



College of Law and Governance studies

Title of the research

**Freedom of Expression and Prior Restraining factors in Ethiopia:
Focus on Printing Media.**

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Master of Laws (LLM) (Public Law and Constitutional Law Stream)**

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Approval sheet

This is to certify that the thesis prepared by Melkamu Ogo Negerasha, entitled: “FOE vs. Prior Restraints in Ethiopia: Special Focus on Printing Media.” and submitted in partial fulfillment of the requirements for the degree of Masters of Law (LLM) (Public law and Constitutional Law Stream) complies with the regulations of the University and meets the accepted standards with respect to originality and quality.

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Acronyms

FDRE-----	Federal Democratic Republic of Ethiopia
HOF-----	House of Federation
Cri.C-----	Criminal Code of Ethiopia, 2004
HPR-----	House of Peoples Representatives
EBA-----	Ethiopian broadcasting authority
OSCE-----	The Organization for Security and Co-operation in Europe
OAS-----	Organization of American States
UN -----	United Nation
<i>ACHPR</i> -----	African Charter on Human and People's Rights
<i>ECHR</i> -----	European Court of Human Rights
EUCHR-----	European Union Convention for the Protection of Human Rights and Fundamental Freedoms
IACHR-----	Inter-American Court of Human Rights
IACHR-----	Inter-American Commission of Human Rights
UDHR-----	The Universal Declaration on Human Rights
ICCPR-----	International Covenant on Civil and Political Rights
PCOP-----	Private Company/ies Operating Periodicals
BSPE-----	Berahnina Selam Printing Enterprise
PP-----	Public Prosecutor
FOE-----	Freedom of Expression
HPR-----	House of Peoples Representatives.
EPA-----	Ethiopian Press Agencies
PPI-----	Private Printing Enterprises
PDRE-----	People's Democratic Republic of Ethiopia
IGO-----	Inter Governmental Organizations
NGO-----	None Governmental Organizations

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Abstract

Since the adoption of UDHR, recognizing FOE as one of fundamental rights and freedoms is widely accepted and guaranteed under different core international and national human right instruments including national Constitutions. FOE refers not only to freely express one's view, but it includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. As a best instrument of FOE, media plays a great role in the realization of FOE. FOE is widely accepted for its justification of Personal fulfillment and development, get the truth and democratic governance.

The FDRE Constitution has recognized such right in elaborated manner and further obliges any actor involved in implementation of fundamental rights and freedoms to act in line with those international human right instruments to which Ethiopia is a party.

However, this recognition is being affected by various subsidiary laws, procedures and practices of the government and other actors in different forms. To examine these impediments against FOE, the relevant legislations have been thoroughly analyzed. Also to understand the realities from the ground, selected court cases have been analyzed critically as well as in-depth interview conducted with legal practitioners, media professionals, scholars, and other relevant individuals both from governmental and non-government organizations. Mostly the courts are not interpreting those controversial legislations which incorporate vague and wide terms, considering the spirit of FDRE constitution as well as international human right laws in which Ethiopia is a party. In the same manner, EBA, BSPE, Attorney general has been applying different legal based and other impediments which developed through practice against FOE in general and freedom of Media in particular. However, though the extent recognition to FOE and Media is acceptable, the reality from the ground is so far from the text of FDRE Constitution and other internationally accepted principles which designed in favor of FOE and Media.

Chapter One

Introduction

1.1. Background Introduction

Freedom of the expression (Hereinafter called FOE) is one of the fundamental rights and freedoms. Exercising it plays a key role in democracy and also allows the civil society to progress. Considering its benefit, different influential and binding regional and international human right instruments such as Universal Declaration of Human Right,¹ International Covenant on Civil and Political right,² African Charter on Human and Peoples right, European Human Right Charter,³ American Convention on Human Rights⁴ and the Arab Charter on Human Rights,⁵ have clearly recognized FOE as basic rights. Some of these instruments are followed by the different instrument which elaborate, clarify and interpreted their mother instrument where they emerged from in way of protocols, precedents, guidelines and different facilitation mechanisms to implement.⁶ According to UDHR, FOE is a bundle of right which includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁷

Coming to national laws, the lion shares countries in the world including undemocratic countries have recognized FOE and Media by using different legislations though the way of implementation and the reality from the ground vary from countries to countries. Ethiopia is not an exception, it has clearly recognized such rights through different relevant instruments such as the Constitution of Federal Democratic Republic of Ethiopia⁸ (Hereinafter called FDRE Constitution), a proclamation to provide for freedom of the mass media and access to

¹. Universal Declaration of Human Right, UN General Assembly Resolution 217A (III), 10 Dec. 1948. Art. 19.

². International Covenant on Civil and Political right, UN General Assembly Reso. 2200A (XXI), 16 Dec. 1966.

³. African Charter on Human and Peoples' Rights, Adopted 27 June 1981, OAU Doc. Cab/leg/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into Force 21 October 1986, Article 9.

⁴. American Convention on Human Rights "Pact of San Jose, Costa Rica", 22 November 1969, Article 13. Available at, <http://www.oas.org/juridico/english/treaties/b-32.html>, last accessed on April 02, 2017.

⁵. Revised Arab Charter on Human Rights, 22 May 2004, Article 32.

⁶. Among others, the followings instrument can be seen as complementary document for their mother legislation, such as Johannesburg Principles on National Security, Freedom and Access to Information, adopted on Oct. 1995, UN Doc. E/CN.4/1996/39, 22 March 1996, and Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights Annex, UN Doc E/CN.4/1984/4 (1984) and different interpretive precedent of European Court of human right over Article 10 of European Convention on Human right.

⁷. Cited above at note 1.

⁸. Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No.1, Neg. Gaz., Year 1, No.1.

information (Hereinafter called media proclamation)⁹, and Broadcasting Service Proclamation.¹⁰ In addition to these national legal instruments, Ethiopia is a party to different international and regional human right instruments which recognizes FOE such as ICCPR, UDHR, and ACHPR.

According to the above governing relevant instruments, recognizing FOE in Ethiopia extends to the prohibition of prior restraints practice in any form to protect the right specifically the Freedom of Media. Media is the best instrument to enjoy FOE. Both rights are interconnected. Without FOE, it is unthinkable to enjoy the freedom of the media.

According to different scholars of the field, the extent of recognition to FOE under the FDRE Constitution and its cross reference to international human right instruments at least for interpretation of fundamental rights and freedoms are accepted in affirmative. But coming to reality on the ground and different controversial legislations such as media proclamation, anti-terror proclamation,¹¹ Criminal Code¹² and the different activities of the government, the above recognition is considered to be nothing but merely in the text. Because these legislations have incorporated different provisions which seriously affect FOE in different forms such as authorizing different organs to limit FOE, containing a limitation clause in broad and vague manner and criminalizing defamation. Also, the indirect and invisible hand of government, which is stretched against FOE is playing a devastating role.

The different improper act of the government against FOE is facilitated by different governmental institutions such as Ethiopian Broad Casting Authority, Berhanina Selam Enterprises, Attorney General, and courts. All these areas which include legal and practical impediments against FOE will be explored in this paper. In doing so, chapter one set statement of problems, objectives and questions of the research, scope of research, limitations and related bases of the paper.

The second chapter reviews different literature, disuse conceptual framework of the FOE and its justifications, and selected experiences of different countries.

⁹. A Proclamation to Provide for Freedom of the Mass Media and Access to Information, 4th Dec. 2008, Proc. No. 590 Neg. Gaz. 14th Year, No. 64

¹⁰. Broadcasting Service Proclamation, 2007, See Preamble, Proc. No. 533, Neg. Gaz. 13th Year No.39.

¹¹. A proclamation on Anti-terrorism, 2009, Proc. No. 652, Neg. Gaz. 15th year, No. 57.

¹². The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, Proc No. 414, Entered in to Force on 19th May 2005.

The third chapter identified and determined different relevant and governing laws to FOE and media. The most controversial provisions of these legislations have been seen. The discussion extended to international human right instruments in which Ethiopia is the party and other regional human right instruments which will take the lesson from.

In the fourth chapter, those governmental institutions which criticized of practicing prior restraints and affecting the right in different modalities determined in detail. In doing so, the act of Berhanina Selam Printing Enterprises, Attorney General and Ethiopian Broad Casting Authority examined as how they are functioning in relation to FOE and Media. Under this chapter, also selected decision of the court rendered on issues related to FOE and Media analyzed in a manner which shows the reality on the ground.

The final chapter concludes the content of the entire paper and sets the practicable and proper recommendations which are inferred from the discussion of the paper.

1.2. Statement of the problem

The issue of FOE, Media and prior restraints in Ethiopia are becoming burning issue and attracted international agencies, scholars, political parties and activist which defend human rights both from Ethiopia and outside the country. Almost all of them are blaming the Ethiopian government for practicing prior restraints in different forms and affecting the FOE in different modalities. On its side, the government of Ethiopia; however, is trying to justify its action as being lawful since it aims at protecting public safety and order. Hereby, one needs to examine the conflicting narrative to see where the problem lies.

In addition to the practices of prior restraints, the government criticized for enacting different laws these considered to be in conformity with FDRE Constitution, international human right laws in which Ethiopia is the party and widely accepted principles of laws which protect FOE and Media. The controversy further goes to blaming the government for its failure of taking different measures to make the media sector competent as to respond the quest of realization of FOE and Media on the ground. In different occasions, the governments defend the critics oppositely as it is working in favor of such rights. This research examined every corner of matters which are relevant to FOE and Media. Different selected governmental institutions, laws and practices of the government assessed in a manner which shows the place where the above-raised impediments exist.

1.3. Objectives of the research

To analyze the relevant legal regime pertaining to FOE/Media, different governmental institutions, act of the government, judicial decisions on the matter and practical impediments which show the overall environment of Media and FOE Specifically,

- To explore the practical challenges tempting the FOE and media in Ethiopia.
- To identify the relevant laws which affect FOE and the media, if any?
- To review the good practices of other countries to draw lessons from.
- To look into the Court cases critically and identify the gap of interpretations of relevant laws to FOE and Media and finally to recommend possible proper solutions which facilitate the enjoyment of such rights.

1.4. Research Questions

- What is the extent of the recognition to FOE and its limitation under the Ethiopian legal regime?
- What challenges have been tempting the publisher of periodicals during their dealings with printing enterprises?
- Which organ of the government has been acting against Periodicals?
- Which legislations have been affecting FOE and Media in Ethiopia?
- What are those practical challenges which influence Media companies?
- Who is responsible for non-existence of critical media in Ethiopia, which acts as a watchdog of the people?

1.5. Scope of the research

The study comprises of both legal analysis on relevant laws and empirical looks to reality from the ground issues pertaining to FOE and Media. In doing so, the research is limited only to print media sector specifically periodicals. For the purpose of this paper, periodicals refer to newspaper and magazines irrespective of their owner. Status of periodicals both government and privately owned will be discussed from their inception to this day. No other type of media, namely, electronic, social and any other is outside the scope of this research. But if necessary and appropriate, they may be raised in a way which more elaborates the issue of the matter at hand.

1.6. Limitations of the Study

During conducting this research, the researcher has faced difficulties to conduct the interview with target interviews and collect necessary documents from the relevant organizations. Why, because dealing with the subject matter of this study is considered by the majority of peoples as controversial and disappointing the government. Different target interviewees rejected the request for the interview made by the researcher. What makes the matter more complicated is that, during conducting the research, states of emergency was declared. Because of that, the declaration has negatively affected open discussions, especially where the matters are related to politics. As it is clearly known, detail discussion regarding the subject matter of the study touch political issues either in favor or against the government. That is why the writer faced the difficulty during data collection.

However, using different ways the writer convinced the interviewees as the situations are getting better and declarations of a state of emergency are modified in favor of different rights. Finally, the majority of target interviewees was consented to made interview with me considering the above-changed situation of the declaration of state of emergency and the effort of the researcher.

1.7. Research Methodology

Methodologically both doctrinal and empirical research methods are applied in the thesis. Regarding data collection, qualitative method of data collection through in-depth interviews with most relevant persons in the case at hand is adopted. The interviews were made possible through the semi-structured questionnaire. The interviewees expressed their view and knowledge which they accessed from their past experience, learning and other sources which make them be informed about the matter. Through this way, empirical reality is realized from the interview of relevant individuals, namely, publisher, journalists, personals from printing organizations and other relevant people. Purposive sampling methods applied during the selection of interviewees and the interview made by face-to-face contacts base. In addition to interviews, different statically prepared data and relevant documents from different organizations were analyzed.

Relevant laws are discussed and analyzed in depth in a way which shows the status of governing legal regime. Primary sources such as national and international laws in which

Ethiopia is party and national laws are consulted. To enrich the discussion, different principles and rules which are accepted in the field are discussed to fill the gap of legal regimes in Ethiopia. Also, legal instruments, books, journals, and judicial decisions are consulted as a secondary source.

Chapter two

2. Literature Review; Conceptual Framework and Selected Foreign Countries Experience

Because of its fundamental role in underpinning democracy, FOE is considered as a key fundamental rights and freedoms. As an instrument of FOE, Media has important functions in providing information, facilitating and promoting the public debate which is seen as a signal for a proper functioning of democracy.¹³ Media allows the government, politicians, and public figures to communicate to citizens in an easy and sufficient manner. To be an effective contributor to the democratic process, the media as a channel for ideas and information and generator of the debate must be able to offer a variety of views and operate independently.¹⁴ For citizens, the media is a major source of information and commentary on public issues. Media plays a great role in informing and mobilizing citizens to be part of the democratic process and development of the country. Realizing such fact, Thomas Jefferson reflected historic view in favor of the media stating, *“Were it left to me to decide whether we should have a Government without newspapers or newspaper without a Government, I should not hesitate a moment to prefer the latter.”*¹⁵

Nowadays, failing to recognize FOE under the Constitution holds an exception. Because the Lion share of countries in the world has recognized FOE as a basic right. This indicates that FOE has formed as a universally recognized fundamental right. According to Andrew Puddephatt,¹⁶ what makes the right fundamental is that, when this very right is enjoyed properly, some other rights by default are highly likely to be respected and enjoyed. Realizing that, the following three reasons discuss the matter in a manner which shows its crucial nature to be fundamental. Firstly, it is a human need to be ourselves and have our own identity. So the ability to express ourselves in the different form of expression is central to the realization of our humanity. Secondly, it is a foundation for other rights and freedoms. Without enjoying FOE, it is not possible to organize, inform, alert, or mobilize people in defense of any human rights. Finally, it is the pre-condition of social and economic

¹³. Hitchens, L. “Broadcasting Pluralism and Diversity: A comparative study of policy and regulation”, HART publishing, (2006), P.31.

¹⁴. Ibid.

¹⁵. Thomas Jefferson (Founding Father of America) in a letter to Edward Carrington, January 16, 1787.

¹⁶. Andrew puddephatt, “The Importance of Self-Regulation of Media in Upholding FOE,” Series CI Debates, UNESCO, N.9 (Feb. 2011), P. 9.

development as transparent and open communications are necessary to ensure economic and social development.¹⁷

Coming to the concept of Prior restraints, roughly speaking, it deals with official restrictions imposed upon speech or other forms of expression in advance of actual publication.¹⁸ Such natures differentiate it from the subsequent punishment which results in the penalty and civil damage against communicator. Unlike that, Prior restraints prevent communication from occurring at all. With regards to the consequences of the both practice and their nature, most scholars in the field agree that a threat of the subsequent punishment “chills” speech, while prior restraint “freezes” it at least for the time.¹⁹

Though the concept is understood as raised above, regarding as what constitutes prior restraints; no common understanding is drawn from the different experiences of different countries. In order to meet the study objective, the researcher precisely presents the most common form of prior restraints from viewpoints of practices in few countries.

The first and most easily identifiable form of prior restraints are where a given legal instrument clearly undertakes to prevent future publication without advance approval of concerned organ of the Government.²⁰ The second form of prior restraint comes from the Court through the instrumentality of injunction or similar orders by judicial process.²¹ In addition to the above both usual forms, the prior restraints may be adopted in some other way against the FOE and media.²² More importantly, to realize the importance and basis of FOE, the following section presents well known justifications.

2.1. Justifications for Protection of FOE

Justifications in defending FOE could come from various bases. Realizing those bases, different scholars have reflected their views in defense of FOE. Here under a few of these justifications are discussed in a manner which shows the advantage of the free exchange of opinions in the different form.

¹⁷. Ibid.

¹⁸. Thomas I. Emerson, “The Doctrine of Prior Restraint,” *Yale Law Faculty Scholarship Series*, (1955), P. 648.

¹⁹. Barry O. Hines, R. Kurt Wilke, & Sarah M. Lahr, “The Prohibition against Prior Restraint derives from the first Amendment,” P.4.

²⁰. Cited above at note 18, P. 655.

²¹. Ibid.

²². Id. P. 656.

2.1.1. Free Speech as a Mechanisms to Get Truth

Among scholars who defend the FOE, John Stuart Mill is a well-known scholar who tried to justify the FOE as it helps to dig out the truth.²³ According to his argument, truth drives out falsity, therefore, irrespective of its falsity or truthiness free expression of ideas should be tolerated. The truth is not stable or fixed, but it may grow through time. Therefore, different views should not be restricted for their apparent falsity. Mill also argued that free discussion is necessary to prevent the "deep slumber of a decided opinion". The discussion would drive the onwards march for truth and by considering false views, the basis of true views could be re-affirmed.²⁴ Furthermore, he argued that an opinion only carries intrinsic value to the owner of that opinion, thus silencing the expression of that opinion is an injustice to a basic human right. For Mill,²⁵ the only instance in which speech can be justifiably suppressed is in order to prevent harm from a clear and direct threat. Except for this exceptional situation, regardless of any difference of the speaker, content of the expression or any unjustifiable reasons, everyone should be free of any means or act suppressing of speech²⁶.

Regarding censorship, Mill reasoned out two situations which justify abolishment of censorship.²⁷ The first is that, by its nature human beings are fallible. We are always capable of getting things wrong and we can never be entirely sure that we have anything right. We cannot know as which of our certainties be accepted or rejected by others. The mill's second premise is that we are corrigible. Experience and critical discussion can improve our opinions. Our best hope of improving our opinions is to make them public. So those others may show us our errors. The core of his argument is that censorship prevents correction of errors by critical discussion. According to Mill, unless the FOE is exercised freely, we might suppress the truth which we'll get at only through free discussion. Also, we will hold such true beliefs only through dogmatism and lack the deliberative resources to fully understand and defend our beliefs."²⁸

²³. John Stuart Mill, "On Liberty," (1869), Chapter II, available at < <http://www.bartleby.com/130/2.html> > last accessed on Oct. 18, 2016.

²⁴. Sanders Karen. "Ethics & Journalism", SAGE Publications Ltd., (2003), P. 67.

²⁵. Cited above at note 23.

²⁶. Warburton Nigel, "Free Speech: A Very Short Introduction" Oxford University, (2009), PP. 24–29.

²⁷. Cited above at note 23.

²⁸. Ibid.

In general, if people are allowed to enjoy FOE and get access to the different opinions from the marketplace of idea, it fundamentally plays a key role in their ability to, develop, hone, and refine or replace/discard their own ideas and/or convince others of their arguments, ideas and finally consider and assess others' opinions and views.²⁹

2.1.2. Contribution of FOE to Democratic Governance

FOE can be taken as one of the basic aspects of democratic governance. It plays a key role in cultivating participation and holding public representatives accountable and helps us to draw on the wisdom of many, rather than the narrow minds of a few. In connection to this, Alexander Meiklejohn defends FOE showing its linkage with democracy in which self-governance is applied.³⁰

The norms on limiting FOE mean that public debate may not be completely suppressed even in times of emergency.³¹ In order to be appropriately knowledgeable, there must be no unjust constraints on the free flow of information and ideas. According to Meiklejohn, democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism. He acknowledges that the desire to manipulate opinion can stem from the motive of seeking to benefit society.³²

If the people are not free to receive information in the form of a range of ideas, opinions and any of political views, they will not be sufficiently well informed to make appropriate and meaningful political choices, whether at the ballot box or in their interactions with government.³³

In general, it can safely be concluded that FOE promotes democracy. This is because, in the democratic society, the people can actively comment, criticize and express their wishes to guide the government to act in conformity to their interest.

²⁹. Media law handbook for southern Africa "The role of the media and press freedom in society", Vol. 1, P.5

³⁰. Alexander Meiklejohn, Free speech and its relation to Self government, New York, Harper Brothers Publishers, (1948).

³¹. Brett, Sebastian, "Limits to Tolerance: FOE and the Public Debate in Chile," Human Rights Watch. P. XXV, (1999).

³². Marlin Randal, "Propaganda and the Ethics of Persuasion", Broadview Press,(2002), PP. 226–227.

³³. Cited above at note 29, P.6.

2.1.3. FOE is Useful to Realize Personal Development /Self-fulfillment/

To fully develop their personality and be autonomous moral agents with self-respect, the human being needs to enjoy FOE. It can be taken as an integral aspect of each individual's right to self-development and fulfillment.³⁴ Anyone should be allowed to decide by him/herself to choose as which one is better without coercion by any one. Restrictions inhibit our personality and its growth. The reflective mind, conscious of options and the possibilities for growth is distinguishing nature of human beings from animals. For the full-fledged development of personality, FOE is highly essential. FOE is therefore protected not just to create a better government and not merely to discover the truth, but to enlarge the prospects for individual self-fulfillment or to allow personal growth and self-realization.³⁵

These justifications for the protection of FOE are widely accepted by different international, regional, and national actors in dealing with its protections. A decision by the European Court of Human rights can be seen as a good example. While rendering its judgment over the case of *Handyside v. The United Kingdom*, the court has directly considered two of the above justifications for protections of FOE. The case originated in an application against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on 13 April 1972 by the United Kingdom citizen, Mr. Richard Handyside. In his application, Mr. Handyside complained that the action in the United Kingdom against himself and the schoolbook was in breach of his right to freedom of thought, conscience and belief, his right to FOE of expression under Article 10 of the convention and his right to peaceful enjoyment possession. Finally, the court holds by thirteen votes to one that there has been no breach of Article 10 of the convention. The relevant part of the reasoning of the court over the case states that:

*“Freedom of expression constitutes one of the essential foundations of a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to 'information and ideas' that are favorably received or regarded as inoffensive but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broad mindedness without which there is no 'democratic society'.”*³⁶

³⁴. Gedion Timothewos, “FOE in Ethiopia: The Jurisprudential Dearth,” *Mizan Law Review*, Vol. 4 no.2, Autumn (2010), P. 204.

³⁵. Hassen Mohammed, “Media Law,” *Mekelle University, Department of Law*, (2010), P. 6.

³⁶. European court of human rights, case of *Handyside v. the United Kingdom*, application no. 5493/72, Strasbourg, 7 Dec. 1976, P. 18.

Two of the above-discussed rationales of FOE namely personal development and self-fulfilment, and democratic governance which justify the protection of FOE were stressed by the court in deciding over the matter in conformity with it. The first Justification, the instrumentality of FOE to get the truth is closely linked to the utilitarian tradition in moral philosophy and less influential in the jurisprudence of the European Court than in the US and Canadian Supreme Courts.³⁷ In whatever case, all the above three justifications are practical and accepted by the majority of jurisdiction.

