

Jurisprudential challenges to freedom of expression in Ethiopia: Critical re-reflections on selected legislations of the country

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Abstract

According to the political philosophy of liberal democracy, which demands the fundamentals of individual autonomy, freedom of expression is among those ground maxims that trigger critical academic discourse with practical public policy implications. A government, that wins popular legitimacy, is expected to lay down solid and systematic foundations for the realization of free proliferations of ideas and information of different sorts from diversity of sources across different sections of the society. In addition, free and democratic societies, that have constitutionally stipulated rights to freely access and transfer information, will have greater opportunities to pass informed decisions and judgments on fundamental questions of the individual lives of its citizens. In this regard, democratic States do not therefore impose unjustifiable and broad restrictions up on individual citizens, journalists and other institutions. Based on this basic philosophical assumption, this work has critically explored the main existential jurisprudential challenges to freedom of expression, which have been posing significant threats, to such democratic values in Ethiopia. To this effect, the country's Freedom of the Mass Media and Access to Information Proclamation and its recent Anti-terrorism proclamation, have been critically evaluated and analyzed. The cumulative result of critically evaluating these proclamations reveals some jurisprudentially contradictory provisions with existing constitutional principles. This includes other binding international human right instruments ratified by Ethiopia concerning the justifications to limit freedom of expression, registration and licensing requirements. Moreover, some broadly and vaguely formulated provisions of the recent anti-terrorism proclamation have also posed significant threats to individual Ethiopian citizens, journalists and institutions, such as the basic autonomy to freely exchange ideas, information and thought without unlawful and unjustifiable interference from government.

Keywords: Existential Challenges, Ethiopia, Freedom of Expression, Media

Introduction

In a democracy, freedom of expression is one of those fundamental human rights so that individual citizens, journalists, public as well as private institutions are entitled to freely express themselves, receive and transmit their information, ideas and thought. Removing legal and practical impediments that can hinder the independent operation of media could play a significant role in building a viable and predictable political system and State. A political system that legitimizes the existence of free, independent, and diverse operations of media with individual freedom of expression is a defining denominator to build democratic culture, society and State (Ali, 2015). Such a political environment, will therefore, enable individual human beings to: search for truth, pass informed decision on fundamental questions of their lives, and actualize their diverse potentials, effect informed communications with those who are in power and to contribute to the common good of their society and State. In light of this, this research seeks to critically assess and examine the existential jurisprudential challenges to this universal human right, freedom of expression in Ethiopia. To this effect, the paper seeks to analyze two basic legal documents of the country, the *Freedom of the Mass Media and Access to Information Proclama-*

tion (Proclamation No. 590/2008) and the *Anti-terrorism Proclamation* (Proclamation No. 652/2009). As such, it reveals some of the negative implications of these documents on freedom of expression of individuals, journalists, and any other potential actors within the country.

Understanding freedom of expression

The quest for freedom of expression is inherent to human nature and has been central to ancient, medieval, and modern literatures as well as political traditions of different societies. Human beings are born with the faculty of thinking so that they can rationalize, doubt, investigate, examine, analyze and pass informed or rational judgments on fundamental questions of their lives. In other words, they are naturally curious and they desire to know and search for truth (Hansen, 2010, pp.1-2). Individuals employ language so that they can communicate and understand each other that will ultimately lead them to effectively explore the foundation of truth. To this effect, at any rate, there must be enabling social, cultural and political environments which could institutionalize and implement freedom of thought, opinion and expression of every individual human subject as an autonomous and rational actor who is capable of independent thinking and informed decisions (Ali, 2015, pp.74-75).

Many scholars as well as international human right regimes have tried to define the concept of freedom of expression in various ways. The concept of freedom of expression, for Plato, could be understood as an inherent human entitlement of all rational human beings which enables them to search for the truth and true knowledge of things. According to his analysis, this could be possible only through free, open, rational and critical exchanges of ideas, investigations, analysis and dialogues between and among human beings. Therefore, according to him, human beings could effectively face their ignorance for truth only through their active and independent engagements in series of critical and rational reflections, investigations, dialogues and analysis in an enabling environment for free and diverse flows of ideas (Hansen, 2010, pp.1-2).

