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CENTER FOR THE ADVANCEMENT
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NEW MEDIA LEGISLATIONS

AND THEIR IMPLEMENTATIONS

IN ETHIOPIA

A REVIEW

Developed by research consultant: **Mesganaw Mulugeta Assefa**
International advisor: **Joan Barata**



About CARD

The Center for the Advancement of Rights and Democracy (CARD) is a board-led, for-not-profit organization registered in Ethiopia under the Civil Societies Law 1113/2019 with registry number 4307. CARD acquired its legal personality on 24 July 2019.

CARD aspires to see Ethiopia where democratic culture flourished on human rights values and has been working with a mission to empower citizens and groups of citizens to ensure their ability to promote and defend human rights and build democratic governance in Ethiopia.

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For More Info

Email: info@cardeth.org

Website: www.cardeth.org

Phone: +251 116 671 657

Book Design: Armonium Solomon



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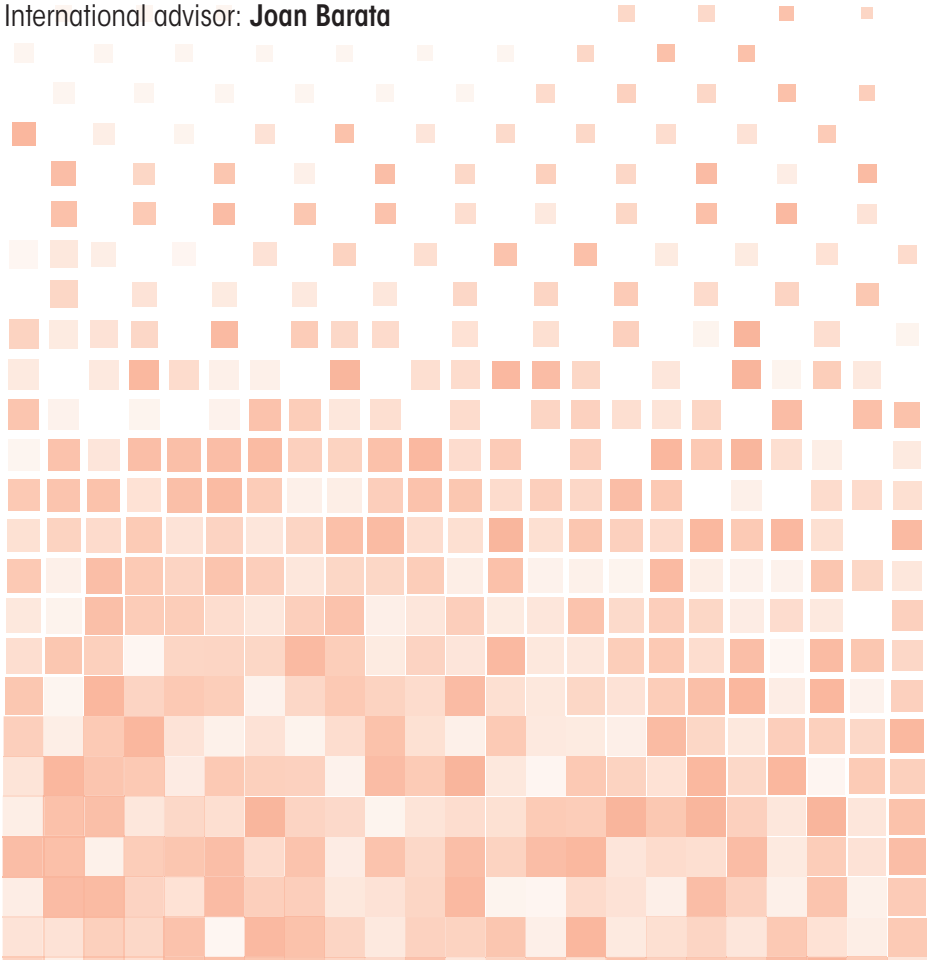
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ABBREVIATIONS

CSOs	Civil Society Organisations
EHRC	Ethiopian Human Rights Commission
EIO	Ethiopian Institution of the Ombudsman
EMA	Ethiopian Media Authority
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
LJAAC	Legal and Justice Affairs Advisory Council
UN	United Nations
ETB	Ethiopian Birr

EXECUTIVE SUMMARY

April 2023 marked two years since the promulgation of the new media proclamation in Ethiopia. The law was the result of the political and legal reform process launched by Prime Minister Abiy Ahmed's government after taking office in April 2018. The media reform process made significant improvements to policy, legal, and regulatory frameworks, which would help build a sustainable, vibrant, independent, and viable media environment.

The process of reforming the Ethiopian media laws was as monumental as its outcome. The drafting process was mostly led by volunteering independent experts, including journalists, lawyers, sector representatives and scholars. The process has set a good precedent for an open and transparent legislative process in Ethiopia. It also produced a robust diagnostic study that identified not only major gaps in media-related legislations but also some practical and institutional challenges that can serve as a basis for further action and intervention, including through advocacy or capacity building.

The Media Law Proclamation introduced a wide range of changes in media regulation in Ethiopia that had some practical impact on the media landscape, but implementation faces numerous obstacles. The law attempted to midwife an independent state media regulatory body. However, its implementation was marred by a blatant violation of the law. The government appointed a Board by contravening the media law in process and in substance by appointing political party members through a non-transparent process.