2.2. Selected Foreign Countries Experience

2.2.1. Selected Countries and the Rationales of selection

For the better understanding of the experience of countries in order to take a lesson from, the researcher has preferred three countries, namely the United States of America (Hereinafter called USA), People's Republic of China and the republic of Kenya. Each country has different experiences which may fit to Ethiopian reality and help the protection activities of FOE and Media in a country.

To start with, USA is believed to have a good history of allowing its citizens to enjoy the freedom of speech in reality even without detailed legislations but precedents. Except for the first Amendment to Constitution of USA³⁸ and precedents of the Supreme Court, no bundles of legislations are enacted to govern the matter. But irrespective of the dearth of numerous legislations which guarantee the freedom of speech, the reality from the ground in the USA concerning the FOE is best.

Unlike the USA, numbers of legislations are enacted to recognize FOE in China. In the same manner, there are different legislations which stiff realization of FOE. Those legal guarantees to FOE will be eroded also through the instrumentality of such problematic legislations and acts of the government. So, the researcher, aimed to examine those laws from two opposite sides in order to evaluate the national legislations of Ethiopia whether legal guarantees of FOE is affected by some other legislations.

Finally, why the researcher referred to the experience of Kenya is that both Kenya and Ethiopia shares a number of realities which makes them close with regards to economy,

³⁷. Cited above at note 35.

³⁸. First Amendment to the United States Constitution, December 15, 1791.

history and some other factors. But recently Kenya has taken different amazing measures in favor of FOE reforming major relevant laws which affect the realization of such rights.

Going through all the above experiences, the researcher believes that lessons will be taken *mutatis mutandis* to the reality of Ethiopia.

2.2.2. Detail of the experience

In China, the FOE has recognized by the Constitution³⁹, the Law on Assemblies, Processions, and Demonstrations,⁴⁰ and finally ICCPR in which the country becomes the party.⁴¹ However, there are other legislations which deny the above legal guarantee of FOE, especially during application. Among them, the constitution itself has incorporated different provisions which seriously affect the FOE. Such denial takes place in the guise of maintaining social order, the personal dignity of citizens, the interest of society and state, security, honor, and interests of the motherland.⁴² Such all reasons suffer the subjective interpretation of the agent of the government during dealing with the matter at hand. Among the above reasons, the term social/public order is the main instrument for the government to silence the voice of the citizens. To the level of the researcher's knowledge, the extent and scope of the term social order are nowhere defined in an authoritative manner. Because of that, the court, Police, and other relevant organs of the government abuses the vague terms wrongly interpreting in a way which eviscerates free speech protections found in Article 35 and the Law on Assemblies, Processions, and Demonstrations.⁴³

Also, the Criminal Code of China under Article 290 and 291 tempts realization of FOE through the pretext of controlling act of assembling crowds to disturb public order and assemble with the intention to attack state organs.⁴⁴ A serious criminal punishment formulated in such provisions becomes the threat for citizens, not to enjoy FOE freely. In the same manner, the regulation on Complaint Letters and Visits recognizes right to assembly,

³⁹. Constitution of the People's Republic of China, 4 Dec. 1982, Article 35 & 41

⁴⁰. Law of the People's Republic of China on Assemblies, Processions and Demonstrations, Article 4, 31 Oct. 1989.

⁴¹. Mindy Kristin Longanecker, "No room for dissent: China's Laws against Disturbing Social Order Undermine its Commitments to free Speech and Hamper the rule of law", Pacific Rim Law & Policy Journal Association, Vol. 18 No. 2, (2009), P. 377.

⁴². Cited above at note 39, Article 28,38,51,53 and 54.

⁴³. Ashley Esarey, "Speak No Evil: Mass Media Control in Contemporary China, A Freedom House Special Report", (2006), P. 7.

⁴⁴. Criminal Law of the People's Republic of China, July 1, 1979, as of amended of Mar.14, 1997 Art 290-291.

procession, and demonstration, but requires the citizen to go in line with the cardinal principles specified in the Constitution, such as not to impair state, protect public or collective interests, rights others and social order. Cross-referring such problematic terms of the constitution again allow the government to abuse such vague and general terms.

Regarding prior restraints, the government of the PRC adopts strict control over the FOE including the press. It is hardly possible to see any of the mass media, which is independent and freely engaged in its duty. Compared to other sectors, the Chinese government maintains strict control over the publishing industry.⁴⁵ The government controls the information through instrumentality of its sophisticated means such as legal, political, economic and technological.⁴⁶ All these acts have been intentionally done by the government to censor every venue of media to maintain its monopoly of power and information.

Irrespective of its legal guarantee, citizens of the PRC have not enjoyed FOE on the ground. As discussed above, the main reason can be generalized as the government is intentionally affecting the FOE. Such act of the government is facilitated through the instrumentality of formulating Vague and general terms in legislations, misapplication of those problematic legislations and practicing another impediment against FOE. In addition to adopting prior restraints, serious and disproportional subsequent criminal punishment helps the government to easily silence the critic people of citizens which pointed against it.

Here, the relevance lesson for Ethiopia is that only legal recognition of the right is not guaranteed for the realization of any right unless it's followed by best practices on the ground. Also during dealing with vague and general terms of legislations, special attention should be paid to interpret it in line with accepted principles of human rights and interpretation to make the result fruitful. Finally, the government should refrain from producing different legislations which confuse the ordinary citizen because of its number, size and none clarity. Incorporation of Vague, ambiguity and general provisions of legal instruments which need interpretation are not advised, especially in a country having the record for violation of human right.

⁴⁵. Wei luo, Chinese law and legal research, (2005), P.166.

⁴⁶. Vi L. Nhan, "Media in China: Method of State Control", The Orator, Vol. 3, (2008),

Unlike China, USA has no many of legislations except broad terms of the first amendments to Constitution of USA⁴⁷ and decisions of supreme courts which interpret such first amendments. The relevant part of the first amendment of the constitution states that;

“Congress⁴⁸ shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

The above guarantee of the Constitution is not an absolute. According to the decisions of the Supreme Court, there are developed exceptions which justify a limitation over freedom of speech and media in the USA. When infringed, most of the limitations consequents subsequent punishments, but not prior restraint. Among others, such exceptions include incitement to imminent violence, true threats, defamatory speech, obscenity, and child pornography. These all refer to the content-based restriction which allows the government to regulate over FOE. Also, there are some other justifiable rules which authorize the government to regulate the time, place and manner of occurrences of expressions in non-content regulation bases.

Regarding prior restraints in the USA, there are some circumstances which allow the government to impose it against on freedom of speech and media. But mostly the government loses the cases failing to prove as the occurrences of controversial expression affects the national security and constitutes some other sufficient grounds of prior restraints.⁴⁹

In general, USA can be taken as a benchmark country in the world which allows its citizen to enjoy the freedom of speech in a better way except for those limited and narrow exceptions as of developed by the supreme court. This is because the system of the USA with regards to FOE is built on the idea that the free and open exchange of ideas, encourages understanding, advances truth-seeking and allows for the rebuttal of falsehoods.

In such a case, the courts of USA have played a great role in protecting FOE. Such protection is resulted by the proper interpretation of the laws and the realization of

⁴⁷. First Amendment to the United States Constitution, December 15, 1791.

⁴⁸. Although the text of the Amendment prohibits only the [United States Congress](#) from enacting laws that abridge the FOE, the Supreme Court held in [Gitlow v. New York](#) (1925) that the [Due Process Clause](#) of the [Fourteenth Amendment](#) prohibits also [state legislatures](#) from enacting such laws.

⁴⁹. [Schenck v. United States](#), 249 U.S. 47, 52 (1919) and The "Pentagon Papers" case, [New York Times Co. v. United States](#), 403 U.S. 713 (1971).

justifications of FOE. So that, the Ethiopian Courts should take a lesson from the experiences of USA Courts to see the FOE practiced on the ground.

Constitution of the Kenya has recognized FOE and Media in a clear and elaborated manner.⁵⁰ More importantly, the designers of the constitution have wisely formulated the limitation clause incorporating widely accepted legitimate grounds.⁵¹ The relevant part of the Constitution which recognizes FOE which includes freedom to seek, receive or impart information or ideas, freedom of artistic creativity and freedom of academic and scientific research.⁵² Also freedom of media of every type which includes electronic and print media is recognized.⁵³ More importantly, the constitution requires the state not to control Media and penalize any person for any opinion or view or the content of publication and dissemination.⁵⁴

In relation to media, the existence of independent body which have to say on media is necessary. Because of this, the Constitution of Kenya has imposed duty over the legislation to enact legislation that provides for the establishment of an independent body which set media standard and regulates and monitor compliance with those standards.⁵⁵ It is believed that such kind of independent organ facilitates the free flow of information and rescues the sector from the improper act of government which affects FOE.

In addition to above legal guarantee, the Kenya has taken serious measures in favor of FOE and Media. The Kenyan Court strikes down criminal defamation laws stating that Penal Code Provision⁵⁶ on Criminal Defamation is Unconstitutional.⁵⁷ The court further requires the government to reform the similar laws that unjustifiably limit the right of Kenyans.⁵⁸ The High Court of Kenya is the first court in the region (East Africa) to abolish criminal defamation law and declare that criminalizing defamation violates the right to FOE. Most importantly, in the middle of the analysis, the court held that *“the invocation of criminal defamation to protect one’s reputation is ... unnecessary, disproportionate and therefore excessive*

⁵⁰. The Constitution of Republic of Kenya, 2010.

⁵¹. Id. Art. 33(2)

⁵². The Constitution of Republic of Kenya, 2010, Article 33.

⁵³. Id. Art. 34 (1)

⁵⁴. Id. Art. 34 (2)

⁵⁵. Id. Art. 34 (5)

⁵⁶. Penal Code of the Republic of Kenya, Article 194, (as of Rev. on 2012)

⁵⁷. Jacqueline Okuta & Jackson Njeru Vs. Attorney General, Case No. 549 Of 2016, High Court of Kenya at Nairobi Milimani Law Courts, Constitutional and Human Right Division, Decided on 6th Feb 2017.

⁵⁸. Ibid.

*and not reasonably justified in an open society based on human dignity, equality and freedom”.*⁵⁹

Concerned organ of the Ethiopian government has nothing just reason to fail to take a lesson from the stand of the Kenyan courts regarding the abolishment of criminal defamation.

As a party to the ICCPR, the Kenya has accepted and implemented the urges of Africa Union to repeal criminal defamation laws.⁶⁰

Ethiopia is a member state of different regional and international human right instruments which in different instruments including resolutions urge the abolishment of criminal defamation laws. Because of that and unjustifiable of such laws in the country should follow the experience of Kenya of outlawing the criminal defamation laws.

⁵⁹. Ibid.

⁶⁰. African Commission, Resolution 169 on Repealing Criminal Defamation Laws in Africa, 48th Ordinary Session, Banjul, 10-24 November 2010.

Chapter three

3. Development of Printing media in Ethiopia, International, and Regional Human Right Instruments Guaranteeing FOE and Printing Media

3.1. History and Development of Periodicals and Prior Restraints

Different historical evidence suggests that Ethiopia is one of the few African countries that have their own script in “Geez”, an indigenous Semitic language from a very early period.⁶¹ Coming to the history of modern print media, especially newspaper, its history started, however during the end of the 19th C by the regime of Menilik II.⁶² It is infant sector compared to the literature history of the country in general. It is important to see the development and current status of print media and prior restraints since the regime of MenilikII.

Because of the lack of convincing and conclusive evidence of written historical materials which shows the first newspaper in Ethiopian, it becomes difficult to examine the extent of freedom through periodicals and censorship as how it developed in line with the then legal framework and practice of the government.

Because of this gap, the writer of this paper will try to come with sound inferences which show the first newspaper in Ethiopia and their status in relation to the legal framework and the situation they passed through. To achieve this, the following sub-section highlights all previous works separately (those old works competing to be the first newspaper) in detail. The separate discussion of the following old work will show the clue in the search for finding the first newspaper in Ethiopia.

Modern mass communication in Ethiopia began with De la Leproserie and published in Harrar in 1890 by father Bernard, a Franciscan missionary. The main purpose of this publication was to support the campaign against leprosy⁶³. Since 1890 the publication was continued for consecutive fifteen years until 1905. It was bilingual publication and used Amharic and French language. Father Bernard had a duplicating machine (Roneograph)

⁶¹. Nigussie Meshesha, “Media and Politics in Ethiopia: A Critical Analysis”, Ethiopian Journal of Social Sciences and Language Studies, Vol. 1 No.2, Dec. 2014, P. 78.

⁶². Id. P. 76.

⁶³. Cited above at note 61 and Teffera Neggussie, “Ethiopian Mass Media Profile”, Population Media Center, (2006).

to satisfy the amount of copies needed for the intended purpose of De la Leprosierie.⁶⁴ Finally, in 1905 the title De la Leprosierie changed to Le Semeur d' Ethiopie and remained in publication until 1911⁶⁵.

Le Semeur d'Ethiopie was a monthly missionary periodical, concerned primarily with religious affairs. It was published in Harrar from 1905 to 1908 and in Dire Dawa from that year until 1911. The journal was founded, and edited for most of its history, by a French Lazarist missionary, Father Marie-Bernard and was produced by his fellow missionaries who had earlier established the country's first Leprosarium, in Harrar.⁶⁶

Secondly, some historical evidence suggests that there was a handwritten work produced by Eritrean patriot Blata Gebre Egziabhere “before 1900”. It was Amharic weekly and focused on unity, strength, and modernization of the country.⁶⁷

Thirdly Aimiro /means intelligence in Amharic/ come into being in 1902 by a Greek businessman called Endreas E. Kavadia. The name Aimiro was given by Emperor Menilik and it was a four page handwritten weekly newspaper having a circulation of only 24 copies. Later on, Kavadia obtained a duplicating machine and the circulation reached 200 copies.⁶⁸

Coming to the identification of the first newspaper, though there is a consensus as the history of the birth of printing media was started during the regime of Menilik II, however, identification of the first newspaper is still subject to argument. Some scholars believe as the history of newspaper in Ethiopia started by Aimiro (1902) while others trace back the history to De la Leprosierie (1890) and handwritten work of Blata Gebre Egziabhere (1900).

One important point, drawn from both side scholars who are in favor and against the existence of the newspaper before “Aimiro” is that, both sides have agreed directly and/or indirectly for the existence of weekly hand written work of Blatta Gabre Egziabher “before

⁶⁴. Ashenafi Gudeta , the framing of political parties by the Ethiopian print media in the 2010 parliamentary election, unpublished MA thesis, AAU university, june 2012, P. 8.

⁶⁵. Ibid And Dr. Wondwosen Teshome, Media and multi-party elections in Africa: The case of Ethiopia, *international journal of human rights*, Vol. 6, Issue: 1 Year, (2009), P.88. Available at, <http://www.insanbilimleri.com/en> last accessed on April 14, 2017.

⁶⁶. Richard Pankhurst, “Two early periodical publications "Djibouti" and "Le Semeur d'Éthiopie" as sources for late 19th Century and early 20th Century Ethiopian History”, (2003), Volume 19, PP. 231-256.

⁶⁷. Rechard and Rita Pankhurst, “Ethiopia Observer, Journal of Independent Opinion, Economics, History and the arts”, Vol. VI. No. 3, (1962). P. 262.

⁶⁸. Ibid.

1900” and De la Leproserie of Harrar.

Having the above separate discussion of the three previous works, the point of departure and issues agreed by the different scholars in mind, it is crucial to critically examine all works in a manner which shows the first newspaper in Ethiopia. To do so, it is a crucial first to understand the element of the newspaper (the requirement which makes a given work as a newspaper). Among other major elements of newspaper, the availability of the market, periodic publication, title, reasonable quality of paper, containing current news, and other informative articles can be taken as examples which show a clue to conclude whether the given written work is the newspaper or not. Based on these general requirements of the newspaper, let’s look into the above works, namely De la Leproserie, Aimiros and works of Blata Gebre Egziabhere analyzing them in line with minimum standards which are required to be satisfied by any printing works to get the status of the newspaper.

To start with, work of Blata Gebre Egziabhere of Eretria patriot is not qualified /satisfying the minimum elements of the newspaper as discussed above. Because it was missing the title and simply known as the work of the Blata Gebre Egziabhere. Secondly, it was handwritten and lacks the quality of paper and standard written style. Thirdly, the actual time of its existence is not clear. So, it is difficult to accept the works of Blata Gebre Egziabhere as a newspaper. But the researcher believes that the work had a positive influence on the development of the printing media.

Coming to De la Leproserie, almost all the minimum elements are satisfied. Even though different scholars, including Richard Pankhurst are not confident to recognize the De la Leproserie as newspaper, they have directly and/or indirectly accepted the existence of the above-stated requirement of newspaper in it. So, it can fairly be concluded that De la Leproserie was the newspaper which fulfills the minimum requirements of the newspaper.

Finally, State-owned Aimiros is not debated to be a newspaper. In addition to official recognition of Menilik II and the fulfillment of the elements of the newspaper, every scholar in the field has accepted without any doubt.

Based on the above discussion, except the work of Blata Gebre Egziabhere, the rest works, namely De la Leproserie of 1890 and Aimiros were real newspapers fulfilling the element of the newspaper and logically in conformity to minimum standards of newspaper. As far as

we have agreed on the recognition of both works as a newspaper, the next issue is recognizing the first newspaper in Ethiopian printing media history. To reach the final conclusion, we can simply refer to the period in which both newspapers existed. De la Leproserie was established in 1890 and followed by *Aimiro* in 1902. So, without doubt, De la Leproserie is a first newspaper in the history of the printing media sector in Ethiopian.

3.1.1. Newspapers and Prior Restraints during the Regime of Menilik II

Emperor Menilik II tried to transform Ethiopia to modernization and partly achieved his goal in introducing different new technologies in the country. In addition to another sector, he was interested in developing a modern mass communication system in Ethiopia. His interest was manifested by his willingness to establish *Aimiro* and by imposing no restriction on those De la Leproserie/ *Le Semeur d'Ethiope* which existed during his regime. Due to various factors, though his aim to see modern mass media was not fully successful, especially after the battle of Adwa, his interest to introduce modern mass media including periodicals was grown and fruitful.⁶⁹

Coming into control of the government, newspaper existing during the regime of Menilik II had never escaped from serving as instruments of the Menilik II and his regime. The difference with following regimes was that the complicated and organized form of control of government over the media was not practiced.⁷⁰ But such none organized control of information was denied by the then editor in chief of *Aimiro* newspaper. Such denial of the criticism over the influence of the regime was expressed on Megabit 11, 1907 E.C of publication of the *Aimiro* Newspaper in a way which reflects the essence of the editorial policy. The relevant part of the publication states that; “...

”

“(...[S]ince its very origin, the newspaper has based by clear politics. Not for the interest of the specific group. The publication was based on freedom, not considering the subjective feeling of editor-in-chief.”⁷¹

According to the above relevant part of the *Aimiro* publication, the editor in-chief clearly concluded as he was acting freely considering only the ethics of journalism. But practically

⁶⁹. Cited above at note 64, P. 8.

⁷⁰. Shimelis Bensa, “Survey of the private press in Ethiopia: 1991–1999,” FSS monograph series I, Forum for social studies, (2000), P.,11.

⁷¹. Ibid.

Aimiro was not free from the influence of the Menilik II.⁷²

3.1.2. Legal Guarantee of FOE (Printing Media) and Prior Restraints during the Regime of Emperor Haile Sellassie I

Attempt made to modernize media by Menilik II continued during the regime of Haile Sellassie I. Compared to the previous regime, the printing media sector developed well invisible manner during this regime. According to a Proclamation to Publish Newspapers and Books of 15 February 1934 (Yekatit 7, 1927 E.C.), media development has gone further step and invited private newspapers, though the sufficient number of private sectors had never enabled to enjoy the right for different factors⁷³. Constitutionally for the first time, freedom and media were guaranteed by the article 41 of the 1955 Revised Constitution of Ethiopia. But there were subsequent legislations which imposed strong limitations on freedom and the press.⁷⁴

In addition to oppressing legislations and different influence of the King and the government over the media, there are some other factors which played the devastating role not to exercise the FOE and media. Among these factors, poor infrastructure, lack of developed technologies which facilitate print media, a few numbers of literate citizens in the country to read periodicals and a small number of publications can be raised as an example.⁷⁵ Because of these factors the product of print media was available and accessible only for fewer numbers of citizens such as royal class, elites, and literate city dwellers all close to the regime.

Generally, the media had served as the mouth of the king and his regime. The following selected relevant content of the then publication of Addis Zemen Newspaper⁷⁶ shows the media environment during that regime.

“.....
()
.....
..”

..this Addis Zemen newspaper is established with the permission of Haile Sellassie I to explain what the people are expected to do in favor of their country, the king and the government of the king and to manage the rational way. Its duty is

⁷². Ibid.

⁷³. Id. P. 15.

⁷⁴. Neggussie Teffera, “Ethiopian Mass Media Profile”, Population Media Center, 2006, P. 5.

⁷⁵. Cited above at note 70, P. 86.

⁷⁶. Addis Zemen Newspaper, Ginbot 30, 1933 E.C

generalized by three words. Truth, service, and freedom . . . Service refers to the strive of our beloved majesty King to reinstate the sovereignty of Ethiopia, leaving his own interest and unprecedented sacrifice paid by him unparalleled by anyone to achieve that purpose self in a manner which never be done in mankind. (Translation, mine)

The wording and all content of the above part of the newspaper shows how the then media was controlled by the regime and the degree of obedience of journalist to government. Though the progress of the Ethiopian press was interrupted for five years (1935-1941) because of the country's occupation by Italian forces, after the independence, the printing media sector grew in number and circulation in a significant manner. Among those newspapers and magazines that existed during the regime of Haile Sellassie I, some are listed below.

<i>No</i>	<i>Name of newspaper and magazine</i>	<i>Language</i>	<i>Establishment Year</i>	<i>Owned by</i>
	<i>Newspapers</i>			
<i>1</i>	<i>Kasate Birhan</i>	<i>Amharic</i>	<i>1959</i>	<i>Government</i>
<i>2</i>	<i>Atibiya Kokeb</i>	<i>Amharic</i>	<i>1935</i>	<i>Government</i>
<i>3</i>	<i>Addis Zemen</i>	<i>Amharic</i>	<i>1941</i>	<i>Government</i>
<i>4</i>	<i>Sendek Alamachen</i>	<i>Amharic</i>	<i>1941</i>	<i>Government</i>
<i>5</i>	<i>Ethiopian Herald</i>	<i>English</i>	<i>1943</i>	<i>Government</i>
<i>6</i>	<i>Yezareyitu Ethiopia</i>	<i>Amharic</i>	<i>1952</i>	<i>Government</i>
<i>7</i>	<i>Ye Ethiopia dimts</i>	<i>Amharic</i>	<i>1950</i>	<i>Private⁷⁷</i>
<i>8</i>	<i>Nuro Bezeday</i>	<i>Amharic</i>	<i>1947</i>	<i>Government</i>
<i>9</i>	<i>Tekle Haimanot</i>	<i>Amharic</i>	<i>1947</i>	<i>Government</i>
<i>10</i>	<i>Alemena Tebeb</i>	<i>Amharic</i>	<i>1950</i>	<i>Government</i>
<i>11</i>	<i>Progress Economique</i>	<i>French</i>	<i>1950</i>	<i>Government</i>
<i>12</i>	<i>Addis Ababa</i>	<i>Amharic</i>	<i>1953</i>	<i>Government</i>
<i>13</i>	<i>Ye Alem wore Be Se'll</i>	<i>Amharic</i>	<i>1953-1954</i>	<i>Government</i>
<i>14</i>	<i>Ye Eretria dimts</i>	<i>Amharic</i>	<i>1945</i>	
<i>15</i>	<i>Hibret</i>	<i>Tigr./Arabic</i>	<i>1970</i>	
<i>16</i>	<i>Ethiopia</i>	<i>Amharic</i>	<i>1972</i>	<i>Government</i>

⁷⁷. Cited above at note 70., P. 10.