Locke (1824), also defined the concept of freedom of expression as the basic right of human beings which enables them to find out the truth. He argued that the idea of freedom of expression implies that individual human beings are entitled with liberty and equality to express, receive, and transfer ideas, thoughts, feelings, and positions of their own and that of others. It enables them to reach out informed decisions and ultimately develop democratic society and State. However, this natural entitlement could be limited if it is contrary to human society, or to those moral rules which are necessary to the preservation of civil society (Locke, 1824). In addition, Mill (1956) defined and justified freedom of expression as indispensable value of human beings which enables them to honor truth against falsehood through free and open flows or exchanges of diversity of ideas among human beings. However, he has also argued that freedom of expression should be permitted on condition that the manner be temperate, and do not pass the bounds of fair discussion (Mill, 1956).

In addition to the above scholarly definitions, the Universal Declaration of Human Rights (UDHR) was drafted in December of 1948 as the foundation and standard of international human rights law concerning the fundamental right of human being to freedom of expression. The declaration states, 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 (UDHR, 1948). Further, in 1966, the International Covenant on Civil and Political Rights (ICCPR) stipulated that everyone shall have the right to hold opinions without interference. This covenant underlines that everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing, in the form of art, or through any other media of his choice. However, it also justifies that these rights and freedom are subject to certain restrictions and they shall only be revoked when indicated by law and when necessary. For example, it may include for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals (ICCPR, 1966). As such, the above definition concerning the idea of individuals' freedom of expression with its legitimate limits formulated by ICCPR has been adopted and formulated as integral parts of respective constitutions of most individual democratic States (Ali, 2015, p.81).

In light of this, the concept of freedom of expression therefore connotes individuals' freedom to seek, receive and impart information and ideas of all kinds through any media of their choice. And, it is a fundamental human value which enables human beings to search for truth for its own sake and to actualize some of their individual as well as collective goals.

Major arguments for freedom of expression

According to Descartes, our freedom of expression ensures our freedom of choice, thinking and judgment so that we could not be dictated by any external force (Thiroux, 1989). Our autonomy, according to Kant, will also enable our moral consciousness to recognize that, as free rational beings, we are bound by the universal moral law independently of any particularity found in empirical reality (Thiroux, 1989).

For an inherent curiosity and aspiration of individual human beings, there must be enabling socio-cultural and political environment in a State for free proliferations of diverse ideas among human beings from all possible sources. Thus, in the absence of our basic freedom of opinion, expression and thought, our fundamental quest for truth, knowledge, and moral responsibility could not be realized (Ali, 2015, p.79). Ensuring citizens', journalists' and other institutions' freedom of expression by individual governments is an absolute and logical precondition to effectively and efficiently realize their individual citizens' and journalists' inherent quests for truth and knowledge. Moreover, it should be up to those individual citizens, journalists and institutions to freely choose the contents as well as sources of information for their reasoned and independent judgments concerning their day-to-day fundamental queries and challenges. The recognition and institutionalization of the principle of freedom of thought and expression in matured democracies of the west had fundamentally been motivated by human beings natural curiosity to know and seek understanding (Ali, 2015).

As an extension of the argument, there are two basic justifications as to why various international human right instruments as well as individual States recognize and promote individuals' freedom of expression within their own respective policy orientations. First, they usually raise deontological argument for freedom of expression so that they put intrinsic rational for the need of this basic human liberty. For Plato and Kant, the legitimate claim of an autonomous rational individual human agent for the universal truth should be considered as an end in itself and it must not be associated with any other material end (Ali, 2015). Therefore, the basic claim of individual citizens and the institutionalizations of freedom of expression by individual States have been attached to such a deontological justification, claiming and respecting for individuals' freedom of information is an end in itself, which has nothing at all to do with some material motives. Such an argument has been reflected in western liberal democracy that ensures individuals' liberty and freedom to exercise their civil and political rights among which freedom of press is one of them (Ali, 2015).