17	<i>Ethiopia</i>	<i>Amh./Arabic</i>	<i>1947-1963</i>	<i>Pub. Unionist party of Eretria.</i>
18	<i>Zemen</i>	<i>Tig./Arabic</i>	<i>1954</i>	
	<i>Magazines</i>			
19	<i>The Ethiopian Mirror</i>	<i>English</i>	<i>Post liberat.</i>	<i>Government</i>
20	<i>Menen</i>	<i>Eng. & Amh.</i>	<i>>></i>	<i>Government</i>
21	<i>Addis Reporter</i>	<i>English</i>	<i>1960-1970</i>	<i>Ethiopian Patriots Asso.</i>
22	<i>Tewahedo</i>	<i>Amharic</i>	<i>>></i>	<i>Eth. Orth. Tewa. church</i>
23	<i>Berhan</i>	<i>Amharic</i>	<i>>></i>	<i>Evangelical church</i>
24	<i>Azeb</i>	<i>Amharic</i>	<i>>></i>	<i>EWVA /Eth.Women welfare Asso.</i>
25	<i>Ethiopia Observer</i>	<i>English</i>	<i>>></i>	<i>-</i>

Sources:⁷⁸

Establishment of BSPE in 1921, the progress of a number of literate citizens, legal guarantee, and the growth of awareness of citizens with regard to media has played a greater role in the development of newspapers than the previous period.

Before the establishment of BSPE, print media was handwritten and faced difficulty in a number of copies. After coming into being of BSPE, all those challenges related to lack of printing and duplication instrument were addressed.

In the post-Liberation period (1941-1974), the reformation of the legal framework governing the freedom and printing media was comparably smooth. During this regime, among those laws that recognized the freedom and private media, the decrees of 1944 (1936 E.C.) and 1942 (1934 E.C.), the Revised Constitution of 1955 (1948 E.C.) and the penal code of Ethiopian 1957 (1949 E.C.) can be seen to understand the then legal environment of freedom in affirmative. After the enactment of these legislations, including privates, different printing Media come into existence dealing with different issues.⁷⁹

Coming to a status of prior restraints during this regime, officially censorship was legally introduced in 1934 (1927 E.C) for the first time in a country.⁸⁰ Regarding the period, also Bahru

⁷⁸. Cited above at note 64, Note 70 Appendix I & II and Ellene Mocria, Mesfin Messele and Alemayehu Gebre Hiwot, "Survey of culture and media in Ethiopia", Swedish international development cooperation agency, (2003).

⁷⁹. Cited above at note 70, P., 16.

⁸⁰. _____, (2007 E.C), . 16 and cited above at note 70, P. 15.

Zewde has shown the clue, stating as the practice of “formal” censorship is existed before the Italian invasion.⁸¹ Because of this, the inception date of the first “formal” Censorship practice of 1934 is more credible. So let’s refer to the relevant part of such first proclamation which deals with Censorship. It states that;⁸²

“...

”

“...Where it is believed that newspaper or any other publications printed in or imported to Ethiopia deemed to affect the interest of the public or government, the minister of the interior can impound it not to be disseminated, sold and printed”. (Translation, Mine).

Following such proclamation, the proclamation of public security⁸³ came into existence to control information. According to Article 2 of the proclamation, “the commissioner of police may order the arrest without the warrant and detention of any person who in his opinion would... be a danger to public security if he remained at large.” The broadness of the proclamation and the power of the police commissioner makes the proclamation dangerous which seriously affects the freedom. The reason deemed to danger to public security is defined as any of “political activities, espionage, propaganda, subversive activity, acts prejudicial to the interest and safety of the Ethiopians, the British or alliance e forces or the Ethiopian government and acts prejudicial to public safety.”⁸⁴

Mass media as an area of concern for the regime, for the first time organized under the ministry of information and tourism on 1964 by the legal instrument which forms the ministry itself.⁸⁵ Following that, order No. 46 of 1966 legislated to make clear any publication subject to official censorship including periodicals and books.⁸⁶ In addition to all the above legislations which directly deal with censorship and other impediments against the periodicals, Printing Press control legislation⁸⁷ by itself played a devastating role against the publishers. The proclamations require the publishers to secure permission from the censors to

⁸¹. Bahiru Zewde, The history of modern Ethiopian, 1855-1991, (2002), P. 193, Cited by, Dr. Wondwosen Teshome, Media and multi-party elections in Africa: The case of Ethiopia, International Journal of Human Rights, Volume: 6 Issue: 1 Year: 2009, P.89.

⁸². A Proclamation to Publish Newspapers and Books, 15 Feb 1934.

⁸³.Public Security Proclamation, 1942, Schedule, Proc. No. 4, Neg_Gaz, 31st Jan. 1942.

⁸⁴. Ibid.

⁸⁵. Minister’s definition of powers, Amendment order, 1964, Neg_Gaz, Year 23, No. 10.

⁸⁶. Ministers Definition of Powers, Amendment No. 2, 1966, Order No. 46, Neg_Gaz, Year 25, No. 23.

⁸⁷. Printing press control proclamation, 1942, Proc. No. 28, Neg_Gaz, Year 2, No 27.

get their work be printed. So it can be concluded that the censors are in a position to decide the fate of periodicals to be printed or not.

During this regime, the censoring organ was named differently and organized under different organizations. The name of the organ includes the Censorship Board, censorship section and Censorship Office.⁸⁸

3.1.3. Periodicals and prior restraints during the regime of the People's Democratic Republic of Ethiopia (PDRE) /from 1974 to 1991/

When the PDRE regime comes to power, its first few years were promising and there was hope to enjoy the freedom of the expression through press and other means of communication. During this golden period, though no new legislation is made which guarantee freedom and media, practically significant change has seen compared to the previous regime in the manner which was friendly to media and freedom. The reason which binds the Derg to make the environment, smooth for the media is that the quest for legal reform in relation to freedom and media was seriously raised during the eve of the downfall of the King's regime.

Because of this, the newly government Derg was not in a position to silence such quest in a short period of time. That is why the King has initiated new draft proclamation which to some extent would respond the question of people to freedom if it were adopted. Surprisingly the Derg came into power before entry into force of such draft proclamation titled Proclamation to writing and speech⁸⁹

Dialogues between opposing political groups were seen in print and electronic media, and journalists became extremely open and critical of the government. During this period, including freedoms, some of the private periodicals such as Gohi, Abiyot Fana and Kume Neger were existed even after the regime overthrown the regime of Haile Sellassie.⁹⁰

“Due to the sudden lifting of censorship of the state-controlled media of communication.... the press began to report fairly accurate[ly]... the events that were shaking the regime. For the first time in their history, Ethiopians were able to read something other than soporific propaganda in their newspapers.”⁹¹

⁸⁸ . Abera Ketsela, Control of Information and Literature in Ethiopia, Unpublished LLB thesis, AAU 1981, PP. 24.

⁸⁹ . Freedom of Speech and writing proclamation, 1966, Proc. No. 46, Neg. Gaz

⁹⁰ . Cited above at note 88, PP. 61-62.

⁹¹ . Cited above at note 70, P, 13.

But this freedom was not long lasting. The government turned its face against the media and controlled it aiming to shape media in a way friendly to propaganda consumption of the government. In addition to control of information, the government had gone further and failed to clearly allow the private sector to operate media in any legislation with the exception of the long-awaited Constitution of the People's Democratic Republic of Ethiopia of 1987 (Hereinafter called PDRE Constitution). Article 49 of this very Constitution has recognized freedom of media and expression in a clear manner though it was not properly applied.⁹²

Until coming into force of the proclamation which defines power and responsibilities of ministry,⁹³ Printing media sector was governed by the order No. 46 of 1966 which defines the power of the Ministry of information and Tourism.⁹⁴ After few years of coming to power, the Derg regime has no longer interested to allow the people to enjoy freedom and media. To this effect, the government had adopted different mechanisms to adopt prior restrains against freedom especially through printing media.

In addition to other informal harassments, the new proclamation which defines the power and responsibilities of the ministry of information and national guidance has enacted in a manner which control the information against freedom and media. Practically, through widely and wrongly interpreting the proclamation, the government had prohibited private sectors to operate periodicals.⁹⁵ Following the enactment of proclamation No. 127/1977, different directives from different offices were legislated to govern mass media adopting direct censorship.⁹⁶

In addition to the above major proclamation, subordinated regulations and directives of different offices, the new proclamation No.174 of 1979⁹⁷ which establishes a commission for organizing the party of the working people of Ethiopia has made the power of the censor office stronger to strictly conduct its duty of censorship than before.⁹⁸

⁹². Id., P.17.

⁹³. Definition of Powers and Responsibilities of Minister Proclamation, 1977, Proc.No. 127, Neg. Gaz., Yr.36, No. 29.

⁹⁴. Cited above at note 89.

⁹⁵. Provisional Military Government of Socialist Ethiopia, Ministry of Information and National Guidance, Information Policy Guide-Line, (Amharic) (Unpublished).

⁹⁶. Ibid.

⁹⁷. Commission for Organizing the Party of the Working People of Ethiopia Establishing Proclamation, (1979), Proclamation No. 174, Neg. Gaz. Year 39. No.5.

⁹⁸. Cited above at note 61, P.14.

In addition to prohibiting private sectors from operating periodicals, the government was also failing to free government owned periodicals by imposing censorship in a manner which denies freedom of media and expression. This all intentional act of the regime is to silence anti-government voices and to use the media as the instrument to mobilize the people to accept and exercise the socialist ideology.

3.2. Legal Guarantee of FOE/Media under Int'l and Regional Laws

Under this section, relevant regional and international human right instruments to FOE and Media will be discussed separately in a manner which shows the legal regime of Ethiopia. In addition to the above instruments ratified by Ethiopia, European human right convention that developed by judicial interpretation and influential over other jurisdictions will be referred.

3.2.1. Universal Declaration of Human Rights /UDHR/

The universal declaration of human rights came as the foundational human right instrument in international level on 10 Dec. 1948. Though such document is not binding over states for different political ideologies, almost all the spirit of the UDHR shades its influence over member states as customary international law. The probable reason is that, the content of the instrument became rational and universally accepted in the modern society. Article 19 of the instrument has guaranteed FOE for the first time in the international level. It states that, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

3.2.2. International Covenant on Civil and Political Rights /ICCPR/

The blessing of coming into force of such instrument is that the content of none binding predecessor UDHR reaffirmed and become binding over the member states. Because of this, article 19 of the UDHR which recognizes FOE also reaffirmed by Article 19. The basic progress of the ICCPR regarding FOE is that, unlike the UDHR, it contained a limitation clause with conditions to be satisfied mandatorily. Following this document number of the instrument have been done more to clarify the limitation clauses such as Siracusa and Johannesburg Principles.

3.2.3. Johannesburg Principles

It is a set of principles on freedom and national security developed by a group of experts and

endorsed by the UN special rapporteur on freedom of opinion and expression.⁹⁹ This instrument contains principles with the clear test which justifies the restriction on FOE in the case of national security. According to this instrument, restriction on FOE will be imposed only where the speech was intended to incite imminent violence and there is a direct and immediate connection between the expression and likely hood or occurrence of such violence.¹⁰⁰ The principle No 7 (A) (I) further protects FOE and Media, extending rights to sensitive areas like advocacy for non-violent change of government policy or the government itself shall not be considered as a threat to national security or subject to any restrictions.

3.2.4. European Union Convention for the Protection of Human Rights and Fundamental Freedoms

The EU Convention for the Protection of Human Rights and Fundamental Freedoms (Hereafter called the EU Convention) came into being in 1950. Article 10 the Convention has recognized FOE and Media in fair, comprehensive and broader manner than its counterpart instruments. Another important point of this convention is that, limitation over the FOE should be imposed where the test of ‘necessary in a democratic society’ is satisfied. Thus, the robust case- law of the European Court of Human Rights makes it very attractive for transplanting higher standards of FOE. The philosophical foundations of freedom and the jurisprudence of the European Court of Human Right have developed in a manner which drives other jurisdictions to take a lesson from.

3.2.4. African Charter on Human and Peoples’ Rights

Compared to the above international and regional human right instruments, the African Charter on Human and Peoples’ Rights is not strong enough to safeguard the FOE. It is hardly possible to find the mechanisms protections to FOE and the test which allow the states to impose legitimate limitation over FOE. Unlike to its counterpart ICCPR and EU convention, ACHPR comes with failed to incorporate clear limitation clauses which go with accepted legitimate grounds of limitation. The relevant part, Article 9 of the Charter states that “Every individual shall have the right to receive information, express and disseminate

⁹⁹. Johannesburg Principles on National Security, Freedom and Access to Information, adopted on Oct. 1995, UN Doc. E/CN.4/1996/39, 22 March 1996, Available at, <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>. last accessed on 26 sep. 2016.

¹⁰⁰. Id. Principle 6.

his/her opinions within the law.” such part of the charter looks recognizing any national law which limits the freedom as it is.

To fill the gap of the charter and response to the quest of freedom, information, and media, different documents have endorsed by the different organ to be applied in member states. Among them, Declaration of African Civil Society Organizations of May 3, 2003, the Windhoek Declaration of 1991,¹⁰¹ Midrand Declaration on press freedom in Africa of 2013¹⁰² and Declaration of Principles on Freedom in Africa by 2002 which guarantee freedom can be seen as to understand the relevant legal regime of the matter at hand in regional level. These principles have elaborated the article one of the African Charter on human and peoples’ rights which were confusing and open to potentials of abuse.¹⁰³ Such instrument requires the governments to refrain itself from arbitrary interference against FOE and restriction clause to be provided by law, serve a legitimate interest and be necessary for a democratic society.¹⁰⁴ regarding to printing media, the declaration requires the registration system to impose no substantive restrictions, periodicals published by a public authority to be free from undue political interference, the publishers to increase the scope of circulation of the print media, particularly to rural communities and finally the declaration requires the states to encourage Media owners and media professionals to reach agreements to guarantee editorial independence and to prevent commercial considerations which unduly influencing media content.¹⁰⁵

3.3. Legal Regime of FOE and Media under National Laws of Ethiopia

Legally speaking, since the EPRDF-led governments come to power, a number of legal instruments have been enacted containing different clauses which deal with the FOE and media. Furthermore the first legal document to the regime namely Charter of Transitional Government of Ethiopia (Hereinafter called TGE Charter) cross-referred international human right instrument UDHR¹⁰⁶ to be fully respected and applied in a country particularly

¹⁰¹. Windhoek declaration, may 3, 1991, last accessed on Oct. 10, 2016, available at [http:// www.unesco. org/web world/fed/temp/communication_democracy/windhoek.htm](http://www.unesco.org/web_world/fed/temp/communication_democracy/windhoek.htm) .

¹⁰².Pan-African parliament, Midrand declaration on press freedom in Africa, Gallagher Convention Centre,Private Bag X16, Midrand 1685, Johannesburg 15 May 2013.

¹⁰³.Declaration of Principles on Freedom of Expression in Africa, 22 October 2002, available at: <http://www.refworld.org/docid/4753d3a40.html>, last accessed 13 April 2017.

¹⁰⁴. Id. Article 2.

¹⁰⁵. Id. Article 8.

¹⁰⁶. supra note 1.

fundamental rights and freedom”¹⁰⁷. Following enactment of the TGE charter, a proclamation to provide for freedom of the press¹⁰⁸, FDRE Constitution¹⁰⁹ and A Proclamation to Provide for Freedom of the Mass Media and Access to Information¹¹⁰ were legislated recognizing FOE and media. But it doesn’t mean that the realization of such freedom is free from challenges both for the academic and practical purpose. Nonetheless, it is undeniable that both legal and practical environment with regards to FOE and Media during this regime (EPRDF) is in affirmative compared to previous regimes. Especially during the enactment of TGE Charter, freedom of Media was realized on the ground.

To understand the full Ethiopian legal regime, it is mandatory to refer international and regional human right instruments in which Ethiopia is the party.¹¹¹ In favor of such basic rights, the FDRE Constitution further requires the actors of constitutional interpretation to consider and go in line with those relevant international instruments ratified by Ethiopia.¹¹². Though there are some indicative evidence which show the existence of private periodicals during the regime of Haile Sellassie I and Derg,¹¹³ the private sector engaged in printing media business in significant numbers in this regime.¹¹⁴ But since the 2005 national election, terribly the private printing media were diminished dramatically from the market.

Currently, there are a number of national laws which governs FOE and Media. Some of them favor and recognize such rights while others incorporated some of the controversial provisions which affect the subject matter. In the following section, the most selected and relevant laws have been examined in a manner which shows the national legal environment to FOE and Media Ethiopia.

3.3.1. FOE and Media under FDRE Constitution

Compared to previous Constitutions of 1955 and 1987, FDRE Constitution of 1995 has recognized FOE and Media in more detailed and elaborated manner. The other interesting

¹⁰⁷. Transitional Period Charter of Ethiopia, 1991 July 22, Proc. No. 01, Art. 1 (a), Neg. Gaz., year 50th, No. 1.

¹⁰⁸. A Proclamation to Provide for the Freedom of the Press, 1992, Proc. No. 34.

¹⁰⁹. Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No.1, Neg. Gaz., Year 1, No.1.

¹¹⁰. Cited above at note 9.

¹¹¹. Cited above at note 109, Art, 9(4).

¹¹². Id, Art, 13(2).

¹¹³. Cited above at note 90.

¹¹⁴. Ellene Mocria, Mesfin Messele and Alemayehu Gebre Hiwot, “Survey of culture and media in Ethiopia”, Sida, (2003). P. 31.

part of the constitution is that it abolished Censorship of any type. The relevant article of the Constitution, Article 29 entitled “Right of Thought, Opinion and Expression”¹¹⁵ states that:-

- 1) *Everyone has the right to hold opinions without interference.*
- 2) *Everyone has the right to freedom without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.*
- 3) *Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:*
 - (a) *Prohibition of any form of censorship;*
 - (b) *Access to information of public interest.*
- 4) *In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.*
- 5) *Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.*
- 6) *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. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.*
- 7) *Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.*

Though such rights are guaranteed by the above provision, the matter is still subject to criticism by scholars of the field and human rights defenders. The main concern of the critics, refers to the characterization of the above article under the part of democratic right and clarity of the limitation clause to some extent. For the purpose of this research, the most controversial part of the FDRE Constitution with regards to FOE and Media will be discussed in the following manner.

3.3.1.1. FOE and Media under the Part of Democratic Rights

To begin with, the allocation of FOE and Media under the part of the democratic right is controversial. The root of the controversy emanates from the spirit of Article 10 of FDRE Constitution.¹¹⁶ This very article under sub-article one states that “*Human rights and freedoms, emanating from the nature of mankind are inviolable and inalienable.*” (Emphasis added) while sub-article two states “*Human and democratic rights of the citizens and peoples shall be respected.*” (Emphasis added) From the reading of this article, Dr.Gedion inferred to points and indicated tentative solutions to manage unwanted consequences.¹¹⁷ The first one is that human rights and freedom emanates from nature of mankind while the democratic

¹¹⁵. Cited above at note 109, Art, 29(1-5).

¹¹⁶. Cited above at note 109, Art, 10.

¹¹⁷. Cited above at note 34, P. 208.

right is not. The second one is that human rights and freedoms are inviolable and inalienable while the democratic right is required to be only respected. Based on this fact, though it is subject to disagreement, it can possibly be inferred that human rights and freedoms are more protected than democratic right.¹¹⁸

As far as no justification is learned from international human right instruments in which Ethiopia is the party, the writer of this paper believes that different treatment over fundamental rights and freedoms may consequent unwanted and condemned effect especially against the essence of Article 13 (2) of FDRE Constitution. Equality of fundamental rights and freedoms in FDRE Constitution is still subject to argument from, both practical and academic point of view. Unless a clear, authoritative and settled case law exists that affirms the formal equality of all fundamental rights and freedoms, the question looks to persist forward.¹¹⁹

3.3.1.2. Limitation over FOE in General and Under FDRE Constitution

“The limitation provisions serve the dual purpose of protecting individuals from arbitrary limitation on the one hand and of tolerating acceptable constraints on right that serve the general public interest and welfare of the society on the other hand”¹²⁰

Incorporation of the limitation clause over fundamental rights and freedoms is not the new phenomenon in the history of every legal system. Limitation clause is not condemned by itself where it is wisely formulated and properly applied.

Legislations which incorporate a limitation clause differ from Country to Country. The limitation clauses may appear in Constitution, in case law or other legislation. Most countries prefer to incorporate fundamental rights and freedoms with its limitation clause under their Constitution. In such a case, the designers of the Constitution may choose one of the most usual ways to manage limitation which fits to their specific situation. The limitation clause may be general, specific/internal, incorporating no limitation clause¹²¹ or hybrid (General and Internal)¹²². The researcher discussed each way in detail with examples of countries adopting

¹¹⁸. Ibid.

¹¹⁹. Id., P. 213.

¹²⁰. Adem Kassie, Limiting Limitations of Human Rights under the FDRE and Regional Constitutions, Ethiopian Constitutional Law Serious School of Law, 2011, P.3.

¹²¹. The International Institute for Democracy and Electoral Assistance, Limitation Clauses, Nov.2014. P.6.

¹²². Cited above at note 120, P.4.

them and looked into the FDRE Constitution as to clearly understand the way applied under the FDRE Constitution.

The Constitutions with No limitation clause not widely applied except few Countries.¹²³ In this case, the courts are primarily responsible for determining the nature and extent of protected rights. For those countries with strong democratic institutions and a good record of human rights protection, this approach may be reasonable to adopt. The advantage of this approach is that the legislature and the court will have a lot of discretion over the specific case considering every specific issue in a case by case basis. Oppositely leaving the Constitution with no detailed, specific limitations and further guidance is risky in non-democratic countries with having weak institutions.

Secondly, coming to general limitation clauses, there are countries which incorporate a single/general limitation clause in their Constitutions. For example, Constitution of South Africa has adopted such way and contained only single general limitation clause under section 36 which manages every limitation case. The relevant section states that:-

- (1) “The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom, taking into account all relevant factors, including-***
- (a) The nature of the right;***
 - (b) The importance of the purpose of the limitation;***
 - (c) The nature and extent of the limitation;***
 - (d) The relation between the limitation and its purpose; and***
 - (e) Less restrictive means to achieve the purpose.***
- (2) Except as provided in sub-section (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”(Emphasis added)***¹²⁴

Also, the Canadian Constitutional Act incorporated a general limitation clause stating that “*The Canadian Charter of Rights and Freedoms guarantee the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society*”. (Emphasis added)¹²⁵ These very parts of limitation clauses set out the circumstances that must be taken into account when dealing with the limitation of fundamental rights and freedoms. Formulating general limitation clause

¹²³. Constitutions of Argentina, Egypt and USA have incorporated no limitation clause for those constitutionally guaranteed freedom and media.

¹²⁴. Constitution for the Republic of South Africa, 1996, Section 36.

¹²⁵. Constitutional act of Canada, Canadian Charter of Rights and Freedoms, 1982, Art. 1.

in the Constitution gives significant power to judge to interpreted matters case by case basis within the boundary of the general limitation clause. To effectively execute its task of interpreting the law, the court should be independent and strong. For those non-democratic countries having no strong judiciary, adopting the general clause is not advisable.

Thirdly, there is another way of managing limitation by incorporating internal/specific limitation for each right which legally recognized. The FDRE Constitution has adopted this way and formulated internal limitation for different rights guaranteed by the Constitution. For example, the Constitution has incorporated specific limitation of some of the rights such as the right to life, freedom, the right of assembly, demonstration and petition¹²⁶ and freedom of association.¹²⁷ Internal limitation clause is mostly preferred to consider the specific nature of the rights while dealing with it.

Finally, designers of the Constitution may adopt a hybrid approach to handle the limitation. In such kind of approach, the Constitution contains both general and specific/internal limitation clause.¹²⁸

As a concluding remark, in democratic countries where the institutions are strong, it may be acceptable to adopt the approaches which give significant power either to the legislator or court in a manner which allows them to consider specific case and situations. Contrarily, in non-democratic countries, more detailed and specific limitation clause is necessary in order to protect fundamental rights and freedoms from the arm of the government.

Ethiopian approach to incorporate the specific limitation is acceptable for its detailed guidance consideration of the specific nature of the right. But the challenge in such approach is that the legislator may produce legislations which may affect basic rights. Because, the Ethiopian law maker organ (HPR) is assumed not to be independent. Its total seat is occupied of seats by the single ruling party. So the government may easily influence the HPR to formulate the limitation clause in favor of it.¹²⁹ Also coming to the independence of the judiciary, starting from the appointment of the judges and administration of the judiciary, it is

¹²⁶. Id. Art. 30 (2)

¹²⁷. Id. Art. 31.

¹²⁸. Cited above at note 119, P.4

¹²⁹. Interview with Dr. Abera Degefa, Lecturer at Addis Ababa University School of Law and Governance Studies, Oct. 09, 2016.

hardly possible to expect the judiciary to interpret the law freely considering the essence of the FDRE Constitution and international law ratified by Ethiopia.¹³⁰

Examination the article 29 (6 and 7) of the FDRE Constitution indicates some of the shortcomings which require authoritative interpretation and incorporation of additional grounds as legitimate grounds of limitation.¹³¹ The first sub-article lists the grounds which justify limitation over FOE and Media while the second sub-article imposes the duty on every citizen to obey any legal limitations during exercising FOE and Media.¹³²

Failure to incorporate the most acceptable grounds of limitations such as national security, the need to uphold the integrity of the judicial process and the fair trial rights of individuals are one of the gaps of the FDRE Constitution. This implies that the list cannot reasonably be taken as an exhaustive list.”¹³³

The danger of this implication is that it seems to invite additions of such grounds of limitation which might at the end of the day results very long listed and broadly formulated limitations which may jeopardize FOE and Media.”¹³⁴ That may be why the media proclamation recognized the national security as legitimate ground controversially with extended interpretation authorizes the public prosecutor to decide over the situation to be the emergency or not.¹³⁵ To fill this gap, relevant international instruments should be consulted during dealing with limitation where the national security requires.¹³⁶

Secondly, the constitution has failed to define laws which considered incorporating limitation clause in a fair and just manner. That is why the term “any legal limitation” stated under Article 29(7) of FDRE Constitution is confusing. Because it is not quite clear whether any legislation incorporating limitation clause required mandatorily become in conformity to sub-articles six of the above article. Nonetheless the mere application of sub-article 7 of the FDRE Constitution without considering sub article 6 will erode the spirit of the Constitution which allows the limitation only in limited circumstances. Otherwise, reading of Article 29

¹³⁰ . Ibid.

¹³¹ . Cited above at note 109, Art. 29(6-7).

¹³² . Id. Art. 29 (7).

¹³³ . Cited above at note 34, PP. 219-220.

¹³⁴ . Id., P. 220.

¹³⁵ . Cited above at note 9, Art. 42 (2-3).

¹³⁶ . Cited above at note 99.

(7) without considering article 29 (6) will consequents dangerous result against FOE and media.¹³⁷ Thirdly, in addition to those formal requirements stipulated in the Constitution, such as the legality of limitation, some other further guidance is needed to manage the limitation issue.

“...the text of the Constitution does not provide any substantial restriction on limitations to be imposed on freedom based on legitimate grounds. Hence, adopting some substantive restrictions on the limitations that could be set by the state of freedom is necessary. That is why, in most democratic countries, the proportionality test/analysis (which requires that any limitation imposed on a right be proportionate to the legitimate aim being perused) is employed to distinguish acceptable and unacceptable limitations on human rights.”¹³⁸

Though the above selected gaps seen among others as a shortcoming, it is undeniable that the FDRE constitution has fairly recognized the FOE and Media in elaborated and acceptable manner with limited legitimate grounds of limitation.

3.3.2. A Proclamation to Provide for Freedom of the Mass Media and Access to Information.¹³⁹

This proclamation came with some positive measures which facilitate the enjoyment of FOE and Media in a better way than its predecessor media proclamation N0. 34 of 1992. Abolition of censorship which reaffirmed the FDRE Constitution is one of the most interesting measures taken by such proclamation¹⁴⁰. However, some of its provisions are still controversial and likely uncomfortable to the media sector. Among them provisions which deals with the power of the public prosecutors, denying individuals from operating periodicals (only legal persons/Companies/ are allowed to operate Media) and cross-ownerships are the most burning one. Let disuses each controversial issue separately. (*Issues related to power of public prosecutor will be disused under Chapter 4.3*)

Regarding to cross ownership, article 7 (3) of media proclamation states that any person who exercise effective control over a COP may not exercise the same power in any other companies engaged in the same business in overlapping markets with previous one simultaneously.¹⁴¹

¹³⁷. Cited above at note 34, PP. 213-214.

¹³⁸. Id. P. 221.

¹³⁹. Cited above at note 9.

¹⁴⁰. Id. Art. 4 (1).

¹⁴¹. Cited above at note 9.

According to Mr. Getahun Girma¹⁴² the reason to prohibit cross-ownership of mass media is to allow the diversified view to be heard and avoid the monopoly of view from the same source.

If that is the case, it can easily be inferred that the government is airing its monopolized view using its all type of Media as an instrument. The reason is that the government is operating the similar type of media in overlapping markets. Regarding this the writer of this paper believes that it is not fair to limit the individuals from joining different companies with significant control. But to avoid the negative result, the government should take different measures. The measure includes, but not limited to, delivering training for media community, facilitating the preparation of the code of conduct by appropriate organ and like.

Also prohibiting the natural person from operating printing Media is the other controversial area under media proclamation. According to a media proclamation¹⁴³, only artificial persons/companies are allowed to own periodicals. This may affect the right of individuals to practice FOE through the instrumentality of journalism. Because the establishment of Company a complicated task of traders. It requires the significant amount of capital, business experience, manpower and bureaucracy of management. It is a difficult condition to satisfy for those interested individuals to practice journalism with no sufficient amount of money, business experience and management skill of companies.

3.3.3. A proclamation on anti-terrorism

This time, terrorism is one of the serious threats to every of the nations in the world. Because of the terrorist act, millions of the people have lost their lives while the same are wounded and disappeared. In the same manner, the numerous properties are damaged in different parts of the world.

Following the proliferation of the terrorist group in different states, especially after the 9/11 attack of Al-Qaeda against world trade center of USA, United Nation has adopted multiple resolutions to urge member states to criminalize terrorism in their domestic criminal laws and take appropriate action to prevent and counter terrorism.¹⁴⁴ The UN Human Rights Commission also issued resolutions reminding nations to “refrain from using counter-

¹⁴². Interview with Getahun Girma, Assistance head of public relation department, Ethiopian Broadcasting Authority, Oct. 15, 2016.

¹⁴³. Cited above at note 9, Art. 7 (6).

¹⁴⁴. United Nations General Assembly, Global Counter-Terrorism Strategy, 2014.

terrorism as a pretext to restrict the right to freedom of opinion and expression in ways which are contrary to their obligations under international law”.¹⁴⁵ The African Union has also required the member states to take proper measure to fight the terrorist.¹⁴⁶

According to the Ethiopian government, as the member state to both UN and AU (both UN and AU have been urging their member states to fight terrorism) and to protect the country from the terrorist attack, it has taken a different measure to combat terrorism. To this end, a proclamation on anti-terrorism¹⁴⁷ legislated to facilitate the prevention of the terrorism act.

But this is not convincing to different individuals and organizations defending human rights. The content of the proclamation is seriously challenged as it affects FOE. They consider as the government intentionally legislated to silence the critical and opposing voices directed against the government. In general, anti-terror proclamation is still facing opposition from different corners, including the national and international community.

For the purpose of this research, we will assess the most relevant provision of the media proclamation to FOE and media in a manner which shows the status of the proclamation whether it violates or in conformity to constitutionally guaranteed FOE and media.

The first critique is that the definition fixed to terrorist act under Article 3 of the proclamation¹⁴⁸ is broad, uncertain/unclear and potential to pull and constitute even non-terrorism act into terrorism act. Among other phrases, “coercing the government”, “destabilizing or destroying the fundamental political, Constitutional or, economic or social institutions of the country” and “causes damage to natural resource, environment, historical or cultural heritages” can be raised as an indication for the shortcoming of the proclamation. They are open-ended for interpretation and subject to abuse in the pretext of legitimate limitation.

The phrase “coercing the government” lacks certainty regarding its magnitude to be easily determinable by the public at large. Because of this, it is not clear as which type and level of expression constitute the terrorist act. Also, the intention to coerce the government should be

¹⁴⁵. Commission on Human Rights resolution of 2003/42, 2004/42 and 2005/38.

¹⁴⁶. African Commission on Human and Peoples’ Rights, Resolution on the Protection of Human Rights and the Rule of Law in the Fight against Terrorism, meeting at its 37th Ordinary Session held in from 21st November to 5th December 2005.

¹⁴⁷. Cited above at note 11.

¹⁴⁸. Id. Art. 3.

considered. The same is true for the phrase “destabilizing or destroying the fundamental political, Constitutional or, economic or social institutions of the country”¹⁴⁹. Such kind of poorly drafted legislations usually consequents misallocation of ordinary criminal offenses to terrorist acts. Also the phrase “causes damage to natural resource, environment, historical or cultural heritages”¹⁵⁰ is not easily identifiable because of its broadness and uncertainty. The proclamation has failed to put the act that causes damage to the natural resource, environment, historical or cultural heritage in a qualified manner. Many jurisdictions in the world, handled these matters in a qualified and clear manner. For instance, the Common Wealth definition of terrorism limits that “the means of damage requiring that the damage has to expose the public or a part thereof to dangerous, hazardous, radioactive or harmful substance, a toxic chemical, a microbial or other biological agent or toxin.”¹⁵¹

The proclamation goes further and defines terrorism act in a broader fashion that includes crimes committed against property. Thus, criminalizing and punishing property crimes as a terrorist act under the proclamation is against the principle of fair labelling and certainty¹⁵². In relation to this, UN Special Rapporteur on counterterrorism and human rights has stated that the notion of terrorism doesn’t encompass property crimes rather it should be limited to acts committed with the intention of causing death or serious bodily injury, or the taking of hostages.¹⁵³

In general, the definition of the terrorist act, at least as it applies in the context of restrictions on freedom, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organized criminal case and to influence public authorities by inflicting terror on the public.¹⁵⁴

In addition to the poor definition of the terrorist act, the proclamation has incorporated the article which criminalizes “encouragement of terrorist” in a manner which makes the

¹⁴⁹. Ibid.

¹⁵⁰. Id. Art. 3 (5).

¹⁵¹. Dersolegn Yeneabt Mekonen, “Assessing Controversial Issues of the Ethiopian Anti-Terrorism Law: A Special Focus on Substantive Matters”, *Journal of Law, Policy and Globalization*, Vol. 40, (2015), p.61.

¹⁵². Ibid.

¹⁵³. Human rights watch, *An Analysis of Ethiopia’s Draft Anti-Terrorism Law Updated, 2009*, p.5.

¹⁵⁴ Joint declaration on defamation of religions, and anti-terrorism and anti-extremism legislation by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, (2008).

proclamation subject to criticism as it negatively affects FOE and media.¹⁵⁵ What makes this provision problematic is that, it has incorporated phrases “likely to be understood”, “indirect encouragement” and “other inducements” in a vague and broad way which gives discretion to law enforcement organ and courts in a manner which may in a way which may allows the executive and courts to constitute different ordinary criminal act as encouragement to terrorism irrespective of their degree or relevance against FOE and media. Their fate of different acts depends on the decision of the court, the analysis of public prosecutor and other relevant agents of the government. The terms “encourage” “indirectly encourage” and “other inducement” stated in the Proclamation should be abandoned in favor of internationally accepted terminology such as “direct incite” with its elements to constitute a crime. Such kind of situation gives the space to develop subjective standards of the concerned persons. Both “indirect encouragements” and “other inducements” are not recognized as a legitimate ground under international human rights instruments to restrict freedom unless it is directly intended to incite such conduct. More specifically, according to UN Special Rapporteur on Freedom of Opinion and Expression, restrictions on freedom in the name of national security may be imposed only where the speech was intended to incite imminent violence and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.¹⁵⁶ Also, the proclamation has controversially criminalizes inchoate conducts those are yet attempted.¹⁵⁷

Finally, but not limited to, Article 22 of the anti - terrorism proclamation¹⁵⁸ which binds anyone, including journalist to give the source of information is controversial provision. What makes the situation worse is that no clear test is there and the subjective decision of the police may be rendered on the cost of source. Unlike this anti-terror proclamation, Criminal code of FDRE is liberal which guaranteed the secrecy of the identity of the source with the exception to limited reasonable circumstances. Article 45 (2 - 3) of Cri. C protects the publisher or editor from forceful disclosure of the source except in the case of limited

¹⁵⁵. Cited above at note 9, Art. 11.

¹⁵⁶. Cited above at note 99.

¹⁵⁷. A Proclamation on anti-terrorism, 2009, Art. 4, Proc. No. 652, Neg. Gaz., 15th year, No. 57.

¹⁵⁸. Id. Art. 22.

situations which may consequent clear and imminent danger or in relation to serious crimes.¹⁵⁹

However, for the purpose of facilitation of free flow of information by media institutions and the public either journalist or media institution should enjoy the right to keep source of information where they found information in the course of journalism.¹⁶⁰

Regarding for those shortcomings of anti-terror proclamation discussed above, the senior public prosecutor (Name confidential)¹⁶¹ argues oppositely and states as the proclamation is the best instrument which facilitates the fight against terrorism. He doesn't agree to the existence of shortcoming in a proclamation against FOE. He further states that in case of application of those "so called vague and broad terms" nothing problem will result as far as the interpretation considers the ideology of suspects. But surprisingly, he has never soundly reasoned out as how they identify and evaluate the ideology of suspects.

The above discussion safely paves the way to conclude as some of the provisions for instance article 2 (6), 3, 4, 5 (1) (b), 6 and 22 of the Anti-Terrorism Proclamation, but not limited to, negatively affects the FOE and media. The shortcoming of the proclamation is mainly related threat of the broad definition of terms, excessive duties to cooperate and provide information against to the right of journalists/media institution to keep the source of information, vagueness, and ambiguity of terminology and like will seriously consequents the chilling effect against FOE and media.

3.3.4. Criminal Code of the Federal Democratic Republic of Ethiopia

Among the matters which affect the FOE, criminalizing defamation and incorporating serious provisions which labels expressions of views in the different category of the crimes such as spreading false rumors, encouragement to the commission of crime, and disturbance of public peace can be cited. Regarding defamation, one important point needs to be clear is that defamation laws are necessary as far as it serves an important social purpose, namely the protection of the reputations of persons. However criminalizing defamation is condemned by

¹⁵⁹. The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, proc No. 414, it entered in to force on 19th may 2005, Art. 45 (2-3).

¹⁶⁰. Article19, Global campaign for free expression, Comment on Anti-Terrorism Proclamation of Ethiopia of 2009, P.6.

¹⁶¹. Interview made with (Name Confidential), Sep. 10, 2016.

well established democratic jurisdiction, international organizations and human rights defenders.

There are different justifications which require abolishment of criminal defamation and formulation of only civil laws in the matter. Among them, failure of criminal defamation law to pursue a legitimate aim, disproportionate sanctions, adequacy of civil law to protect reputation/honor, and technicalities of litigation in the criminal case are widely considered as sound justification to decriminalize defamation.

It is widely considered that defamation is the act which directly affects the reputation/honor of individuals.¹⁶² So that, if any, the injury occurred against individual's reputation/honor, it can be fixed by compensation in terms of damages. Because of that, the civil laws are sufficient enough to respond the question of defamation act. That is why criminalizing the defamation is considered as the excessive measure which chills FOE and media. Defending a defamation action in criminal proceedings discourages serious discussions and critics in public fearing the penal sentence and its effect. Criminal sanctions do not for the most part aim to remedy the actual harm caused to the victim, but it rather punishes the defendant for his/her expression.

In addition to the non-proportionality of criminal sanction technicality of criminal litigation makes the enjoyment of FOE difficult. Unlike the civil matter, criminal litigation process is more technical and single mistake on the process may consequent serious criminal sanctions in which the civil matter ends up by the monetary loss.

Different international bodies have found out the negative impact of the criminal defamation against FOE and media. They suggested for countries in different occasions for the decriminalization of criminal laws and replace it with civil defamation law. The UN Special Rapporteur on Freedom of Opinion and Expression in his 1999 Report to the UN Commission on Human Rights stated that “Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be

¹⁶². Among other international and national human right instruments, Article 24 of FDRE Constitution, Article 12 of UDHR and Article 17 of ICCPR can be seen as reputation/honor is tied to person.

applied”¹⁶³ Again in its report in 2000 and 2001, the Special Rapporteur has gone further and called states to repeal criminal defamation laws.¹⁶⁴

In the same manner, the Joint Declarations of the representatives of intergovernmental bodies¹⁶⁵ to protect free media and expression; special international mandates for promoting freedom have also come with the same idea, in favor of abolishing criminal defamation law.¹⁶⁶

In line to this, the European Court of Human Right during rendering decision on the first defamation case, it made the following point as a part of the decision in favor of FOM. It states that;

“...the penalty imposed on the author ... amounted to a kind of censure, which would be likely to discourage him from making criticisms of that kind again in future ... In the context of political debate such a sentence would be likely to deter journalists from contributing to public discussion of issues affecting the life of the community. By the same token, a sanction such as this is liable to hamper the press in performing its task as purveyor of information and public watchdog”¹⁶⁷

From the readings of the above part of the decision, it can easily be learned that the court has seriously considered the negative effect of harsh punishment, the value of media, and benefit of public discussion. In general, though the European court of human right has not yet clearly disregards criminal defamation law, it has repeatedly stated that criminal defamation law consequents different problems against the FOE. That may be why it still failed to sentence any of harsh punishments during the defamation cases it entertained.¹⁶⁸

In determining the liability of persons, the ECHR has adopted the “Reasonability Test” to manage the cases which related to defamation caused by the press. The reasonableness refers to the motive of the publisher to serve the public and they are required to show as, "they are

¹⁶³. Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/1999/64, 29 January 1999, para. 28.

¹⁶⁴. Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 52 and UN Doc. E/CN.4/2001/64, 26 January 2001.

¹⁶⁵. Joint Declarations of the representatives of intergovernmental bodies, UN Special Rapporteur on freedom of opinion and expression, OSCE representatives and OAS Special Rapporteur on Freedom, 2013.

¹⁶⁶. International Mechanisms for Promoting Freedom, joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom, Dec. 2002.

¹⁶⁷. European court of human right, Lingens v. Austria, 8 July 1986, Application No.9815/82, 8 EHRR 407. para. 43.

¹⁶⁸. Article 19, briefing note on International and Comparative Defamation Standards, Global Campaign for Free Expression, February 2004, P.4.

acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism”.¹⁶⁹

In nutshell, decriminalizing defamation laws are repeatedly required by different international and regional organizations. This time, a number of countries have completely abolished criminal defamation laws and applied only civil laws for damage in order to protect FOE and compensate the victim.¹⁷⁰

Coming to the Criminal Code of the Federal Democratic Republic of Ethiopia¹⁷¹ (Hereinafter called Cri.C), defamation is criminalized. The Cri.C has incorporated a number of provisions which directly and indirectly deal with defamation, printing media and different way of expressions. In addition to criminalizing defamation, Article 618 of Cri.C is designed in a way which provides special protection for state and public servants. In addition to the above discussions on the criminalization of defamation, also other relevant provisions of the Cri.C that affects FOE will be discussed in a manner which enables to render appropriate recommendations.

To start with, according to Article 244 of Cri.C, defaming the state in public¹⁷² is punishable by simple imprisonment. In the same fashion Article 486 states that the act of starting or spreading false rumors or suspicions against the Government or the public authorities or their activities, thereby disturbing or inflaming public opinion, or creating a danger of public disturbances is punishable up to three years of rigorous imprisonment.

The private nature of the defamation mostly raised by abolitionists of criminal defamation laws. In line with this argument, the reading of different international human right instruments and relevant national legislations indicates that the honour or reputation is more associated with the natural person.¹⁷³ So, the defamation clause is better to protect natural

¹⁶⁹. European court of human right, case of Bladet Tromsø and Stensaas v. Norway, Application no. 21980/93, judgment Strasbourg , 20 may 1999, para. 65.

¹⁷⁰. States which abolished criminal defamation includes; Gana (2001), Kenya (2017) Bosnia-Herzegovina (2002), Estonia, Georgia (2004), Ghana (2001), Mexico (2007), New Zealand (1992), Sri Lanka (2002) and the Ukraine (2001). Kenya 2017, Jamaica (2013).

¹⁷¹. Cited above at note 161. Art. 613, 614 and 618.

¹⁷². This article requires a given act to satisfy the element stated in Articles 613 of the same code. According to this article, understanding the truthfulness of the fact, he/she should notify the third party false statement with the intention to affect the honor/reputation of the individuals.