The second argument lies on teleological moral reasoning, which had been initiated by Aristotle. According to Aristotle, each and every individual acts as well as human associations have their own respective purposes. For him, the highest purpose of the State and its apparatus is to achieve good life and happiness (Ali, 2015). Individuals' freedom of expression is meant to lead a true and a happy life of citizens according to Aristotle though he is not an advocate of democracy from monarchy (Conole, 2014). In addition, institutionalizing freedom of expression enables individual human beings. Therefore, to make truth the champion over its fight against falsehood, to safe guard the wellbeing of the society as well as the State (Milton, 1918). Thus, according to such a teleological reasoning, individuals' curiously to destroy falsehood and to survive truth could not be possible in a political system that does not allow individuals' freedom of expression (Ali, 2015, p.80).

According to Mill (1956), the measure of liberty is progress not truth. If an opinion is not open to discussion then one has assumed infallibility deciding the question for others, thereby denying the very impetus for progress. Moreover, Mill (1956), came up with the utilitarian prescription concerning individuals' freedom of expression which could be limited if such freedom affects the freedom of others (Mill, 1956). On the other hand, Locke (1824), argued for individuals' freedom of expression to attain truth. Thus, advocates of teleological argument reflects the basic idea that individuals' freedom of expression shall be recognized to secure truth, to safe guard public interest, to effect secular and representative government.

Overall, in a democratic system, the quest for freedom of thought and expression may simply be attributed to human beings' innate curiosity towards truth for its own sake or with some teleological motives. Accordingly, human beings, as rational animals, need to be allowed to freely exchange information free from unjustifiable and illegitimate restrictions and interventions of the government. And, a political system that ensures freedom of thought and expression will therefore open the chance for citizens to easily and freely access, evaluate and control the policies, decisions and actions of their respective governments. Ensuring the transparency of governments will also result in public participation, accountability and rule of law, which are the foundations modern constitutional democracy (Ali, 2015).

Historical overview of freedom of expression in Ethiopia

In Ethiopia, constitutional guarantee to freedom of expression is not of a recent phenomenon in the country's modern political system. Influenced by the Federation of Eritrea with Ethiopia, freedom of expression was for the first time given constitutional recognition in modern Ethiopia by the Revised 1955 Constitution during the imperial regime of Emperor Haileseilase (The 1955 Ethiopian Constitution, Art 41). During the military regime, the 1987 Constitution of the Peoples' Democratic Republic of Ethiopia also gave constitutional recognition to freedom of expression (The 1987 Ethiopian Constitution, Article 47).

After the lapse of the military regime, significant constitutional changes occurred as far as freedom of expression was concerned. Accordingly, not only did the Transitional Charter recognize freedom of expression, but freedom of the press and speech became a reality with an unprecedented proliferation of privately run newspapers and magazines (Bonsa, 2002). In addition, in Ethiopia's constitutional history, freedom of expression was stipulated in the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution in a comparatively detailed manner (FDRE, Article 29). At least at policy level, freedom of expression has therefore been given recognition in Ethiopia for more than half a century. However, modern Ethiopian political tradition suggests that such constitutional guarantees of freedom of expression have not been effective in fostering political dissent and freedom of the press.

Existential jurisprudential challenges in Ethiopia

As it had been stated before, the recent constitution of the FDRE put at least the minimum roadmap to ensure citizens' fundamental freedom of expression in the country. However, other emerging legislations of the country have come up with challenging provisions to restrict this constitutionally formulated value. To this effect, this study attempted to critically disclose existential jurisprudential challenges in Ethiopia by taking two relevant legislations of the country: *Freedom of the Mass Media and Access to Information Proclamation* and the *Anti-Terrorism Proclamation*.