¹⁷³. Cited above at note 109, Article 24.

persons than a legal person especially states and government. They are expected to tolerate critics than ordinary individuals.¹⁷⁴

Special protection for public Servant is not justifiable. During entertaining the case of *Lingens v. Austria*, the European court of human right states that “Politicians should have a greater degree of tolerance to public scrutiny and possible criticism in the press than a private individual”.¹⁷⁵ Against this, public officials from undemocratic countries silence the public critics reflected against them using different means such as criminalizing defamation, designing criminal law in a way which protects public Servant/Officials than ordinary citizen and imposing serious punishments where such law infringed.

In addition to the criminalization of defamation, controversially the Cri.C has gone further and disregarded the “defense of truth” which is accepted in the different developed jurisdiction. It is against the principle that one should not be able to defend a reputation one does not deserve in the first place.¹⁷⁶ According to Article 614 of Cri.C, the defendant is expected to show the court the absence of intention to injure the honor/reputation or utterance/expression aimed to actuation of a higher interest or moral purpose.¹⁷⁷ The phrase ‘intention to injure’¹⁷⁸ is the other problematic point which is subject to disagreement. The problem with this phrase is that it is difficult to prove his/her intention not to injure the honor or reputation of others. Also, the phrase “public interest”¹⁷⁹ “a sufficient ground to believe” and “higher interest or moral aim” of the provision are difficult to understand its boundary and degree. It is open-ended for disagreement.

According to Article 486 of the Cri.C where the expression “Disturbing or inflaming the public opinion” it will be punishable criminally. Here the danger of this provision is that it is not clear as how disturbance of the public opinion is identified. Secondly, the limitation is in conformity to FDRE constitution, which limits limitation clause not to limit expression on account to content and effect of expression. Such provision is so broad and ambiguous,

¹⁷⁴. Cited above at note 161, Art. 244.

¹⁷⁵. European court of human right, *Lingens v. Austria*, 8 July 1986, App. No. 9815/82, 8 EHRR 407. Para. 43

¹⁷⁶. Toby Mendel, Report on the draft Ethiopian Proclamation to Provide for the Freedom of the Press With Reference to the Law and Practice of the United Kingdom, India, Germany and Canada, A Report for The Ethiopian Parliament, Oct. 2006

¹⁷⁷. Cited above at note 161, Art. 614.

¹⁷⁸. Id, Art. 614 (2) (a).

¹⁷⁹. Id, Art. 614 (2) (b).

which is subject to interpretation by the court. Having this fact in mind, nothing is likely to justify the limitation imposed by Article 486 of the Cri.C.¹⁸⁰ Because of its nature of openness, ambiguities and controversies numbers of countries have realized the negative effect of it and taken different measures to overcome those negative effects. Some states have struck down such kind of provisions, such as Canada¹⁸¹ and Zimbabwe¹⁸² while others, including the United Kingdom have removed it from their book.

Coming back again to Media related crimes, Article 257 of Cri. C is the area of concern to the media community. This very provision has been affecting them not to enjoy the FOE of media because of its broadness and openness for interpretation. Additionally, it favors the Public prosecutor to frame a charge as an optional law to anti-terror proclamation of 652/2009 against the editor in chief, deputy editor in chief, publisher, printer, and disseminator because of the content of periodicals.

According to Attorney (Name confidential),¹⁸³ before the coming into force of an anti - terrorism proclamation of 256/2009, many of the journalists had been prosecuted and convicted in violation of article 257 of Cri.C. But nowadays, there a tendency of public prosecutors to turns their face to Anti-terrorism proclamation to frame charges against journalists. It is up to public prosecutors to choose one of the existing laws and/or articles to produce charges against journalists or actors in media through different capacities.

Article 43 (5) of Cri.C, is another controversial provision of the Code. It is considered to be unconstitutional and eroding the Constitutional guarantee of Rights of persons accused to be presumed innocent until proved guilty¹⁸⁴ and right to produce evidence in their own defence.¹⁸⁵ The relevant part of such article states that in determining the liability of a person under this article for the crime committed through the product of mass media, the content of

¹⁸⁰. Gedion Timothewos, An Apologetics for Constitutionalism and Fundamental Rights: Freedom in Ethiopia, A Comparative Study, Unpublished LLM Thesis, Central European University, June 28, 2009, P. 110.

¹⁸¹. Her Majesty queen Vs. Ernst Zundel (R. v. Zunde), 2 S.C.R. 731, File No. 21811, 1992, Supreme Court of Canada.

¹⁸². The Zimbabwe Supreme Court has also struck down such a provision. Chavunduka and Choto Vs. Minister of Home Affairs and Attorney-General, 22 May 2000, Judgment No. S.C. 36/2000.

¹⁸³. He is now acting as an attorney and consultant at law after he left the ministry of justice in which he served as a public prosecutor for long time. During his stay there, he states his memory that many of journalist convicted for violation of article 257 of Cri.C and for the same issues other journalist convicted for violation of anti-terror proclamation.

¹⁸⁴. Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No.1, Art. 20 (3), Neg. Gaz, Year 1, No.143 (1).

¹⁸⁵. Id. Art. 20 (4)

the matter shall be deemed to have been inserted, published or disseminated with full knowledge and consent of the editor-in-chief, deputy editor, publisher, printer, and disseminator¹⁸⁶. No proof to the contrary may be admitted in such a case. Based on this problematic provision of the Cri.C, the above-listed actors will not enjoy the presumption of innocence where they are accused of crimes which committed through mass media. They all assumed guilty and not allowed to proof contrarily. Because of that, they have denied the right to adduce or to have evidence produced in their own defense, and to obtain the attendance and examination of witnesses on their behalf before the court against the constitutional guarantee.¹⁸⁷ It directly violates the Article 20 (4) of FDRE Constitution.¹⁸⁸

In general, according to the above discussion and other relevant problems of Cri.C, the criminal laws are not friendly to enjoy FOE and media in our country. In addition to criminalizing defamation, incorporation of different provisions dealing with mass media in a manner which affects the media environment, multiplicity and complication of legislations applicable to media related crime, broadness/ambiguity/vagueness of terms in relevant laws and misapplication of laws against the laws also makes the criminal justice system inconvenience to FOE and media. Because of this, there are routine experiences of private media community to face the prosecution in violation of laws which governs defamation, spreading false rumors, encouraging terrorism, and outrages against the Constitution.

¹⁸⁶. Simeneh Kiros Assefa, “The Principle of the Presumption of Innocence and its Challenges in the Ethiopian Criminal Process”, Mizan Law Review, Vol. 6 No. 2, Dec. (2012), P. 303.

¹⁸⁷. Ibid.

¹⁸⁸. Ibid.

Chapter Four

4. Existing Restraints against FOE and Media in Ethiopia

Compared to all the previous regimes, the current government comes up with different measures in favor of printing media sector. But there are some legislations and practices of the government, which affects the FOE in general and PCOP. Those impediments are mainly sponsored by the government using its machinery as an instrument.

This time, there are different government institutions which practice prior restraints by adopting various impediments against printing media sector. Because of the complicated means of the government to control information, different informants state that “FOE and media are the most violated right in Ethiopia”¹⁸⁹. For the clear understanding of the matter at hand, let’s examine the relevant government institutions in the following manner, which have been directly and/or indirectly suppressing periodicals in their day to day activity and other factors which play the same devastating role.

4.1. Berhanina Selam Printing Enterprise /BSPE/

The Berhanina Selam Printing Enterprise (Hereinafter called BSPE) is the Government-owned profit making organization which is accountable to a Ministry of Public Enterprises. Such Enterprise is engaged in printing Business. It is founded in 1921 by Ras Tefari Mekonen (Haile Selassie).¹⁹⁰ Because of its long experience and modern Machinery, private companies operating periodical (Hereinafter called PCOP) prefer BSPE to get their script printed in required quality and time. Such fact mostly makes publishers in Ethiopia dependent to BSPE. Having this advantage and as an instrument of executive organ, BSPE shows the tendency to act as a regulatory body controlling information prior to publication and dissemination. Such tendency and actual intent are manifested in different ways, such as unjust pricing, delay in publication, preparations of an adhesive contract which favors itself, miss interpretation of contracts, administrative hassle and like. Such impediments have been routinely exercised by BSPE especially against PCOP.¹⁹¹

¹⁸⁹. Interview with Mr. Elias Gebru, Journalist and served different Private Periodicals in different Capacities including Editor-in Chief, Nov. 01, 2016.

¹⁹⁰. See official page of BSPE, <http://ethbspe.com/index.php/about-us-2/history-of-bspe-2/>, last access on Dec.12, 2016, 9:00 AM.

¹⁹¹. Interview with Mr. Abraham Gizaw, Editor in-Chief in former Sinq Newspaper, Oct. 18 , 2016.

Among other impediments stated above, the most serious threat against PCOP is the nature and content of the adhesive contract which made by BSPE itself. There are two controversial adhesive contracts documents offered by BSPE. The first one is currently applied and working contract which has been governing the relation between BSPE and its customers while the second one is the draft contract which is still ineffective because of the challenge from the client's side. The draft was issued in April 2012 and disseminated to customers to be signed. The PCOP went through such draft document and opposed some of the provisions which favors and authorizes BSPE to check the script before publication, terminate the contract unilaterally and interpreted the printable script whether it violates the law of the land or not. Mainly because such grounds they refused to sign on the document proposed by BSPE. Still, no clear decision is rendered by any of the concerned organ over the fate of such draft Contract. Until now, the majority of PCOP are not confident for none entrance into force of such draft contract. Both documents are adhesive in their nature which disregards negotiation and makes the publisher have no say on the contract.

For the clear understanding of the devastating role of these contracts against clients, let's discuss the relevant article of both documents in detail separately in the following manner. To start with, article three of the working contract reads that the publisher is duty-bound to deliver script which is in conformity with the law of the land.¹⁹² Also, article ten of such contract document under the title of "Refusing illegal script to print" states that "The printer will notify the publisher when it fails to print because of the force majeure. (Translation mine)¹⁹³ The first provision which deals with the duty of the publisher looks positive. But, the cumulative reading of the above two provisions of the working contract may lead to devastating results against customers. The reason is that, according to article 10, where the BSPE finds (will be measured by the subjective standard) that the script violates the law of the land, it may refuse to print the script. The title of the provision clearly points about the power of the BSPE to refuse to print because of its content. But according to Mr. Kalab

¹⁹². The Amharic version of the contract states that, “

”

¹⁹³. The Amharic version states that, “ _____ ”

Beyene,¹⁹⁴ the provisions of the contract are not authorizing the BSPE to refuse any script because of its content. He tried more to make his argument sound, citing article 11 of the working contract which defines force majeure. According to such definitional provision, force majeure refers to an unexpected defect of machinery and shortage of power.

At least for three reasons, an argument of Mr. Kalab is not convincing. The first one is that the title of article 10 of the contract clearly empowers the BSPE to refuse to print because of its content. The title and the body of the provision are inconsistent. Nonetheless, the contract is subject to interpretation. Secondly, a relation of BSPE with its customer PCOP is not mostly smooth. Because of such relationship and adhesive contact made unilaterally by BSPE, no positive interpretation is expected which favours its clients. Thirdly, the intent and tendency of the BSPE to control information are clearly manifested even strongly by draft contract. Based on this analysis, it can be concluded that the BSPE can easily abuse the provisions which intentionally incorporated in a contract document.

In addition to the above working adhesive contract, the draft contract which was prepared by BSPE is seriously challenged by customers and still not entered to force yet. The draft contract authorizes the BSPE to refuse to print and unilaterally cancel or terminate the contract where it believes (measured by the subjective standard) that the script violates the law of the land. Such draft contract is still not signed by any of the clients. No clear solution is rendered by BSPE or relevant bodies of the government on the fate of the draft contract. Still, it is on the table of BSPE. Though the draft contract has not been entered to force yet, there is no guarantee for PCOP which halt the revival of such draft contract. The relevant part of the controversial draft contract reads;

10

10.1)

10.2)

10.3)

(10.1)

¹⁹⁴. Interview with MR. Kaleab Beyene, Order Receiving and Sales Team Leader in Berhanina Selam Printing Enterprise. Oct. 12, 2016.

Article 10

Refusing illegal script to print

10.1) Where the printer has good cause to believe that the script violates the law, it can refuse to print such script delivered by the publisher.

10.2) Where the publisher has a tendency to get printed its script which violates the law, the printer can terminate or cancel the contract.

10.3) Where the printer disabled to print the script because of the situation stated in the above first sub-article, it shall notify the publishers.¹⁹⁵

Going through the above problematic working and draft contract, a number of questions might arise. Is BSPE a profit-making organization or regulatory body? Do the BSPE have the expert which is competent and legitimate to examine whether the scripts violate the law or not? Does the BSPE have legal ground to examine the script and refuse to print for its subjectively measured reasons? Is the pre-print examination over the script by BSPE is in conformity to its mission and laws which guarantee FOE by prohibiting prior restraints?

To answer these questions, first, it is better to understand the nature and mission of the BSPE. It is the commercial printing enterprise which is making the profit for the government. It is not an administrative or regulatory body. So, any of tendencies to control information through different means such as preparation of improper adhesive contract which empowers it to examine scripts before publication and/or dissemination for any of the reasons are not in conformity to its mission, nature of commercial Enterprises and relevant Laws.

In general, intent of BSPE to control the information which is manifested by the unjust pricing of printing, unreasonable delay of printing periodicals, preparation of problematic adhesive contract which empowers it to examine the script before publication and/or dissemination, and the way used to treat PCOP amounts to prior restraints in its effect and discourages the media community sector not to freely exercise freedom of the media.

4.2. Ethiopian Broadcasting Authority /EBA/

Based on article 11 (1) of the establishing regulation to office of government communication affairs¹⁹⁶ which authorizes Ethiopian Broadcasting Authority (Hereinafter called EBA) to

¹⁹⁵. Article 10 of the draft contract, it is still on the table of BSPE because of refusal of publishers of periodicals not to agree on the power of BSPE. Such draft contract had been prepared by BSPE adhesively and distributed for companies operating periodicals years ago to be signed. But some of such very contract document was challenged by publishers for its content which authorizes the BSPE to unilaterally cancel or terminate the contract and refuse printing for any script which it thinks containing illegal content.

execute regulatory powers with respects to press and article 9 (1) of a media Proclamation¹⁹⁷ that requires periodicals to be registered, it is clear that EBA has a significant role in different matters of printing media sector especially during registration. Because of these documents, any company which desires to operate cross-regional periodical needs to secure registration certificate from EBA.

The experience of the different well established democratic countries shows that strict registration requirement for printing media is made irrelevant. The strict registration process with discretion to deny a registration certificate is highly condemned in the democratic society, human rights activist and different relevant organizations which defend FOE and Media. Because if the registration process is strict and registering body enjoy discretion to deny registration, it safely amounts to licensing¹⁹⁸.

Also, different international¹⁹⁹ and regional²⁰⁰ human right instruments state that the government should not exercise the discretionary power to deny the registration of printing Media. UN general comment in a report of the human rights committee stated issues to prevent control of the media as it will interfere with the right of everyone to FOE.”²⁰¹

Also, the African Commission on Human and People’s Rights on its Resolution on the Adoption of the Declaration of Principles on FOE in Africa has shown its commitment in favor of printing media requiring the member states to make registration system simple. Under the principle VIII which deals with print media, it is required that “Any registration system for the print media shall not impose substantive restrictions on the right to FOE.”²⁰² The purpose of the registration scheme is usually to ensure the defamed individuals to determine where to send their complaint.²⁰³ Registration scheme by itself may not affect the

¹⁹⁶. Government communication Affairs Office Establishment council of ministers regulation, 2008, Reg. No 158, Art. 11 (1), Neg Gaz., 15th year, No. 13

¹⁹⁷. Cited above at note 9, Art. 9 (1).

¹⁹⁸. In Australia, Canada, Germany, the Netherlands, Norway and the USA no strict registration required and the registering organ will not exercise discretion to refuse registration.

¹⁹⁹. Joint declaration by the un special Rapporteur on freedom of opinion and expression, the OSCE representative on freedom of the media and the OAS special Rapporteur on FOE, 18 Dec. 2003.

²⁰⁰. European court of human rights, Gaweda v. Poland, application No. 26229/95, 14th march 2002, Para. 43

²⁰¹. General Comment 10(1), in Report of the Human Rights Committee (1983) 38 GAOR, Supp. No. 40, UN Doc. A/38/40.

²⁰². Declaration of Principles on FOE in Africa, African Commission on Human and Peoples’ Rights, 32nd Session, principle VIII, Banjul, Gambia, 17-23 Oct. 2002.

²⁰³. Article 19, central Asian Pocketbook on Freedom of Expression, Oct. 2006, P. 96.

FOE/Media where the registering body is independent, exercises no discretion to deny registration and does not impose difficult conditions upon the print media.

Coming into our system, to operate printing media, any periodical is required to secure the certificate of registration from EBA. Such a mandatory requirement of registration to operate printing Media and the process are challenged by a number of Media community for different reasons.

The first reason is that prior registration requirement is applicable for any publisher irrespective of their size of the publications. The Proclamation looks failing to show the clear scope of the registration and silently requiring those non-significant numbers of any periodicals to be registered in the same fashion with those of large size periodicals.

Secondly, discretion and dependency of the registering organ (EBA) are seriously challenged by the media community. Based on the analysis conducted over the data collected through interview, the researcher finds that there was the different situation which practically enables the Authority to refuse the registration. According to Mr. Elias Gebru,²⁰⁴ and another informant, a number of the individual's application for the registration is rejected by EBA. They further state that the most known critical journalists cannot dare to request EBA to act as an Editor-in-chief or have significant control over the periodicals. Mostly they come with a shade of another person to act indirectly after registration. There are some experiences such journalist to buy already existing PCOP fearing the difficulty of the strict registration process.

In addition to its discretionary power, the EBA is criticized for its relevancy to manage the registration task. The practice of different countries shows that if necessary, the registration process is managed by the independent body. In our case, the registering EBA is accountable to the powerful executive organ of the government, which is not independent of the government.

Though it is not practically possible, the media Proclamation is so liberal and in harmony to the applicant to register the periodicals. After receiving the application letter, a Proclamation requires the EBA either to register the periodical in due time or if not for good reason, to respond in writing within 30 days of application stating the grounds of rejection. If not, the

²⁰⁴. Cited above at note 192.

Proclamation assumes the periodicals deemed to be registered.²⁰⁵

From the reading of Article 9 (5) of media Proclamation, which governs the registration of periodicals, it can be learned that there are possibilities which authorize the EBA to deny registration. Because where the EBA denies the registration notifying the applicant for the ground of rejection (even not convincing), the Proclamation likely allows the EBA to enjoy such discretion. No grounds which justify rejection of registration are clearly identified under Media Proclamation. That is why the argument of informants, those challenge the “practical” discretion of EBA to deny registration is sound.

Coming back to the implementation of Article 9 (5), it is not so far applied on the ground. Without a registration certificate, practically there is no room to practice operate printing media in Ethiopia. There are different situations which mandatorily require any person to secure a registration certificate as a pre-condition to operate periodicals. Those situations, mostly happen in the ministry of trades and printing enterprises. As a trader, any COP should secure the trade license from the ministry of trade.²⁰⁶ Now, the problem is that to issue trade license, the Ministry of Trade requires the registration certificate issued by EBA. Without such certificate, it is unthinkable to get the trade license from the Ministry.

In the same manner, printing enterprises require a registration certificate to deliver their printing services to any person which operates periodicals. Printers don't well come to any publisher without such certificate and trade license. Because of the above two situations, article 9(5) of the media Proclamation is impracticable and fictitious.

In relation to the practice of the discretionary power of EBA, Mr. Basaznew Wondimagegn²⁰⁷ argues in favor of EBA not to directly practice discretion in denying registration. But he argues that the EBA indirectly enjoys the discretion using a different way. According to him, a delay of registration is one means to reject an application. He further states that where the EBC is not interested to issue the certificate, it lets the applicants wait the lengthy period of time. In this case, the applicants will give up on waiting for the response and turn to other sectors of business.

²⁰⁵. Cited above at note 9, Art. 9 (5).

²⁰⁶. Commercial Registration and Licensing Proclamation, 2016, Proc. No. 980, Art.5, Neg-Gaz, 22nd Year, No.101.

²⁰⁷. Interview with Mr. Basaznew Wondimagegn, General Manager of Jiret Magazine, Jan. 10, 2016.

Administrative hassle and requirements of registration are other challenges which discourage interested individuals to operate periodicals. Registration requirements stated under the media Proclamation is acceptable and looks simple.²⁰⁸ According to informants, the EBA has adopted its own requirements which developed by practices in the guise of the administrative process of registration. According to Mr. Tewodros Kassa,²⁰⁹ though nowadays there are significant changes, previously those requirements developed within the EBA were so strict and long listed. He specifically states that applicants were required to own their Camera having “more” megapixel, desktop computers, and other expensive equipment to get registered. Including these all burdens, also 15,000.00 /Fifteen thousand/ Birr capital is required to be deposited in a bank. Such amount of money is still strictly being applied for issuance of the registration certificate as a pre-condition. During the interview with media community and other relevant evidence, what the writer of this research realized is that most print media community fear those requirements of registration developed through practices than those conditions required by law.

Including Mr. kumilachew Dagne,²¹⁰ different individuals in the sector believe that, if there was no interest by the government to exercise discretion to deny registration, there would be no need to authorize EBA to register periodicals. According to them, if the registration is simply for the purpose of statics and some acceptable light technical matters, it would be possible to get the same from the ministry of trade which registers every of traders including COP.

Advertisement Proclamation is other relevant legislation which empowers EBA to ensure that advertisement is conducted in such a manner that contributes to the economic, social and political development of the country. During exercising this power, the authority may take different measures on existing periodicals in connection to their activity related to advertisements.²¹¹

Based on the above legislations and its discussion, EBA will have a significant role to have a say over the matters of COP especially during registration of periodicals and management of advertisement. So, it can be concluded that there are different legal and practically developed

²⁰⁸. Cited above at note 9, Art. 9 (3).

²⁰⁹. Interview with Mr. Tewodros Kassa, Managing editor at weekly Yehabeshaweg Newspaper, Oct. 17, 2016.

²¹⁰. Interview with Mr. kuminachew Dagne, Attorney and Consultant-at-law, Nov. 06, 2016.

²¹¹. Advertisement Proclamation, 2012, Art. 31, Proc. No.759, Neg. Gaz. 18th Year, No. 59.

impediments of registering periodical in EBA. Here one basic thing what the writer of this researcher realized is that currently the EBA has to some extent reformed itself in responding to the application of registration positively for a majority of applicants.

4.3. Attorney General (Public Prosecutor)

Among others, the part of the Proclamation, which grants significant power to the public prosecutor (Hereinafter called PP) to impound the periodicals is one of the most controversial parts of the Proclamation. The relevant part of the media Proclamation, states that;

*“where the federal.... Public prosecutor... has sufficient reason to believe that a periodical or a book which is about to be disseminated contains illegal matter which would, if disseminated, lead to a clear and present grave danger to the national security which could not otherwise be averted through a subsequent imposition of sanctions, may issue an order to impound the periodical.”*²¹²

With regard to this very sub-article, one visible problem is that the prerequisite to impound the periodicals is stipulated differently in an Amharic and English version of the provision. The Amharic version requires the PP to obtain the court order to impound the periodicals in principle, while the English version failed to state the role of the court during impoundment. Actually, this mistake of the provision will not result any significant problem. Because, where the discrepancy occurs between an Amharic and English version of any legislation, the Amharic version will always prevail over the English one.²¹³ So, it can be concluded that the PP in principle should secure the court order to impound the periodicals except in a case of emergency.

The wording of the provision that justifies impoundments is open and subject to broad interpretation. The standard stated by the provision to evaluate the matter is “sufficient reason to believe” which requires the subjective standard of the PP. According to such wording of the provision, the PP is expected only to show its belief in the occurrence of the matter in the future based on its subjective evaluation. Also, the judge will enjoy subjective decision over such general terms.²¹⁴

Dealing with impoundments, the media Proclamation has completely failed to consider the nature of periodicals. By their nature, newspaper and magazine contain information/news

²¹². Cited above at note 9, Art.42 (2).

²¹³. Negarit Gazeta Establishment Proclamation, Aug 22. 1995, Art. 4 (2), Pro. No. 03, Neg. Gaz , Year 14th, No. 64.

²¹⁴. Cited above at note 9, Art.42 (2).

concerning to the current situation. In favor of this, the European court of human right considered the nature of the media and stated over one of its decision that “News is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.”²¹⁵ So, when the periodicals are delayed of distribution or printing, no one will be interested to read such outdated publication. Having such nature of the periodicals in mind, it is simple to understand the negative consequence of impoundment²¹⁶.

So, for those publishers, especially economically poor, a single act of impoundment against them will automatically throw them out of the media market. The writer of this paper visited different COP and made the interview with relevant individuals on their economic status and finds that the lion shares of COP are hardly covering their administrative cost. So such situation forces journalists to practice self-censorship fearing the economic crises which may result from the broad power of PP. Finally, because of the openness of the terms of interpretation, especially “emergency” and “reason to believe” the decision of the Court and PP is unpredictable.

The most controversial issues refer to the power of the PP to impound the periodicals in a case of emergency even without securing the court order.²¹⁷ The Proclamation says nothing as what constitutes the “emergency situation”. So where any periodical is targeted by the public prosecutor because of its content, the fate of such periodical will be decided by PP’s subjective evaluation of the situation to be an emergency or not. The situation is open ended for interpretation and probably will suffer the subjective decision of both the judge and PP.

In addition to critics over a legal framework, practically different situations have happened in a country regarding impoundment of periodicals by the initiation of PP. For the purpose of this research, let’s discuss the famous case comprises the parties “Federal Public Prosecutor Vs. Feteş Newspaper”.

On 20 July 2012, the ministry of justice ordered BSPE to impound the Feteş Newspaper not to get distributed. The then reason for the Public prosecutor to impose prior restraint is that

²¹⁵. European court of human right, the Sunday Times v. the United Kingdom (No. 2), Application No. 13166/87, 24 Oct. 1991, para. 51.

²¹⁶. Cited above at note 9, Art.42 (4).

²¹⁷. Id..42 (3).

the PP thought that the front page of Feteḥ carried conflicting reports about the health of former Prime Minister Meles Zenawi in a way which disturbs the peace and security of the country.²¹⁸

()
(Letter sent by BSPE to publisher of Feteḥ Newspaper)²¹⁹

በየማምንቱ ዐርብ በደርጅታችን የሚታተመው ፍትሕ ጋዜጣ የሐምሌ 13 ቀን 2004 ዓ.ም. ስትም እንዳይወራጥ በ13/11/04 በቁጥር ፍ/ሚ/ፈ/ሚ/ሰ/ሕ/መ/ቁ.664/04 ከሕትየጽያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ፍትሕ ማኒስቲር በተጻፈ ደብዳቤ የታገደ መሆኑን እንገልጻለን።

ገልጻዊ

- ሰዋና ሥራ ስሰፈጸሚ
- ሰም/ዋ/ሥራ ስሰፈጸሚ
- ስሕገ ስገልግሎት
- ሰሥራ መቀበያና ስያሜ ቡድን



Because of the letter sent by the FDRE Ministry of Justice dated 13/11/04 E.C Ref #..... 664/04, we notice that the Weekly Feteḥ newspaper has been impounded. (Translation mine)²²⁰

In this specific case, it is realized that the court had confirmed the impoundment order of the PP against Feteḥ not to be disseminated. Here the interesting question is that, in which reason and level of examination the court been convinced to reaffirm the order of the PP? According to Mr. Journalist²²¹, the then edition Feteḥ has contained the news on a cover page regarding the death of the late prime minister prior to the government’s official disclosure to the public.

²¹⁸. Interview made with, “Name Confidential, Oct. 12, 2017.
²¹⁹. Tesfaye Alemayehu, Social Media as an Alternative Political Forum in Ethiopia: the Case of Face book, unpublished MA thesis, Addis Ababa University, June 2013, P.119.
²²⁰. The letter is signed by Mekonnen Abera, Marketing director and its copy is addressed to Chief executive, Deputy Chief executive, legal department and order receiver and sales team of the BSPE (Translation mine).
²²¹. Interview made with, “Name Confidential” Feb 20, 2017.

Now the point is, whether the so-called news about the death of Meles Zenawi is a threat to the security of state not. It is not clear as which test or principle had applied by the court to confirm the impoundment order of PP against the FeteH. According to some well established democratic nations such as in the USA, where the government convinces the court as the periodical's dissemination is dangerous for the national security, the court may impound both the printing and dissemination adopting the strict test and principle.²²² Also according to Johannesburg principles, the government should demonstrate as impoundable publication is intended to incite imminent violence and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.²²³

Having this in mind, coming again to our case discussed above, the impounding order against FeteH is not rational. Because the court had never reasoned in detail over the impoundment decision as to how the then FeteH edition endangers the national security. Also, the PP has never produced the sufficient evidence to show the same in a convincing manner. Even after the government has officially disclosed the death of Meles, nothing problem happens following the news regarding security. To some extent it may show as the reason of PP of impoundment and reaffirmation of the Court was not reasonable.²²⁴

4.4. Other Challenges Affecting Companies Operating Periodicals

In addition to the above discussed legal and institutional impediments, there are other different impediments which directly and indirectly affect the printing media sector. Among them, unfair distribution of advertising, lack of subsidy and other forms of financial support for the sector, no incentives, including duty-free and denying tax-free period, treating the Media sector with other ordinary unflavored traders, in the same manner can be raised among others.

These all challenges amount to soft/indirect censorship. It is the act of the government, which influences the COP in Ethiopia. Basically, soft censorship refers to act of the government to apply financial pressure against media companies. Soft censorship takes place in different

²²². The "Pentagon Papers" case, *New York Times Co. v. United States*, 403 U.S. 713 (1971).

²²³. Cited above at note 98.

²²⁴. Tesfaye Alemayehu, *Social Media as an Alternative Political Forum in Ethiopia: the Case of Face Book*, unpublished MA thesis, Addis Ababa University, June 2013, P.119.

forms. Among others, we will discuss the most visible act of the government which amounts to soft censorship.

The first one is denying subsidy and other forms of financial support for the media companies in a manner which makes the printing media sector economically weak and unable to achieve their goal. Nowadays, there are different legislations which favor traders who are engaged in some of the selected business sectors such as export, manufacturing, and similar investment sector to have different advantages from the government. The advantages include tax-free period, importation of capital good and some selected item in a duty-free base, access to have land for long period lease and enjoyment of zero-rated and exempted transaction under VAT Proclamation. Surprisingly, the private owned printing media sector is not falling under the above listed advantageous sector to enjoy different incentives from the government. From such act of the government, simply, we can understand as the government is not interested to encourage the print media sector.

Secondly, it is seriously becoming difficult to PCOP to compete with these periodicals of Ethiopian Press Agency (Hereinafter called EPA) such as Addis Zemen, The Ethiopian Herald, Berissa, Al-alem and Zemen which sponsored by the government. According to Mr. Anteneh H/berhan,²²⁵ without other administrative and relevant cost, the EPA pays about 86,000.00 (Eighty-six million) Eth. Birr to Berhanina Selam Printing Enterprises yearly only for its printing services to the above stated five periodicals. The government is supporting the EPA by allocating sufficient budget and enabling to collect revenue from different sources, especially from advertizing and the sale of those periodicals. Where the governmental organizations want to advertise anything for the public, they choose mostly such public owned periodicals. Additionally, the government has facilitated to maximize the market share for the EPA to distribute its publications for every of government offices. The most surprising thing is that most of the government offices collect the periodicals from the EPA by themselves sending their messengers to do so.²²⁶ Because of the financial support of the government in a form of allocating yearly budget, creating an opportunity to collect different revenues, and facilitation of enhancing the market share, the EPA has been publishing its

²²⁵. Interview made with Mr. Anteneh H/berhan, Production and printing section manager at EPA, Nov. 03, 2016.

²²⁶. Interview made with Mr. Tadesse Assefa, Periodicals Disamination Controller and Registrar at EPA, Oct. 02, 2016.

periodicals in a sufficient number of copies. Compared to private owned periodicals, EPA is publishing a significant number of copies with sufficient copies. The EPA weekly publishes in average a copy of Addis Zemen 101,500, The Ethiopian Herald 57,400, Berissa 9100, Al-alem 2000 and Zemen 10,000 monthly.²²⁷

In a great difference, the most famous private owned periodicals in Ethiopia have been publishing minimal copy compared to EPA. As an indication of the scale of weekly copies of newspapers in average, Amharic Reporter Newspaper 21,560, Sendeq 2000, Ethio Mihidar 1,500, Addis Admass 7683, Yegna press 1,500 and among magazines, Medical 5000, national constriction 4600 and finally Tsehay and Gize 1000 each twice a month publishes in non-significant number.²²⁸ From this discussion, it can simply be inferred that the government is neglecting the privately owned periodicals while promoting the EPA supporting in different forms. Different informants state that government organization mostly doesn't prefer private periodicals for advertisement as they do with EPA.

Currently, in Ethiopia, there are only a few periodicals existed resisting economic and other impediments. According to the data which collected from EBA, since February 2001, 362 different PCOP have registered by EBA. But according to the report of Ethiopian National Archives and Library Agency, only six magazines and eleven newspapers have submitted a copy of their publication on July 2016. Those periodicals which are not submitting their copy of the publication to an agency is deemed to be terminated from publication. Why, because the Proclamation²²⁹ mandatorily requires every publisher or printer to submit the copies of their publication to the agency. Based on this fact, the inconvenience of the sector has pushing factor to kick the private media out of the Media business.

Thirdly Private Printing Enterprises (Hereinafter called PPE) are other challenges for PCOP. According to different informants, PPEs are not interested to print private periodicals. Mr. Tewodros Kassa²³⁰ believes that during the 2005 national election, all PPE was informally ordered by the government not to print privately owned periodicals. Such prohibition of the

²²⁷. Ibid

²²⁸. Data compiled by EBA based on the report of National archives and library agency, accessed on 12 Sep 2016.

²²⁹. Ethiopian National Archives and Library Proclamation, 1999, Proc. No. 179, Art. 19, Neg-Gaz. Year 5th, No. 63.

²³⁰. Interview made with, Mr. Tewodros Kassa, Managing Editor of Weekly Yehabesha Weg Newspaper, Oct. 17, 2016.

government has been manifested through the different act of printers. Among them, interviewees from the majority of printing enterprises indirectly shown a clue as the government indirectly stretch its hand against them. In almost all printers, all interviewees from the companies were not willing to disclose their name and freely discusses with the researcher about the matters related to private periodicals.

Finally, the acts of the government to treat the PCOP in the same manner with ordinary traders have been endangering the sector. Including EBA different government organization accepts PCOP as ordinary traders. Special nature and advantage of Media are not seriously considered by government, while dealing with issues of PCOP.

Generally, for the weakness of the private printing Media in Ethiopia, the government will take the line share of responsibility. Including Mr. Abraham Gizaw,²³¹ some other informant blames the private sector itself for their primary focuses to profit against the professional ethics and mission of media at all.

Regarding for the every improper act of the government discussed in the entire body of the paper, Mr. Fanuel Kinfu²³² concludes that the source of all the challenges currently happening against the printing media sector is the misunderstanding of government about the private Media and accepting it as the source of the threat. According to him, ruling party is not accepting the PCOP as a tool for development, peace and promotion of democracy rather it understands oppositely as they are playing the devastating role. He further states that such kind of misunderstanding about the Media forced it to treat media as a dangerous sector of the government. Such kind of understanding of the government is manifested by different officials in a different time and place. Among them, the speech of the late Prime Minister Meles may show some clue about the matter in a clear form. According to his speech, “Many of the private media and opposition parties are two sides of a coin.” He further states that “It is difficult to differentiate one from the other” (The Ethiopian Herald 8 July 2005). Considering that, the EPRDF government took a series of measures against the independent press in the post-2005 national election.²³³

²³¹. Cited above at note 191.

²³². Interview made with Mr. Fanuel Kinfu, Deputy Editor-in-Chief of Sendeq Newspaper, 12 Nov. 2016.

²³³. Dr. Wondwosen Teshome, Media and multi-party elections in Africa: The case of Ethiopia, international journal of human rights, Volume: 6 Issue: 1 Year: 2009, P.96.

Currently, the printing media sector is facing all above-discussed challenges. Understanding all such challenges, it is an absurd to expect the sector to serve the people properly. Nowadays, the study of this paper shows that journalists are not free to properly conduct their duty in conformity to their professional code of conduct, rather they are acting in a way which rescues them from the improper act of the government and saves their economic advantage. In doing so, unless things changed, the fate of journalism in a country may seriously be endangered.

4.5. Self-Censorship of Printing Media Sector in Ethiopia

Self-censorship refers to an act which is done “to prevent annoyance and punishment of powerful players such as government, gangs, major advertisers, or corporations owning the news organizations and there is no outside power to tell them to censor their work”.²³⁴ To escape from the annoyance and the punishments of powerful players, the journalist, mostly chooses not to write anything against the interest of power players. They hide a fact which already discovered, they cut information which they think disappointing the power players and even they do not want to make any search on any sensitive issue which they cannot write the truths about²³⁵. Self-censorship may be private or public. In a case of public self-censorship, during exercising self-censorship censee internalizes some aspects of the public censor. In contrast, private self-censorship is made by an agent of own attitudes where a public censor is either absent or irrelevant. Unlike public self-censorship, censee and censor is the same agent, such that the censorship process involves the suppression of attitudes within one individual.²³⁶ Among other reasons that force journalists to censor their news stories, political and economic pressure, life threats, cultural expectations, gender, racial and religious issues are also important factors which cause self-censorship.²³⁷

To protect the company from power player’s economic impediments and any other threat, the owner of PCOP directly and/or indirectly encourages self-censorship within their companies.

²³⁴. M. Murat Yesi (PhD), “The Invisible Threat for the Future of Journalism: Self-Censorship and Conflicting Interests in an Increasingly Competitive Media Environment”, International Journal of Business and Social Science, Vol. 5 No. 3, Mar. 2014. P. 76.

²³⁵. Id. P. 71.

²³⁶. Matthew Festenstein, “Self-Censorship for Democrats”, European Journal of Political Theory, (2015), P.13.

²³⁷. Terje S. Skjerdal, “Justifying Self-Censorship: A Perspective from Ethiopia”, Westminster Papers in Communication and Culture, University of Westminster, Vol. 7(2), (2010), PP.103-104.

To secure their job, the journalists in PCOP have no choice than going in line with the wish of the owners/employers. In the same manner, the journalist in governmental institutions operating periodicals, mostly reflects the interest of a government / employer against the ethics and mission of journalism. Mr. Journalist (Name Confidential) who is working as a reporter in governmental periodical states that he knows what the government expects from the sector even before he gets employed there. Because of that, he states that he always makes sure as his reporting is in line with the interest of the government.

In Ethiopia, the government is the major power player to force journalists to censor their news stories than individuals and advertising companies. Because individuals and advertising companies will usually affect only the revenues of PCOP. But where the government is disappointed by the act of PCOP, it may take a different serious measure which includes economic incapacitation, imprisonment, and banning or restrict the exercise of journalism. Similarly, different journalist those made interview with the researcher states that during their work they seriously consider the interest of the government. According to Mr. Tamiru Tsige²³⁸ currently it is difficult to practice journalism, considering those relevant laws. He thinks that those laws are serious and powerful to drive journalist to practice self-censorship not to confront with the government. Mr. Elias Gebru²³⁹ shares this idea and concludes that there are only a few journalists who sacrificed themselves to be obeyed for the ethics and principle of journalism facing difficulties.

In addition to the pressure of the government, advertising companies, media owners, social expectations, religion and ethnic related matters and like power players and situations are playing a devastating role against journalists forcing them to practice self-censorship.

4.6. Analysis on Selected Judicial Decisions over Matters Related to FOE and Media

In the preceding part of the paper, it is explored as how the governmental institution and relevant laws tempted the realization of FOE and media. Among others, both have played a devastating role against these freedoms. For the purpose of all round understanding of the environment to FOE and media in a Country, some of the selected court cases will be

²³⁸. Interview made with Mr. Tamiru Tsige, Editor at Reporter Amharic Newspaper, 13 Oct. 2016.

²³⁹. Cited above at note 198.

analyzed in a manner which shows the reality of implementing the relevant laws on the ground. The case analysis will focus only on issues which the writer of this paper believes to be shortcomings of courts in a way which shows the clue to shortages of criminal justice system in relation to FOE and media.

CASE ONE

Public Prosecutor vs. Temesgen Desalign & Mastewal Printing and Advertising Enterprise²⁴⁰

The case comprises two defendants namely; the first defendant Temesgen Desalign who was an Editor-in-Chief of weekly Feteḥ Newspaper while the second defendant was Mastewal printing and advertising enterprise which was the publisher of the Feteḥ Newspaper. From the charge of PP it can simply learn that the prosecution was caused by the statements which were disclosed in the different publications of Feteḥ Newspaper. The charge comprises four accusations. The first three refers to first defendant Temesgen Desalign. The fourth accusation refers to the Second defendant, publisher of Feteḥ.

The body of the first three accusation states that, Temesgen Desalign is accused of Outrages against the Constitution and its Order, false accusation, and defamation and finally spreading false rumors against the state violating Article 43(1) /A/, 257/A/, 244 and 486 of Cri.C respectively.

According to the charge, using his writings on newspapers Temesgen has provoked/incited peoples to strike against and the government and constitutional order as well as to lose confidence in the government. Statements incorporated in charge as they “loosely” drawn from the writings of controversial publication includes, but not limited to, comparing this generation to previous 1950’s revolutionary generation and provoking this generation to take lesson from the previous one to make revolution against the government, falsely accusing the government for mass killing and imprisonment, defamed the government as it interferes in religious matters including providing their heads, made genocide against different peoples nations nationalities and peoples, follows wrong administration through divide and rules base

²⁴⁰. Public Prosecutor vs. Temesgen Desalign and Mastewal printing and advertizing enterprises, Federal High Court, File No. 123875, affirmed by Federal Supreme Court, File No. 107450).

and executes summary killings and statements which cite the government as a cruel government.

Also, the content of the fourth accusation against the 2nd defendant (Publisher of Feteḥ newspaper) shows its participation as a publisher in Outrages against the Constitution and its order violating 257/A/ of Cri.C.

After the court went through the case for extended two years, on 27 Oct. 2014 the final decision is ended up by sentencing 1st defendant Temesgen Desalign to three years of rigorous imprisonment and 10,000.00 (Ten Thousand) Birr in terms of fine to the second defendant (Publisher). Considering the nature of media, justifications for FOE and relevant international and domestic laws to FOE and media, both the process and decision of the court will be analyzed critically in the following manner.

The first visible problem observed from the charge was that the public prosecutor is failed to cite specific appropriate provisions which he thoughts violated by defendant. The provision cited on the first accusation, article 257 (1) (A) is so general and cross-refers to other provisions without stating its own element of the crime. Reading only such very provision gives non-sense. Because such provision is dependent on other which constitutes crimes. The relevant part of the provision states that whoever, with the object of “committing” or supporting any of the acts provided under Articles 238-242 and 246-252 of Cri.C publicly Provokes them in writings will be punishable up to ten years of imprisonment. According to this fact, it can easily be understood that article 257 of Cri. C cannot stand alone to constitute any of the crime. To make a given charge acceptable, it should comprise article 257 with the other main provision which constitutes one of the crimes from Articles 238-242 and 246-252 of Cri.C which thought violated. Such kinds of defect on a charge will seriously affect the right of defendants to properly defend the charge understanding the element of specific proper provision.

Specifically, coming to the case at hand, the public prosecutor has failed to cite proper provision which makes article 257 of Cri.C meaningful. Such shortcoming of the charge is challenged by the defendant and required to be clarified by a public prosecutor, if not to be rejected. Surprisingly the court disregarded the opposition of the defendants. Because of that,

the court started its job by taking over the defective charge which makes the defendant confused about understanding the provision which the PP thoughts violated.

Secondly, failure of the court refers to the determination of the defendants' statements whether they violate the legitimate restriction or not. The lion share of the analysis part of the court decision is full of assertions without convincing and sound analysis. Article 257 (1) (A) of Cri.C requires any act to be good enough to provoke others for commission or support them in violation of one of the crimes among against Articles 238-242 and 246-252 of Cri.C. Except final assertions, the analysis of the court shows nothing for sufficiency of the defendants' statement to constitute Provocations as per the provision and accepted guiding principles of a different jurisdiction or international human right instruments. Surprisingly, Dr. Yared Legese²⁴¹ who is one of the expert witnesses appeared in court as a defending witness to defendants stated that the act of the defendant is in conformity to legitimate grounds of the Article 29 (6-7) of FDRE constitution. He went further to International Human Right Instruments, an experience of democratic states and his own developed experience on the matter went through all controversial statements and asserted that they are within the boundary of FOE and media.

In the same manner, the 2nd expert witness Mr. Endalkachew HaileMickael²⁴² asserted that, all of the controversial statements are not violating any of legitimate limitations of the media. He concludes that every statement on the publication is within the boundary of the freedom of the media. The final defending expert witness Pro. Mesfin Woldemaryam²⁴³ witnessed that those statements incorporated in a charge as a defamatory and false accusation against the state are true. Based on his statement, those statements listed as a defamatory and false accusation are true and previously released by the report of the late "Ethiopian Human Right 'Board' " () in which he served as a Chairman. According to him, those acts made by defendants are true and disclosed by others previously.

²⁴¹. Interview made with Dr. Yared Legese, Lecturer at AAU and currently practicing law as an Attorney and Consultant at Law. He has conducted different research in relation to FOE and presented it on different occasions in international level. His writings are published on Cambridge University's law journals.

²⁴². Mr. Endalkachew HaileMickael was lecturer at ArbaMinch University and currently acting as consulting Journalist and writing on different issues through different websites.