Challenges from freedom of the mass media and access to information proclamation

To promote the fundamental principles of freedom of expression under article 29 of the FDRE Constitution and other international human rights instruments ratified by the country the House of Peoples Representative (HPR) formulated the proclamation on freedom of mass media and access to information in 2008. The central objective of this proclamation was to create conducive environment for the media, individual journalists and citizens to freely access to information. In this regard the preamble of the underlined proclamation clearly recognizes:

the right of the media to collect and disseminate information, including of a critical nature; realizing that an independent mass media that serves as a public forum for uninhibited democratic dialogue thrives on a viable freedom of information system that facilitates the free flow of information and ideas among citizens by enabling them to exercise their right to seek, receive and impart information and opinions freely (Proclamation No.590/2008, p.1).

This democratic preamble also promotes the constitutional values of transparency and accountability of the decisions and actions of various government officials and institutions and to oblige those officials to facilitate access to the mass media and journalists to information of public interest. It also underlines the right of individual citizenries to get access to information. As the right to get information is a widely recognized human right, the proclamation therefore affirms the right of all persons to seek, obtain and communicate any information held by public bodies except as expressly provided by the proclamation (Proclamation No.590/2008). Regardless of the above commending inclusions, the proclamation has also incorporated some jurisprudentially controversial provisions, which may be leveled as contrary to its main values and objectives, stated at its own preamble and objective clauses. Accordingly, this work has tried to critically evaluate, the jurisprudential irregularities and challenges posed by few among many of those provisions of proclamation.

Challenging mass media registration and licensing procedures

Freedom of the Mass Media and Access to Information Proclamation (Proclamation No.590/2008) of Ethiopia has usually been criticized as it places a corporate and individual duties. This is particularly on private media and journalists to avoid any content which might be deemed to violate the civil and criminal laws of the country, including acts of defamation and false accusations against both groups and individuals. As an illustration, the proclamation states:

save otherwise for prosecutions for false accusations and defamation against the constitutionally established legislative, executive or judicial authorities prosecutions for defamation and false accusation committed against individuals or private organization through the mass media shall be instituted and conducted by the private complainants. In an action for defamation through the mass media the court may award, having regard to the seriousness of the moral damage, compensation up to 1000,000 birr having regard to the seriousness of the damage. (Proclamation No.590/2008, Articles 41(2) & 43(7))

The proponents of such formulations, particularly of the Government of Ethiopia, claim that this provision would provide a more responsible media as it imposes both civil and criminal sanctions against those journalists and media, which violate those defamation and false accusation provisions. However, unlike the proclamation, defamation or false accusation, should be a mere civil offence rather than being a criminal offence so that such acts are private matters since the parties at dispute are private individuals, which are/should be followed by civil or monetary sanctions only against the offenders to remedy the victims. Accordingly, criminal sanction is not a jurisprudentially valid and legitimate penalty for defamation or false accusation. It implies a clear State interest in controlling a certain activity. Although, the law does not expressly limit the output of the media about the type or scope of information, it provides indirect protection for the Ethiopian government. To this effect, the government reserve the right to prosecute any printed or broadcasted media about an official even if no official feels the report has impacted his or her reputation.

In light of this argument, criminalization of acts of defamation or false accusation by the underlined proclamation more likely implies the interest of the Ethiopian government to control, abuse and oppress the media, journalists and individuals' freedom of expression rather than promoting this fundamental human right value. The media, particularly private ones, will likely to be frightened by the possibility of prosecution for any comments they would make about government or its officials. Without freedom to comment on these organs of government, the media will not be in a position to engage actively in the promotion of human rights and it is bound by the legislation not to provide accurate or realistic portrayals of current government issues for fear of litigation. This has a negative implication on freedom of the press and right of the people to receive information by undermining the constitutional and international obligations of the Ethiopian government to promote and protect the fundamental principles of freedom of expression.

In addition to criminalization of acts of defamation or false accusation, compared with the fines for other serious criminal acts and human rights violations like rape and child labor abuse, the proclamation is also criticized for imposing excessive civil sanction, which could reach up to 100,000 birr, for minor violations of the provisions. The implication of such an excessive fines, could threaten the very survival of the strong, free and independent media, which will in turn be the major obstacle to freedom of expression in Ethiopia. To conclude, all the above criminal as well as civil sanctions imposed on professional journalists and the media using those controversial defamation and false accusation provisions of the proclamation will force individual citizens, journalists and private media apparatus to finally resort to self-censorship, which can be a huge blow to freedom of expression.