²⁴³. Pro. Mesfin Woldemaryam has served AAU about for 30 years as Lecturer. He is a well known politician and assumed different high positions in governmental and non-governmental organizations.

made in court. Having this in mind, it may fairly conclude that some of the power players in government system are pessimistic to private media, if not this specific bench which decides over the matter at hand. Such kind of situations affects the right of defendants to be presumed innocent and enjoy it in criminal justice system.

Finally, the court has surprisingly considered the unconvincing expectations of effects to aggravate the punishment against defendants. The court analyzed that; the effect of the defendant's act would be serious and devastating if it were not controlled by the government. Based on such unconvincing calculation of effect prediction, the sentence against defendants suffered aggravated circumstances. After the final decision of the court, the defendant appealed to Federal Supreme Court stating his dissatisfaction with the decision of the lower court and the causes of dissatisfaction. After the appellate court went through the cases, it reaffirmed the lower court decision without any correction.

CASE TWO

Public Prosecutor vs. Temesgen Desalign²⁴⁴

In this specific case, the public prosecutor framed a charge against Temesgen Desalign (Editor-in-chief at weekly Feteḥ Newspaper) alleging the court to render the decision on. The charge is caused by the failure of defendants to disclose required information on some publication of weekly Newspaper Feteḥ in which the defendant acted as the editor in chief. According to the charge, the defendant is accused of violating Article 10 of media Proclamation, which requires a given periodical to notify the address of Editor-in-chief, the identity of the printer and full name of the publisher.

Regarding the name of Editor-in-Chief, there is a discrepancy between an Amharic and English version of the legislation. English version requires no address of Editor-in-chief to state on publication. Oppositely the Amharic version is required to state. It may be easy to solve the discrepancy by adopting the principle of our legal system which makes an Amharic version prevailing over the English one. But coming to Amharic version itself, the term Address itself may be subject to argument. Because, though Article 10 of the Proclamation requires the address of the publisher to be cited, it failed to define the term address.

²⁴⁴. Public Prosecutor vs. Temesgen Desalign, Federal First Instance Court, File No. 89557.

In the case at hand, the defendant mentioned the address of publisher specifically its City, sub-city and Woreda/ Kebele. But the public prosecutor is not satisfied with that and requires the publishers to mandatorily mention the house number. The second reason of accusation is a usage of the publisher's name. According to the charge, the publisher failed to mention the proper name of the publisher called Mastewal Printing and advertising PLC, and used "Mastewal Publishing enterprise" on newspaper. Mr. Journalist (Name Confidential) states that the name Mastewal publisher is internalized to Feteah newspaper community and that may be why such problem occurs. Nonetheless, according to him, as far as the identification of publisher's name is for responsibility and communication issue, everyone, especially relevant government organ and media community knows the fact as both names are to mean the publisher of Feteah. Finally, failure to mention the printer was another reason of accusation against the defendant.

Here the important point is that, if the act of the defendant is wrong, it should not be subject to criminal prosecution. Because as far it is mainly required to know the address of the responsible person for publication, the same is already in EBA which is submitted during the registration. Regarding address of the Editor-In-Chief including house number (which was one ground for prosecution), his identity card and other relevant information is recorded in EBA while issuing the registration. Also, the so-called proper name of the publisher is submitted as well. Based on this, if necessary for different reasons, the printer of publication can easily be known through Editor-in-chief. Here generally what the writer of the paper believes is that it is fine if all three grounds of a prosecution namely house number of Editor-in-chief, the identity of a printer and full name of the publisher is stated on newspaper. But by whatever case, such reason should not be sufficient reason for criminal prosecution at all. Such kind of criminalization is discouraging the media community, not to freely perform their job as a public watchdog.

Surprisingly, in the middle of court preceding the public prosecutor temporally dropped the case by his own initiation in the guise of the collection of other supportive documents. Even after such case, the name of the publisher is not changed on some of the publications. The most interesting matter is that still the case is not revived by the public prosecutor. It is already forgotten. The main reason is that the public prosecutor has no sound justification for criminal prosecution and it is in conformity to the freedom of the media.

CASE THREE

Ethiopian Orthodox Tewahedo Patriarchate Head office V Firew Zenebe²⁴⁵

Fire Zenebe is Editor-In-Chief of the weekly Sendeqe Newspaper. The charge is instituted by the Ethiopian Orthodox Tewahedo Church Patriarchate Head office because of the statements published in such newspapers which they thought defamatory against the reputation and honor of the Patriarch Abune Mathias. The controversial writing was not written by the defendant himself. It was written by Deacon Daniel Kibret. The defendant made such writing published in the newspaper in which he acts as an Editor-in-Chief.

The content of the charge clearly shows that the so-called defamatory content of the publication includes, but not limited to, with the intent to affect the reputation and honor of the Abune Mathias, his Holiness is passive to act in favor of the Church but contrarily active to do things against the Church, his Holiness is an exception to close his door from open discussion with followers of the Church and notifying the peoples as the exhibition which was organized by Mahibere Kidusan is restricted by his Holiness.

In the first presentation to the court, the defendant objected to the charge stating that according to Article 42 (7) of the media Proclamation, where defamation is committed through mass media, the charge should be instituted and conducted by the private complainant himself. The defendant further stated that the lawyers conducting the case in court against the defendant are the representative of the Church, but not the private attorneys of His Holiness Patriarch Abune Mathias.

But without good cause, the Court has rejected the objection of the defendant. Here, what the court failed to consider was that the above provision clearly states that any of defamation cases caused by mass media must be instituted and conducted only by the private complainant. In favor of this point, Article 41 (3) of the same Proclamation states that in a case of conflict between the provisions of the Criminal Code and Part 5 and 6 of media Proclamation in which the above Article incorporated is the later will prevail. Also, Article 49 generally concludes that any laws, orders, and practices which are inconsistent with media Proclamation shall not be applicable to the extent of inconsistency. Because of this, the

²⁴⁵. Ethiopian Orthodox Tewahedo Patriarchate Head office vs. Firew Zenebe, Federal First Instance Court, File No. 32710.

rejection of the court against the objection of the defendant and allowing the attorneys of the Church (According to Media Proclamation, they are eligible individuals to run the case at hand) to institute and conduct the case in a court of law is unacceptable and against the media Proclamation.

Coming to the main part of the proceeding, without detail analysis of the relevant law, determining the content of the publication, understanding the nature of media and other relevant considerations simply entered to the next step proceeding and ordered the defendant to call witnesses and documents in his defense. In such a case, it is to mean that the court is satisfied by the evidence of the plaintiff and imposed the duty on the defendant to convince the court contrarily.

Because of this, the defendant in his defense adduced different letters of “Expert Opinions” from the AAU School of Journalism and Communication, the FDRE Government Communication Affairs Office and the Ethiopian National Journalist Union. Finally, without critically determining the letters of the above mentioned governmental and non-governmental organization the court has accepted their conclusions as the content of the publication does not constitute defamation but merely critics. More surprisingly, the Communication Office and the Ethiopian National Journalist Union have interpreted some provisions of the media Proclamation and FDRE Constitution respectively against the power of the court. Based on their interpretation, they concluded that the controversial part of the publication is not satisfying the elements of defamation at all. More specifically the Union under the second page of the letter stated as they have confirmed of non-declaration of false statements on the publication.

Here the important question is that who are these organizations to interpret the law and determine the statement whether it constitutes defamation or not? If necessary, the court may accept the witness and/or his opinions of the expert where it is in conformity with the power of the court to interpret the law and to assert over the fate of controversial matter. Based on the discussion, when we determine the content of letters, especially except AAU School of Journalism and Communication, both letter affects the power of the court by reflecting concluding remarks over the controversial matters specifically whether the controversial publication is defamatory or not. Finally, the court fully accepted such defective letters and

considered to render judgment over the matter at hand. The decision of the court depends on those letters without both proper analysis of the relevant law and the content of the letters.

The writer of this paper believes that the lion share contents of these letters are not the matter which needs an expert to explore but the Court (Law Interpreter) to determine. Because, where the court allowed the defendant to adduce evidence/“Expert Opinion” which made by the above organizations, it was expecting to have an expert opinion because of their expertise in the field of journalism. But in reverse, without determining the fact in line with Techniques/Nature of media, ethics of journalism and like consideration, their letter focused on interpreting the relevant laws and in which they are not allowed to do.

Nonetheless, the court has finally found the defendant not guilty and made an order of acquittal. Though the decision of the court is ended up in favor of defendants, at least for two reasons environment of the criminal justice system will seriously affect the freedom of the media. First, where the decision of the court is not based on critical analysis of the relevant laws and the fact, the result will be unpredictable and no accepted principle will be developed and such arbitrary practice will confuse the people. Secondly, as we have seen from the case at hand, the defendant has collected letters from different sources which hardly possible for the majority of people. So, such practice will affect those defendants who are not in a position to do the same with the defendant in this case at hand.

CASE FOUR

Saint Marry Monastery administration, Seat of Patriarch vs. Ethio-Mihidar Newspaper/ Halenta printing and advertizing PLC (Publisher) and Getachew Worku²⁴⁶

The case comprises two defendants namely; the first defendant Getachew Worku who was an Editor-in-Chief of Weekly Ethio-Mihidar Newspaper while the second defendant was Halenta Printing and Advertising PLC which was the publisher of Ethio-Mihidar Newspaper. The charge is instituted by the Saint Marry Monastery administration, Seat of Patriarch. The reason of accusation of this case is that, according to the Monastery’s charge, the content of the controversial publication has incorporated defamatory information against the reputation and honor of the Monastery and its Clergies. Specifically, the charge states that defamatory

²⁴⁶. Saint Marry Monastery administration, Seat of Patriarch vs. Ethio-Mihidar Newspaper (Halenta printing and advertising PLC (Publisher)) and Getachew Worku, Federal First Instance Court, File No. 138185, affirmed by Federal High Court, File No. 003810).

statement on the publication includes, but not limited to, the real arc of the Monastery is stolen and substituted by forged one, ancient books, antiques and different properties of the Monastery have taken out from the Monastery and sold, some of the clergies of the Monastery quarrels with waiters/Ladies against their status and Church discipline in grocery and Executive Secretary of the Patriarch made liable for hardening the above all problems happened against the Monastery.

After the Court went through the case for extended one year and two months against Article 43 (4) of media Proclamation, which requires the court to pronounce its judgment within one month from the commencement of the trial, it finally ended the case up by sentencing one year imprisonment and 1500.00 /One Thousand Five Hundred/ Eth. Birr against the second defendant and 10,000.00 /Ten Thousand/ Eth. Birr in terms of fine against the first defendant.

Considering the discussion in section 3.3.4, it is simple to understand as how serious criminal punishment consequents chilling effect to FOE. The above punishment rendered by the court against the defendant is powerful to drive people to practice self-Censorship and fail to enjoy FOE fearing disproportional and serious punishment. In addition to criminalizing the defamation and sentencing imprisonment for responsible persons in a periodical (Editor-in-Chief), imposing the significant amount of money in terms of fine against the publishers of periodicals will seriously affect the environment of media and FOE. In a case of Ethiopia, in the same manner with imprisonment against the responsible persons in a periodical, monetary punishment imposed on publishers (COP) in terms of fine will have the chilling effect on the freedom of the media. Why, because the lion shares of companies operating periodicals in a country are economically weak and hardly cover even their administrative cost. In general, criminalizing defamation and its strict application without considering the justification of FOE and private nature of defamation will result a country to collect nothing from the fruit of enjoyment of FOE.

Chapter five

Conclusion and Recommendations

Conclusion

Nowadays, FOE is constitutionally recognized by the majority of states in the world as one of the fundamental rights and freedoms. Defense of FOE is grounded by justifications which were developed by different scholars. Among them, the English Poet John Milton (1665) has tried to show the instrumentality of FOE to get the truth. Later, such defense has been more developed by English philosopher John Stuart Mill (1869). Secondly, philosopher and free speech advocate Alexander Meiklejohn (1961) defended FOE as it is helpful for democratic governance. Finally, American philosopher Thomas Michael Scanlon defended such freedom as the contributory factor to the Personal fulfillment and development.²⁴⁷

Considering such justifications, Ethiopia constitutionally recognized FOE since the amended Constitution of 1955. But it doesn't mean that FOE is not enjoyed in a country and relevant legislation was made in favor of and/or against FOE before the adoption of such Constitution. Coming to print media, the first newspaper in Ethiopia called De la Leproserie of Harrar incepted in 1980 during the regime of Menillik II. Since then, FOE in general and specifically print media sector have been passed through ups and down facing the different form of challenges which emanates from external factors mostly governments.

During the regime of Menillik II in which newspaper was incepted, the government has never adopted complicated means to control information especially freedom of the media. The Dearth of developing media, a minimal number of literate citizens to access the periodicals, minimal circulation of the periodicals and related shortcoming of media to mobilize the people to specific goal may be taken as sufficient reason which made the media out of the primary concern of the Minillik II. During the regime of Haile Sellassie I, the media become more developed and a number of periodicals existed. During the regime of the Derg, except the first few years, including FOE basic fundamental rights and freedoms were denied. Such regime prohibits Private media. Against freedom of media, what makes both regimes of Haile Sellassie I and Derg the same is that complicated means of control over

²⁴⁷. Cited above at note 34, PP. 202-204.

information through Censorship is legally applied. No critical writings, especially writings which criticize the government will not be published escaping the Censorship. Both governments have used the media as an instrument to reflect their views silencing the voice of citizens through prohibiting private media, shaping the government owned media in line with their interest and adopting some other means of controlling information.

Coming into this regime, FOE and Media constitutionally recognized elaborately manner than previous regimes. The recognition is interestingly gone further and abolished Censorship practice which developed by previous regimes. The extent of legal recognition of FOE and Media in Ethiopia is not seriously subject to critics by different scholars. The FDRE Constitution has recognized fundamental rights and freedoms in harmony to the international human right instrument. In favor of such rights, the FDRE Constitution further requests actors to interpret such rights in line with international human right laws in which Ethiopia is the party.

But the reality from the ground and different subordinate legislations are seriously challenged by human rights defenders as it chills realization of FOE and Media in Ethiopia. Among such legislations, Anti-terrorism Proclamation, media Proclamation, and Cri.C can be cited. To start with anti-terror Proclamation, it has incorporated different controversial provisions which affect FOE in general and specifically erodes the freedom of journalist and media companies to keep the source of information secret. Also, a provision which criminalizes “encouragement to terrorism act” is another controversial issue which forces the journalists to refrain themselves from freely writing. Secondly, Media Proclamation is criticized for its authorization to the Public prosecutor to impose prior restraints in case of “emergency situation”.

Thirdly, Criminal Code has incorporated different controversial provisions which contravenes to FDRE Constitution, criminalizes defamation in a manner which fails to comply to urges of international organizations in which Ethiopia is party such as UN and AU and formulation of a vague and general terms in a constitution which is subject to interpretation which in effect affects FOE and Media. Protecting the state and government officials from defamation and false accusation is the other controversial feature of Criminal Code rather they should tolerate than other. As to make the people free to enjoy a FOE, no

strict legislation is recommended which makes the people vibrant to influence the government over its wrong actions.

Among others, nowadays the above controversial subordinate legislations to FDRE Constitution, weak interpretation of laws by the Courts over those vague and broad terms and the different improper act of the government has been tempting the FOE and Media in Ethiopia. Such unjust act of the government is supported by legislations and government institutions such as Berhanina Selam Printing Enterprise, Broadcasting Authority and Attorney General. Most severely, the courts during dealing with cases which are related to FOE and the media, they routinely fail to consider the essence of FDRE Constitution and international human right instruments in which Ethiopia is the party.

The above discussion may certify that the FDRE Constitution has recognized FOE and Media in elaborated and fair manner. But coming to subsidiary legislations and implementation on the ground, it is hardly possible to perceive the realization of FOE and Media from the ground. That is why currently the most of the private owned periodicals kicked out from the media business.

Recommendations

Based on the above discussions and findings, which inferred from the research work, here under recommendations those require concerned bodies to take measures on their part in a manner which makes the FOE and Media realized on the ground.

- Any provision of Criminal laws which criminalizes defamation should be abolished or repealed. Then, the Proper Civil law should be designed in a way which responds to defamation cases.
- Article 486 (1) of the Cri. C of Ethiopia entitled “inciting the public through false rumors” should be abolished. Because the provision is so vague, general and open for interpretation. Also, the relevant part of the provision, which limits FOE on account of the content or effect of the point of view expressed, is contradictory to Article 29 (6) of FDRE Constitution.
- Article 43 (5) of Cri.C which contradicts with the constitutionally guaranteed right of accused persons to be assumed innocent and adduce evidence in their defense should be amended in a manner which reaffirms such constitutional guarantee. Because against the essence of FDRE Constitution, where a crime is committed through periodicals, the content

deemed to have been inserted with full knowledge of actors such as editor-in-Chief, Deputy Editor, Publisher, and Printer. In such a case, the provision farther denies the right of the accused to prove contrary to the charge.

- The Paranoia Selam Printing Enterprise should be refrained from drafting adhesive contract which empowers it to enjoy discretion of unilateral termination of the Contract, refuse the printable script of periodicals because of their content, and enjoy any special privilege from the text of the contract against the PCOP/Customers. BSPE should not examine the printable script of periodicals before publication and dissemination.
- Article 42 (3) of Media Proclamation, which authorizes the Public Prosecutor to impose prior restraints in case of “emergency situation” should be abolished.
- Article 22 of the Anti - terrorism Proclamation, which imposes a duty on everyone to give information to police should be amended in a way which is in conformity to generally accepted privileges of the journalist to keep the source of information. In the same manner, Article 6 the same Proclamation, which criminalizes Encouragement of Terrorism should be amended avoiding generality, ambiguity, and vagueness of terms which invites uncontrollable interpretation. The reformation of the above provisions should strike a balance between national security and freedom of media/Journalism to keep the source of information and to freely exercising journalism in conformity to journalism ethics.
- Where the cases are related to FOE and Media, the court shall strictly consider the legitimate limitation grounds both from FDRE Constitution and international human right instruments in which Ethiopia is a party. Without considering the essence of such instruments, applying subsequent legislations to the FDRE Constitution, which incorporates limitation may consequent unnecessary result against FOE and Media. Also, when the court receives cases related to the most challenged provisions of care. C to be unconstitutional, such as Article 43 (5), 244 and 486 of the Criminal Code and other related legislations, it should forward the case to Council of Constitutional Inquiry to get the final authoritative decision whether they are in conformity with the Constitution or not.
- Registration of Periodicals should be conducted by the independent body which has not discretion to deny the registration. If not and the government wants EBA to do the same, at least the Authority should not impose any substantive restrictive condition of registration and exercise discretion to deny registration of periodicals.

- Currently, unless registered and certified by the Ethiopian Broadcasting Authority, no, one cannot be registered in a ministry of trade as a trader and get the service of printing from any of Printing Companies. So to make article 9(5) of media Proclamation practical, checking the failure of the EBA to register or responding the reason of failure in writing within 30 days, ministry of trade and printing companies each should treat them as of registered Company.
- The FDRE Constitution should be amended in a manner which incorporates widely accepted legitimate grounds of FOE such as National security, to control arbitrary additions in some other legislation extending its scope. In the same manner, Limitation clauses stated under Article 29 (7) of the FDRE Constitution should be amended as a complimentary provision to Article 29 (6) which lists conditions to be considered while limiting FOE and media. If so, any of limitation clauses from different legislations which fail to consider the conditions of Article 29 (6) of the FDRE Constitution will clearly be identified to be unconstitutional.
- The government should encourage Private companies which operates periodicals by allowing them to import capital goods and printing materials that facilitates establishment of companies and their activity, enjoy tax-free periods and transactions, receive land in lesser lease price or for free to establish the Company, get subsidised printing services, participate in trainings conducted for professionals of government owned Media institutions and like supports to make them capable both economically and professionally to serve as a watchdog of people.
- The private companies which operate periodicals should be allowed to access information in a reasonable manner from any of organizations and participate in press conference and sessions of government organs including HPR.

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Interview made with:

Journalist and shareholders in PCOP

- Mr. Biruh Yihune Belay, Managing editor of Reporter newspaper (Eng. text), 22 Sep .2016.
- Mr. abraham gizaw, editor in chief in weekly Sinq newspaper, 18 Oct. 2016.
- Mr. Tewodros Kassa, managing Editor of weekly Yehabesha Weg Newspaper.
- Mr. Tamiru Tsige, editor in Reporter newspaper, 13 Oct. 2016.
- Mr. Basaznew Wondimagegn, general manager of Jiret Magazine, 10 Jan. 2016.
- Mr. Amare Aregawi, Editor-in-chief of reporter newspaper, 16 Nov. 2016.
- Mr. Fanuel Kinfu, Deputy Editor in Chief of Sendeq Newspaper, 12 Nov 2016.

*Except the above interviewees, the rest 15 interviewee requested me not to disclose their name.

Columnist in Private Periodicals

- Mr. Abdu Ali Hijira, Senior writer and Legal advisor of Reporter newspaper, senior researcher at Horn of Africa press institute, 22 Sep. 2016.
- Mr. Endalegeta Kebede, Author and Columnist of private periodicals, 22 Sep. 2016.

Expert in Ethiopian National Archive and Library Agency

- W/ro Mulu Eshetu, Archive expert at Ethiopian national archive & lib. agency, 14 Oct. 2016.

Individuals from Private Printing Enterprises

- Including Bole printing enterprises and Artistic printing enterprises, seven interviewees required me not to disclose their name.

Journalist in Press Agency/Government owned Periodicals

- Mr. H/Gebreal Biniam, D/editor-in-chief in The Ethiopian Herald, 03 Nov. 2016.
- Mr. Anteneh H/berhan, production and printing section manager in EPA. 03 Nov. 2016.
- Mr. Nigus Wedajeneh, editor-in-chief in Addis Zemen, Thursday 04 Nov. 2016.
- Mr. Tadese Assefa, peredicals disamination controller and registrar of EPA, 02 Oct. 2016.
- Four reporters from periodicals of EPA have required me not to disclose their name.

Lawyers Practicing Law in different Capacity

- Mr. Kumilachew Dagne, Attorney and consultant-at-law, 06 Nov. 2016.
- Mr. Ameha Mekonen, Attorney and consultant-at-law, 06 Nov. 2016.
- Federal supreme Court Judge (Name confidential), 06 Nov. 2016.
- Mr. Kehulu Yibeltal, Attorney and consultant-at-law, 06 Nov. 2016.
- Public prosecutors, offices of Attorney General, (Name Confidential) 12 Oct. 2016.

Scholars from AAU School of law and governance studies.

- Gedion Timotiws (PhD), Former Head of the School and Lecturer, 12 Oct. 2016.
- Abera Degefa (PhD), Lecturer, 09 Oct. 2016.
- Yonas Birmeta (PhD), Head of the School Lecturer, 02 Sep. 2016.
- Yared Tsegaye (PhD), Lecturer, Sep. 02, 2016.
- Simeneh Kiros (Ass. Proff.), Former Coordinator of LLM program & Lecturer, 02 Sep. 2016.

Officials of Berhanina Selam Printing Enterprise.