Challenging mass media registration and licensing

Another critical challenge that hinders the media from actively engage in and contribute to the development of press freedom in Ethiopia, has been the provision that deals with licensing and registration mass media, which grants the power of licensing and registration to the Ministry of Information (MOI) or Regional Information Bureau (Proclamation No.590/2008, Article 9(2)). However, it does not say anything as to whether the underlined ministerial office as well as respective regional information bureaus have the discretion to refuse an application for a license, equally it does not prohibit refusal (Ross, 2007, p.163). Guarantying such an extensive statutorily power to the executive organs of the government, the ministry information or regional information bureaus, instead of an independent press council run by professional journalists, will not serve any purpose for the emergence and development of strong and independent medias and profession of journalism in Ethiopia. The licensing and registration regimes established by the proclamation will have a serious implication against the institutional and personal independence of the media and journalists so that they cannot freely and independently operate without the approval particularly of the executive branches of the federal as well as regional governments of Ethiopia.

Under such circumstance, the press as well as individual journalists in Ethiopia cannot afford to question the actions of the government. In this context, the most likely result of this fear of retribution in the minds particularly among private media and journalists in that they cannot dare to disclose when the

government commits various human right violations. In countries with democratic jurisprudence, governments' huge involvement in the registration and license procedures of media and journalists is unjustifiable. Unlike Ethiopia, democratic countries should have only minimal roles in determining who may or may not exercise the right to practice journalism. In other words, major government's involvement to the profession of journalism will have a more likely negative implication on the development of a vibrant, independent and pluralistic media, without which the public's right to receive and impart information and ideas is impossible.

Challenges from the Anti-Terrorism Proclamation

The quest for maintaining a reasonable balance between ensuring freedom of expression and combating terrorism is becoming the center of the current public policy puzzles, which can in turn have various practical implications on human right and security questions. To this effect, different international human right instruments have formulated similar recommendation to be followed particularly by State actors including Ethiopia so that they could act, with the sense of international responsibility, while the State restricts freedom of expression in order to protect national security and defend their people from terrorist threats. Thus, such an international human right policy recommendation in this regard is to ensure that the application of anti-terrorism legislations formulated by States is limited only to offences that are indisputably terrorist offences rather than making them instruments to suppress political dissent and diversity of views.

Ethiopia has been a signatory state to those international and regional human right instruments such as UDHR, ICCPR and the African Charter for Human and People's Rights. These human right regimes have imposed up on all member states international obligations to respect and promote the principle so that every individual is entitled to receive, express, and disseminate information, ideas, thoughts and opinion within the bounds of those legitimate and justifiable limits (UDHR, 1948; ICCPR, 1966). Besides, Ethiopia has incorporated this universal human right value within its domestic legislations, particularly of its federal constitution (The FDRE Constitution, Article 29). However, the jurisprudential implications of emerging legislations of the country has continued to pose significant threats to this fundamental international as well as domestic constitutional human right principle. In this context, selected provisions of the 2009 Anti-Terrorism Proclamation could undermine those international and constitutional protections to this fundamental human right value, freedom of expression.

Challenges from vaguely and broadly stipulated definitions of the term 'terrorist acts'

According to the ICCPR, of which Ethiopia is a party, limitations to freedom of expression shall only be valid if they are being prescribed by law, to peruse for a legitimate aim and to realize a democratic society (ICCPR, 1966, Article 19(3)). According to the United Nations General Assembly resolution, States must ensure that any of their measure taken to combat terrorism comply with all their international obligations, particularly under various international human rights instruments (United Nations General Assembly resolution, 2006). Similarly, the UN Human Rights Commission (UNHRC) also issued a resolution reminding State actors to refrain from using counter-terrorism as a pretext to restrict the right to freedom of opinion and expression in ways which are contrary to their international responsibility (UNHRC Resolution 2005/38). Finally, the African Union, concerning freedom of expression and access to information of the African Commission on Human and Peoples' Rights, has called for countries to adopt definitions of terrorism which ensure that they do not criminalize speech which does not directly incite violent activities (African Commission, 2005).

Based on these key international human right instruments, State parties should therefore be expected to adopt a more precise and narrowly formulated definition of terrorist offences. This will also ensure that individual citizens will not be targeted only because they hold opposing political, religious or ideological views. This is basically because of the fact that the existence of clearly and narrowly defined anti-terrorism law in a given state will best serve its legitimate purposes. It will also influence individual governments to create a reasonable balance between the promotion of more open and democratic political environment and protection of national security. In this regard, to observe this international obligation, the current constitution of the FDRE also does not allow content based limitations to freedom of expression so as to ensure better protection of the value under discussion by avoiding self-censorship (FDRE Constitution, 1995, Article 29).

Contrary to the above international, regional as well as constitutional standards, the first problem of the current Ethiopian Anti-Terrorism Proclamation begins with its introduction to a very broad and vague definition of term terrorist acts. In this regard, the proclamation defines terrorist acts as those that:

Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country. (Proclamation No. 652, 2009, Article 3)

In the above definition, the phrase 'intimidating the public or section of the public' is vague so that the government may broadly interpret legitimate, non-violent protest and dissents of citizens as acts of intimidation to deliberately target them. Beyond the phrase 'destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country' is broad and vague so that the government may also apply it to intentionally target those who are engaging in legitimate oppositions to the political and economic policies of the ruling party so as to sustain its political power (Global Campaign for Free Expression, 2010). According to the proclamation, a terrorist act would also include anything that causes "serious interference or disruption of any public service" (Proclamation No. 652, 2009: Article 3(6)). Such a broadly stipulated characterizations of terrorist acts in the proclamation may be more susceptible to be manipulated by the Ethiopian government to suppress various types of legitimate, passive, and non-violent resistances to challenge its legitimacy. At any rate, in countries like Ethiopia with very infant constitutional democracies, formulations of such a vaguely worded definitions of different anti-terror proclamations will definitely meant to open wide ranges of opportunities to individual governments to silence various forms citizens' oppositions to closed existential political establishments of those individual States.

Challenges to the protection of sources of information

As to the proliferations of ideas and information among the public, it is an inherent nature of the media that it comprises the ideas, information as well as news, their sources, the dispatchers of those news and finally the receiver, which is usually the general public. In this context, journalists are legitimate and professionally viable dispatchers of those news to the general public. While discharging their duties by disseminating news to the general public with at most professional care, diligence, objectivity and reliability in the interest of truth, journalists shall be protected as to their sources.

To ensure the free flow of information to journalists and then to the public, journalist shall also be granted the legal protection not to be forced to disclose their sources of information. As a result, they will maintain their professional duty to remain confidential concerning the sources of their information. Besides, they will earn public confidence concerning their information security so that the general public will be encouraged to disclose more information. At any rate, it is because of the above justifications that various constitutional democracies and international human right instruments have recognized protection of sources and information. As a result, the United Nations, the African Union, the Council of Europe, the Organization of American States, and the Organization for Security and Co-operation in Europe (OSCE) openly underlined journalists' and media organizations not to disclose the identities of their confidential sources, not to provide information gathered in the course of journalism, not to be forced to testify, and not to be subject to surveillance and searches to undermine these rights (Privacy International, 2007; Organization for Security and Co-operation in Europe, 2007).

In Africa, where Ethiopia is a signatory State, the Declaration of Principles on Freedom of Expression in Africa issued by the African Commission on Human and People's Rights provides detailed guidelines for member States of the African Union on protection of sources to follow to be compliant with Article 9 of the African Charter of Human Rights (Global Campaign for Free Expression, 2010). As such, according to Section XV on "Protection of Sources and other journalistic material", media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except for investigations of some serious criminal offences affecting national security or public interest (African Union, 2002). In this regard, it is recognized that the prevention of terrorism does not justify the elimination of this crucial right for a free press. While the prevention of terrorism is an obvious public interest which in some cases can result in the disclosure of information, it must be also balanced against the public's right to be informed (Global Campaign for Free Expression, 2010). This is especially important in the case where the definition of terrorism is vaguely and broadly defined, such as under the Ethiopian Anti-Terrorism Proclamation. The mere claim that information may be of use in combating terrorism does not eliminate individual freedom of expression.