- Mr. Kalab Beyene, Order receiving and sales team leader, 12 Oct. 2016.
- Mr. Ibrahim Seid, Marketing Head, 12 Oct. 2016.

Officials of Ethiopian Broadcasting Authority.

- Mr. Getahun Girma, Assistance head of Public Relation Department, 15 Oct. 2016.
- Mr. Deressa Terefe, Mass Media Inspection and Capacity Building Directorate Director, Oct. 15 2016.

Annexs

Charges against defendants

Annexs One

Public Prosecutor Vs. Temesgen Desalign & Mastewal Printing and Advertising Enterprise

Annexs Two

Ethiopian Orthodox Tewahedo Patriarchate Head office Vs. Firew Zenebe

Annexs Three

Public Prosecutor Vs. Temesgen Desalign

Annexs Four

Saint Marry Monastery administration, Seat of Patriarch Vs. Ethio-Mihidar Newspaper/ Halenta printing and advertizing PLC (Publisher) and Getachew Worku



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
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 The Federal Democratic Republic of Ethiopia
 Ministry of Justice

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እያየን ነው በማለት ድሀረ ምርጫ 1997 ዓ.ም ተከትሎ ሕገ-መንግሥቱንና ሕገ መንግሥታዊ ሥርዓቱ ለማፍረስ በተደረገው የአደባባይ አመፅ እንዲሁም በአረብና ሰሜን አፍሪካ የተከሰቱ የሕዝብ ዓመፅ በሀገራችን እንዲተገበር በማሰብ ወጣቶች አደባባይ ለዓመፅ እንዲወጡ በዕሉፍ የተሰቀሰና

2ኛ በኩል 05 ቁጥር 177 የካቲት 23 ቀን 2004 ዓ.ም በተሰራጨ ዕትም "የፈራ ይመለስ" በሚል ርዕስ በተከሰሱ አመንጨነት ኢትዮጵያዊያን በአድዋ ጦርነት ያሳዩት ጀግንነት ካተተ በኋላ ሞት የማይፈራ ወጣቶች በሚል ባሠራጨው ዕሉፍ እንደ ማጠቀሻነት በመግለፅ ወጣቶች "ሀ" ካሉ ማንምና ምንም አንደማይፈራ እስታውሶ በእሁኑ ወትት ያለው የኢትዮጵያ ሁኔታ ከመፍራት ይልቅ እንድትቆጣ የሚገፋፋ ነው በማለት በሀገሪቱ ያሉ ማህበራዊ፣ አኮኖሚያዊና ፖለቲካዊ ችግሮች ካብራራ በኋላ የኢትዮጵያ ሕዝብ አደባባይ "ሀ" ብል እንዲወጣና መንግሥትም የሕዝቡን ዓመፅ ለመግታት እልፍ አእላፍ ነጭ ለባሾች፣ ልገርማታሪዎች እንደሚያሰልፍ ነገር ግን እንድ እንጂ ዘጠኝ ሞት እንደሌለና ለዚህም የሆሰኒ መብረክ አገዛዝ ሕዝቡ እንዴት እንደገረሰሰው የኢትዮጵያ ሕዝቡ በማሳያነት ለወሰድ እንደሚገባ በመግለፅ በጋዜጣ ሕዝቡ በሀገሪቱ መንግሥትና በሕገ-መንግሥታዊ ሥርዓቱ እንዲያምፅ እንዲሁም ሥርዓቱ እንዲፈረስ በጋዜጣው አማካኝነት የተሰቀሰ በመሆን በፈፀመው የመገፋፋትና ግዙፍ ያልሆነ የማሰናዳት ተግባር ወንጀል ተከሷል።

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1ኛ በቅጽ 04 ቁጥር 146 ሐምሌ 22 ቀን 2003 ዓ.ም "የሁለተኛ ዜግነት ሕይወት በኢትዮጵያ እስከ መቼ (ከመጣነው ይልቅ የሚቀረን ይረዘማል)" በሚል ርዕስ የዕሑፍ አመንጨጫ በሆነው ፊልማ ዱጋ አማካኝነት የቀረበለትን፡-

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በሲዳማ ብሔር ተወላጆች የተፈጸመው መራራ ትግት በእስከሬ የጅምላ ጭፍጨፋነቱ ይታወሳል። በተመሳሳይ በጋምቤላ እንዲሁም በ1997 ዓ.ም ሕዝባዊ ንቅናቄዎች የአምባገነን የአ.ወ.ሐ.ት ኢ.ህ.አ.ዴ.ግ መንግሥት ስርዓት ምላሽ የጅምላ ፍጅትና ጭፍጨፋ ነጠር በማለት የሀገሪቱ መንግሥት ስም ያጠፋና በሀሰት የወገኗል በመሆኑ

ለ/ ባለፉት ሃያ ዓመታት በኢትዮጵያ የህ.ወ.ሐ.ት ኢ.ህ.አ.ዴ.ግ መንግሥት የጅምላ እስርና ክፋፍለህ ግዛ ፖሊሲ በመከተሉ ምክንያት የተታወሙትን በጅምላ ያሰረና በተከተለው የጅምላ እስርና ፍጅት ምክንያት ኢትዮጵያዊያን ለጅምላ ስደት ተዳርገዋል በማለት የሀሰት ውንጀላና ስም ማጥፋት ይዘት ያለው ዘገባ በጋዜጣው የዘገበ በመሆኑ

2ኛ በቅጽ 05 ቁጥር 166 ታህሳስ 07 ቀን 2004 ዓ.ም "የብሔር ነፃነት እስከ መጨረሻ" በሚል ርዕስ የዕሑፍ አመንጨጫ በሆነው ክንፌ አሰፋ አማካኝነት የኢሕአዴግ ስርዓት የማሌሊት ፍልስፍና ሲተገበር እነ አቶ መለስ ዜናዊ ይዘውት የመጡት የጥላቻና የበቀል ፖለቲካ ሰልጣ የሆነው በምስራቅና ምዕራብ ኢትዮጵያ የአማራ ዘር ጨርሶ እንዲጠፋ ተዘምቶበት ነጠር ጭካኔ በተሞላበት ከተበተሉት በጎላ ዕዋው ወደ አኙዋክ፣ ጋምቤላ፣ እርጥም ወገኖችን ተጠሰ በወላይታ ተከተለ፣ በኦጋዴን ተዘመተ በማለት የሀሰት ውንጀላና ስም ማጥፋት ይዘት ያለው ዘገባ በጋዜጣው የዘገበ በመሆኑ በፈጸመው የሀገሪቱ መንግሥት በሀሰት የመወንጀልና ስም የማጥፋት ወንጀል ተከሷል።

ቴሌ ፋክስ 755061 ስልክ 764014 የመ.ሣ.ቁ. 1370 አዲስ አበባ ኢትዮጵያ
 Fex Tel. 51 50 99 P.O. Box 1370 Addis Ababa Ethiopia
 * ፍትህ በተለወጠ አመራር ፣ በተለወጠ ሠራተኛ ፣ በተለወጠ ተጅም ፣

3





የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 በፍትህ ሚኒስቴር
 The Federal Democratic Republic of Ethiopia
 Ministry of Justice

ቁጥር.....
 Re.NO
 ቀን.....
 Date

3ኛ ክስ በ1ኛ ተከላሽ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የወ/ሕግ አንቀጽ 43/1/ሀ/ እና 486/ሀ/ ስር የተደነገገውን በመተላለፍ

የወንጀል ዝርዝር

ተከላሹ የሐሰት ወራዎችን በማውራት ሕዝብን ለማነሳሳት ወይ አስተሳሰባቸውን ለማናወጥ አስፀ "ፍትሕ ጋዜጣ በሚል በማስተዋል የህትመት ማስታወቂያ ሥራ ድርጅት በየሳምንቱ በሚታተም ጋዜጣ ዋና አዘጋጅ በመሆን፡- በቅፅ 5 ቁጥር 179 መጋቢት 7 ቀን 2004 ዓ.ም በተሰራጨ ዕትም "ሲናዶሱና መጅሊሱ የአብዮታዊ ዲሞክራሲ ማጥመቂያ" በሚል ርዕስ በተከላሹ አመጪነት በታተመው ዕትም አህአዴግና መለስ ደርግን አሸንፎ ከበረሃ ሲገቡ ይዘውት የመጡት የብሔር፣ ፖለቲካና በቋንቋ ላይ የተመሠረተ ፌዴራሊዝም ስርዓት ብቻ ሳይሆን ለኦርቶዶክስ ክርስትና እምነት ተከታዮች ፓትርያርክም ነው በአሁኑ የተተሰተሰው የመ-ስለ-መ- ሕ/ሰብ ጥያቄም እንደዚህ መንግሥት ጣልቃ በመግባቱና የሀይማኖት ነግነት በሀገሪቱ ስለሌለና የእስልምናም ሆነ የክርስትና እምነት መረዎች የአህአዴግ ካድሬዎች በመሆናቸው በማለት የሐሰት ወራዎች በመዘገብ እና ለሕዝቡ በማሳሰብ የሕዝቡን አስተሳሰብ እንዲናወጥ ያደረገ በመሆኑ በፈፀመው የሐሰት ወራዎችን በማውራት ሕዝብን ማነሳሳት ወንጀል ተከሷል።

4ኛ ክስ በ2ኛ ተከላሽ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የወ/ሕግ አንቀጽ 34/1/፣ 44/1/ እና 257/ሀ/ስር የተመለከተውን በመተላለፍ

የወንጀል ዝርዝር

ተከላሹ ከላይ በ1ኛ ክስ በተገለፁ ጊዜያት የወንጀል ይዘት ያላቸው የፍትሕ ጋዜጣ ዕትሞች በአሳታሚነት በመካፈል የወንጀል ድርጊቱን የተሰተሰ በመሆኑ በዋና ወንጀል

ቁ.አ. ፋ-ክስ 755061 ስልክ 764014 የመ.ጣ.ቁ. 1370 አዲስ አበባ ኢትዮጵያ
 Fax Tel. 51 50 99 P.O. Box 1370 Addis Ababa Ethiopia
 " ፍትህ በተለወጠ አመራር ፣ በተለወጠ ሠራተኛ ፣ በተለወጠ ተቋም "።

4





የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 በፍትህ ሚኒስቴር
 The Federal Democratic Republic of Ethiopia
 Ministry of justice

ቁጥር.....
 Re.NO
 ቀን.....
 Date

እድራጊነት ተካፋይ በመሆን በፈፀመው የመንፈሳዊ ግዙፍ ያልሆነ መሠናዳት ተግባር
 ወንጀል ተከሷል።

የማስረጃ ዝርዝር
ሀ/ የሰነድ

Handwritten signature and date:
 በፍትህ ሚኒስቴር
 16/01/2009

- 1ኛ/ ፍትሕ ጋዜጣ ቅፅ 5 ቁጥር 177 የካቲት 23 ቀን 2004 ዓ.ም 4 ገፅ
- 2ኛ/ ፍትሕ ጋዜጣ ቅፅ 04 ቁጥር 149 ነሐሴ 13 ቀን 2003 ዓ.ም 2 ገፅ
- 3ኛ/ ፍትሕ ጋዜጣ ቅፅ 4 ቁጥር 146 ሐምሌ 22 ቀን 2003 ዓ.ም 3 ገፅ
- 4ኛ/ፍትሕ ጋዜጣ ቅፅ 5 ቁጥር 166 ታህሳስ 7 ቀን 2004 ዓ.ም 2 ገፅ
- 5ኛ/ፍትሕ ጋዜጣ ቅፅ 5 ቁጥር 197 መጋቢት 7 ቀን 2004 ዓ.ም 4 ገፅ



ቴሌ ፋክስ 755061 ስልክ 764014 የመ.ሣ.ቲ. 1370 አዲስ አበባ ኢትዮጵያ
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 * ፍትህ በተለወጠ አመራር ፣ በተለወጠ ሠራተኛ ፣ በተለወጠ ተቋም ፣



የኢትዮጵያ ኦርቶዶክስ ተዋሕዶ ቤተ ክርስቲያን
መንበረ ፓትርያርክ ጠቅላይ ጽ/ቤት
Ethiopian Orthodox Tewahedo Church
PATRIARCHATE HEAD OFFICE

ቁጥር 21/2148/08
 Ref. No.

18/08 ወይንም 08 ዓ.ም

Date _____ 20 _____

በፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
 ለቁርቆስ ምድብ ወንጀል ችሎት
አዲስ አበባ

ክሊሽ የኢትዮጵያ ኦርቶዶክስ ተዋሕዶ ቤተ/ መንበረ ፓትርያርክ ጠቅላይ ጽ/ቤት
 ወኪል ለባ ገ/ሥላሴ ጌትነት

አድራሻ :- አራዳ ክ/ከተማ ወረዳ 09 የቤት ቁጥር 149/09

ተከላሽ..... አቶ ፍሬው አበበ

አድራሻ :- ቁርቆስ ክ/ከተማ ወረዳ 10 የቤት ቁጥር 12/201

በ2000 ዓ.ም. በወጣው የመገናኛ ብዙሃንና የመረጃ ነጻነት አዋጅ ቁጥር 590/2000 አንቀጽ 43 (7) መሠረት የቀረበ ክስ ነው

ወንጀሉ

በ1996 ዓ.ም በወጣው የኢ.ፌ.ዴ.ሪ የወንጀል ህግ አንቀጽ 43 (1) (ሀ) እና 613 (3) ሥር የተመለከተውን ቤ.መተላለፍ

የወንጀሉ ዝርዝር

ተከላሽ ዋና አዘጋጅ ሆኖ በሚራበት የሰንደቅ ጋዜጣ ሰንደቅ 11ኛ ዓመት ቁጥር 551 ረቡዕ መጋት 21,2008 ዓ.ም ታትሞ በተሠራጨው ጋዜጣ በገፅ 20 ላይ "ፓትርያርክ" ለኢትዮጵያ የደንበኞች ልምድና የድንበት ሥጋት ፤ የክርስቶስ አንዲት በግ መከራን ስትቀበል ከማይ እኔ የበጎ እረኛ መከራ መቀበልን እመርጣለሁ" በሚል ርዕስ በዳንኤል ክብረት ጸሐፊነት የኢትዮጵያ ኦርቶዶክስ ተዋሕዶ ቤተ ክርስቲያንን ተቋማዊ አሠራርን ጥላሽት የሚቀጥና የቤተ ክርስቲያናቱን ፓትርያርክ የብፁዕ ወቅዱስ አበነ ማትያስ ቀዳማዊ ፓትርያርክ ርእሰ ሊቀኝ ጳጳሳት ዘኢትዮጵያን ስም የሚያጠፋ እንዲሁም በመልካም ስምና ዝናቸው ላይ ከባድ ጉዳት ማድረግ ለተከላሽ ክርስቲያኑ የቤተ ክርስቲያን ተቋማዊ አሠራር እንዲቆይ ለማድረግ በማለብ በተጻፈው አድድ ሥር የጸዱ ጽሑፍ ይዘትም :- በአንድ አምድ ላይ ምዕመናንን የሚያፀና ጉባኤ ለዘጋጅ ነው



[Handwritten signature]

የኢትዮጵያ ኦርቶዶክስ ተዋሕዶ ቤተ ክርስቲያን
 ጠቅላይ ጽ/ቤት
 አዲስ አበባ

አዲስ አበባ
 ADDIS ABABA

ሲሏቸው፤ ሕዝቡ ወደ ቤተ ክርስቲያን እየመጣ ነው ሲሏቸው፤ ወጣቱ ትውልድ ቤተ ክርስቲያንን ለማገልገል እየተጋ ነው ሲሏቸው ብዕራቸውን ይዘው ለማገድና ለመክሰስ ይነቃሉ በማለት በቤተ ክርስቲያኒቱ ላይ ግፍና በደል እንደተፈጸመ በማስቀጠር፤ ፓትርያርኩ ብዕር ምእመናንን የሚያጽና ጦማር ለመጻፍ ወይም ድንገልን የሚያመሰግን ድርሳን ለመድረስ የሚጨበጥ አይደለም ፤ እንደ ጠንቋይ ብዕር ለማፍዘዝና ለማደዝዝ እንጅ" በማለት በተቋሚ የሚጻፉ ደብዳቤዎች ተቀባይነት እንዳይኖራቸው በመቀስቀስ ፤ ሁለተኛ አምድ ላይ "የመንግስት ባለስልጣናት ላይቀሩ የገዛ ልጆቻቸውን ያወያዩ ሲሏቸው በራሳቸው ጠርቅመው የሚዘጉ ፓትርያርክ በታሪክ የመጀመሪያው ናቸው። በሱራራ ነበልባል የተዘጋች ገነት ስትከፈት (ፓትርያርክ የተዘጋች የቤተ ክርስቲያን ልጆቻችንም" በማለት የቤተ ክርስቲያኒቱ ተቋማዊ አስተዳደር እንደተዘጋና ሕልውና እንደሌላት በመቁጠር ፤ በሶስተኛው አምድ ላይ አውደ ርዕዩ የማይደረግባት በቂ ምክንያት ከነበረ ቢያንስ ከሳምንት በፊት መግለጥ ይቻላል ነበር በማለት በመንግስታዊ ሠራር የታገደን አውደ ርዕይ በቤተ ክርስቲያን እንደታገደ አስመስሎ በማቅረብ ሕዝብ ክርስቲያኑ ለአመፅ እንዲነሳሳ ለመቀስቀስ በማሰብ ሆን ብሎ ፤ ዓላማው ግን ማሰራጨት፤ አመጽ ማሰራጨት፤ ጠቅላይ ማስቀረጥና ምእመናንን ወደ ማይፈልጉት መስመር መውሰድ ነው በማለት ስውር ቅስቀሳ በማድረግ፤ እንዲሁም የዚች ሀገር ሰላም አይፈለግም? እና ሀገሪቱ ያለባት ችግር አይበቃትም? ተጨማሪ ችግር ማምረት ይፈልጋል? በማለት ሀገሪቱን ሰላም አልባ አድርጎ ከመቁጠሩም በላይ ቤተ ክርስቲያኒቱን የሀገር ደኅንነት ስጋት አድርጎ በመሳል። በአራተኛ አምድ ላይ ቤተ ክርስቲያን የሚያመጣው ጻፋ መንግስት መከራ ለመቀበል ዝግጁ ነው? በማለት ወደፊት በሀገሪቱ ላይ ቤተ ክርስቲያን የሚያመጣው ጻፋ እል በማለት አጠቃላይ የቤተ ክርስቲያን መልካም ስምና ዝና ላይ ጥላሽት በመቀባት እንዲሁም የገዛ ፓትርያርክችን ለእኛ ለምእመናን ድኅነትን እንዳናገኝ ሥጋት ሆነውበናል ፤ የታገሡትን ሁሉ ለክፋት በማነጣጠል ደግሞ ለሀገሪቱ የደኅንነት ሥጋት እየሆነ ነው" የሚል ይዘት ያለው ዕውቅና እንዲታተም በመፍቀድ እንዲታተም ያደረገ በመሆኑ በፊትም የስም ማጥፋ ወንጀል ተከሷል።

የማስረጃ ዝርዝር

1. የሰነድ

1. የስልጠና/ር አባ ገ/ሥላሴ ገነት የውክልና ማስረጃ (01 ገጽ)
2. ሰነድ ገዢ ገ/ሥላሴ ገነት የተገኘበት ገ/ር 551 ረቡዕ መጋቢት 21, 2008 ዓ.ም የታተመ (24ገጽ)



Handwritten notes and signatures on the right side of the page, including a signature and the name 'Afe M/ Abba G/ Silusie Getnet'.

በፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት
ለአራዳ ምድብ ወንጀል ችሎት
አዲስ አበባ

የፌ/ፖ/ወ/መ/ቁ. 666/07

ከሳሽየመ/ፓ/ቅ/ቅዱሳን ማርያም ገዳም አስተዳደር ጽ/ቤት
ተከላሻች.....1ኛ/ ኢትዮ-ምዳር ጋዜጣ /ሁለንታ ሕትመት እና ማስታወቂያ ኃላፊ.የግ.ማህበር/
አድ. አ/አ. ቁርቆስ ክ/ክ/ወ.10 የቤ.ቁ. ቢ/312
2ኛ/ አቶ ጌታቸው ወርቁ (የአያት ስም የማይታወቅ)
አድ. አ/አ. አቃቂ ቃሊቲ ክ/ክ/ወ. 04 የቤ.ቁ. 128/4

ወንጀል

በ1996ዓ.ም የወጣውን የኢ.ፌ.ዴ.ሪ የወንጀል ህግ አንቀጥ 32/1/ሀ/፣ 43/1 እና 613/3 ሥር የተመለከተውን በመተላለፍ፡፡

የወንጀል ዝርዝር

ተከላሻች በሌላ ሰው መልካም ስም ላይ ከባድ ጉዳት ለማድረስ አስበው 1ኛ ተከላሽ በየሳምንቱ በሚያወጣውና 2ኛ ተከላሽ በዋና አዘጋጅነት በሚያሳትመው ኢትዮ-ምዳር በተባለ ጋዜጣ በጥቅም 03 በቁጥር 107 በግንቦት 22 ቀን 2007 ዓ.ም በሳተመው ጋዜጣ ላይ የግል ተቃዋሚ የሆነቸውን በአ/አ/ተ/ቤ/ክ/ የመንበረ ፓትሪያርክ ቅድስተ ቅዱሳን ማርያም ገዳምን አስመልክቶ "ቦፓትሪያርክ መቀመጫ ቅድስት ማርያም ገዳም ምርመራ እንዲካሄድ ተጠየቀ በሚል" ዋና ርዕስ ሰጠ።

1. በገዳሙ የሚገኘው ታሪካዊ እንጦስ ጽላት በአርቲፊሻል ተቀይሯል፤ ጥንታዊያን የብራና መካህፍት እና የወርቅ ጽንፈኤ ወጥተዋል፤ የስዕልት እና የስጦታ ወርቆችና የብር ገጣጠኞች በየመሸታ ቤቱ እየተሸጡ ነው ይህም ድርጊት የሚፈጸመው በአላቻ ጊዜ በማውጣት፣ ለዕቃ ማጣሪያና ሽያጭ ስበብ እንዲሁም ለነዶችን በመደለዝና በማጥፋት እንደሆነ፤ ከበጎ አድራጊዎች ለገዳሚ በስዕልት የተበረከ ላፕቶፕና ፕሮጀክተር በግልሰሶች ተሸጧል በሚል፤
2. የገዳሚ የንብረት ቁጥጥር ክፍል ኃላፊዎች የውጭ ኦዲት እንዲካሄድ ቦፓትሪያርክ የተሰጠ መመሪያ የተለያዩ ስልቶችን በመከተል ተግባራዊ እንዳይሆን አያደረጉ ነው፤ "የመልክዓ ብስራት አባ ገብረስላሴ ስም ከቱስ ገበዩ አባ ሳሙኤል ቀለሙ እና ሌላ ካህን ጨምሮ ለምንክስና ስርዓት በማይሰማሚ ተግባር በአልባል ቦታ መገኘት እንዲሁም መከላከል።"

(Handwritten signature and notes)