Under the current Ethiopian Anti-Terrorism Proclamation, there appears to be little recognition of protection of sources of information of journalists as well as private individuals (Global Campaign for Free Expression, 2010). Unfortunately, the proclamation also sets out a series of excessive powers for government bodies, particularly of the executive organs. It also imposes serious duties up on private indi-

viduals including the media and journalists to facilitate the collection of information about terrorist offenses. Concerning the failures of individuals, media and journals to disclose terrorist acts, it states:

Whosoever, having information or evidence that may assist to prevent terrorist act before its commission, or having information or evidence capable to arrest or prosecute or punish a suspect who has committed or prepared to commit an act of terrorism, fails to immediately inform or give information or evidence to the police without reasonable cause, or gives false information, is punishable with rigorous imprisonment from 3 to 10 years. (Proclamation No. 652, 2009, Article 12)

As argued in Global Campaign for Free Expression (2010), the proclamation also gives broad and excessive powers to the National Intelligence and Security Service to conduct electronic surveillance of telecommunications including Internet communications to gather information. It also gives the police broad powers to conduct covert searches without any explicit protections for confidential information held by the media, lawyers, religious officials or other persons who are internationally recognized as have a legal obligation to protect confidential information. It also imposes serious duties up on any government institution, official, bank or a private organization or an individual to disclose information so that the police may request from any of these actors any information or evidence which he reasonably believes could assist to prevent or investigate terrorism cases (Proclamation No. 652/2009:Article12, 14, 17 &18).

The Ethiopian Anti-Terrorism Proclamation imposes the above executive branches of the government to bring about court warrants before they conduct search over individuals, institutions, journalists and media as well as their respective premises. However, it is not as such a difficult task for the executive branches of the governments to get such warrants since the judicial independence (institutional as well as personal independence) of Ethiopian courts is highly questionable (FDRE Constitution, 1995, Articles 77-81). And, giving wider desecration to the executive organs of the government (Police, Public prosecutors, intelligence and security apparatus) to gather information in countries like Ethiopia with vary infant democracy as well as with vaguely and broadly stipulated provisions of anti-terrorism proclamation will defiantly minimize the political space of the country for free flows of ideas of different sorts among the public without unjustifiable government restrictions and interventions. Besides, this will seriously harm the basic liberty, privacy and confidentiality of individuals which will ultimately resort them to self-censorship. This will be serious breach to the rights particularly of journalists as well as media to protect their confidential sources and their roles as independent institutions for free proliferations of information and ideas to the wider sections of the society.

The proclamation's attempt to criminalize legitimate expression

It is not in the interest of various international human rights laws for any form of freedom of expression to be prohibited unless it is clearly intended to directly incite violence or terrorist acts. In other words, individual States and legislations shall guarantee freedom of expression to their individual citizens so that any of their restrictions for the purpose of preventing terrorism is recommended only to prevent imminent violence and threats. Accordingly, the quest for an appropriate balance between ensuring national security and freedom of expression has always been the dominant challenge of individual States.

As it has been discussed in the Global Campaign for Free Expression (2010), restrictions on freedom of expression 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. Moreover, the 1995 Johannesburg Principles on National Security recommend that expression may be punished as a threat to national security only if a government can demonstrate that

the expression is intended to incite imminent violence; it is likely to incite such violence; and there is a direct and immediate connection between the expression and the likelihood of such violence. (Johannesburg Principles on National Security,1995, Article 6)

Thus, various international human right instruments recommend that states should not use vague terms when imposing restrictions of freedom of expression and information even in times of crisis. Acts of incitement to violence and public disorder should also be adequately, narrowly and clearly defined in order to minimize potential abuses by dictatorial regimes against legitimate forms of expressions and citizens' oppositions.

Unlike the above international human right policy recommendations, the Ethiopian Anti-Terrorism Proclamation, entitled 'Encouragement of Terrorism', sets out broad prohibitions on speech directly or indirectly 'encouraging' or 'inducing' terrorist acts among those who

publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3 of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years. (Proclamation No. 652, 2009, Article 6)

This has also been argued in Global Campaign for Free Expression (2010), where it is very clear that these prohibitions violate the right to freedom of expression. The offences of 'direct or indirect encouragement or other inducement' are extraordinarily broad and vague offences, which are susceptible to multiple interpretations, that fail the limitations for restrictions on rights required under international human rights law. Unfortunately, the most likely implication of the introduction of penalties to subjectively stated offences are therefore more likely to result in the criminalization of various forms of lawful expressions, political speeches and oppositions. In principle, however, the mere fact of reporting terrorist acts should not be equated to supporting such acts. It is also legitimate to engage in open dialogue and public debate about the causes of terrorist acts or about any other political topics, which could directly or indirectly concern the public.

Conclusion

The principles as well as practices of a democratic political system usually allow the existence of free, independent, and diverse operations of media with individuals' freedom of expression. In light of this argument, this research work has tried to evaluate the existential jurisprudential challenges to freedom of expression in Ethiopia based critical analysis of the two most controversial legislations of the country; *Freedom of the Mass Media and Access to Information Proclamation* (No. 590/2008) and the *Anti-Terrorism Proclamation* (No. 652/2009).

In the name of combating defamation and false accusations, the existing Freedom of the Mass Media and Access to Information proclamation's introduction to content based restrictions by imposing criminal, civil and administrative sanctions against individual citizens, journalists, editors, and mass-media owners has been among the main challenges faced particularly by independent and private newspapers. Other legal restrictions included in the underlined proclamation are those provisions which hinder the establishment of private media; barriers on who can become a journalist, burdensome accreditation processes, the high cost demanded by those interested in registering and establishing private newspapers and the licensing regimes for newspapers.

In addition to those jurisprudentially negative implications of its broadly formulated terminologies and definitions, the recent 2009 Anti-terrorism Proclamation also undermines the protection of journalists' sources of information. It also guarantees broad authorizations to the National Intelligence and Security Service to gather information, imposes excessive duty up on everyone to cooperate and provide information, criminalizes the legitimate exercise of freedom of expression. To silence many legitimate acts of expression, the proclamation have also guaranteed excessive and unlimited powers to executive organs of the government, particularly of the police as well as intelligence and security apparatus, to arbitrarily interfere with individual citizens' freedom of assembly, expression, confidentiality of their information as well as their right to privacy without proper authorizations of courts. In other words, promoting unjustifiable extra-judicial interventions, the underlined proclamation has extended the powers of the police and other executive government apparatus to arbitrarily arrest and detain journalists and individual citizens in the names of counter-terrorism measures. Thus, the most likely implication of all the above formulations is that the underlined proclamation could easily be manipulated by the Ethiopian government to silence its political opposition and to maintain its regime security in the pretexts of public as well as state security concerns.

To remedy the above jurisprudential challenges to freedom of expression, which have been posed by the underlined proclamations, the following legislative intervention are recommended to be made by the Ethiopian government. First of all, to respect and promote citizens' legitimate freedom of expression, the existing mass media proclamation shall be modified to avoid those excessive criminal as well as civil sanctions imposed up on professional journalists and the media using those controversial def-



amation and false accusation provisions. It shall also be amended to promote easily, less costly, independent mass media registration and licensing procedures.

In order to respect and promote legitimate acts of freedom of expression and political dissent of ordinary citizens as well as journalists, the definition of terrorist acts in the proclamation should also be amended to specifically include only acts of serious crime that pose a serious threat to life, safety or property. It should also be modified to guarantee special protection journalistic materials, to ensure the right of journalists and media organizations to protect their sources of information. Finally, there should be significant amendments on those unjustifiable and excessive powers given particularly to the executive organs of the government (Police, Public prosecutors, intelligence and security apparatus) to reduce their arbitrary human rights violations against individual citizens and journalists through various ways of judicial control.

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