The law also attempted to pave the way for media self-regulation. However, two years after the passing of the law and while the 3-year period given by the law to review the ability of self-regulation mechanisms is already approaching, the media self-regulation mechanisms that are expected to put in place an effective system are yet to entertain cases and it's highly unlikely they will be ready in the next one year to take over self-regulation.

The Media Law also expanded media ownership rules and recognised at least three categories of media that were prohibited or unrecognised under the previous law. The most obvious consequence of these has been the increase in the number of registered media and allowing the space for the emergence of new and vibrant media houses. There remains confusion regarding the registration of online media. the Media Authority is of the position that it only considers online media platforms that are registered as media and some of the privileges under the law do not extend to online media that are not registered. In any case, some of the ambiguity emanates from the mix-up with the exercise of freedom of expression by social media platform users, which are not considered media as long as they do not meet the organisational and editorial standard requirements under the law.

The decriminalization of defamation is believed to be one of the most progressive aspects of the media law reform. While defamation used to be the most common charge against media personnel prior to the new media law, there have not been such cases since its passing.

The prohibition of pre-trial detention is the biggest guarantee provided under the media law and has boosted the confidence of journalists by providing protection. Unfortunately, in practice, there have been widespread violations of these protections. Ethiopia is back on the list of the worst jailers of journalists in sub-Saharan Africa and showed a major regress in its press freedom ranking.

Many agree that hate speech and fake news are becoming real problems in Ethiopia. The Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185/2020, which the government drafted by itself without the involvement of the media law working group, has been controversial. Some of its provisions on defining hate speech are criticised for not fulfilling international standards and the criminalisation of disinformation is not seen as best practise in terms of promoting freedom of expression.

The reform process of included revision of other media-related legislations such as the Access to Information and the Computer Crimes proclamations. New drafts of these laws were developed by the media working group and submitted to the government. However, there is no progress from the side of the government to approve these laws. These draft legislations needed to be passed to complete the media reform.

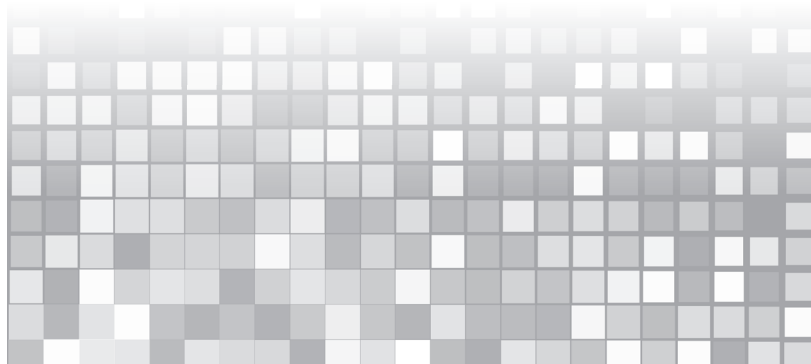
The conflict and political context, including but not limited to the war in the northern part of the country, has had a serious impact on the implementation of the media law reform. It reduced the government's commitment towards media reform as implementing reforms was no longer a priority. It also exacerbated political polarization and increased the risk of instrumentalization of the media for political reasons.

Some conclusions could be drawn on the overall state of media reform based on the findings of this brief research. Many argue that the impact of the media law reform is mixed; with its implementations showing some consolidation, some stagnation and even some regression.

Despite some positive indications, fundamental gains under the media laws are not fully tested. But the law was successful in setting a normative framework for right enforcement. Specifically, the provisions and standards set by the media law were used by media houses to ascertain their right and advocate for decisions in their favor, as seen in many of the bail litigation during the arrest of journalists and the reversal of the decision of media suspension.

In terms of the impact on the actual operation of the media, legacies of the past still prevail and public media remains mostly the same as before the reform. Many of the professional standards under the media legislation have not trickled down. Private media houses continue to self-censor in order to ensure self-preservation and avoid coercive pressure from the government.

There is a serious fear that some of the glaring violations of the law and abuses by the government are indicative of a waning commitment. Outright breach of some of the provisions of the law, such as on pretrial detention have become widespread and accepted by the government. Many agree, however, that regulation is the main orientation and the government has not made strands in its enabling role. The Media Authority is dissatisfied with the law and believes there needs to be an amendment to it. That is why collective action from the side of the media and relevant stakeholders is needed to consolidate the gains and prevent further backsliding on the implementation of the hard-earned media law reform.



1

INTRODUCTION



BACKGROUND

The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) guarantees freedom of expression and the media. Article 29 of the Constitution provides a wide range of protections for freedom of expression and the media. The Constitution protects the press from any form of censorship.¹ It gives legal protection to the press and emphasizes its vital role in the development and functioning of a democratic society. It emphasizes the special position of the media in ensuring the vitality of the democratic process and underscores that special measures should be taken to ensure its operational independence and its ability to entertain diverse opinions. The Constitution imposes on the state media the obligation to entertain diverse views in order to ensure that it is not used as a tool for political propaganda for the ruling party.² The Constitution also states that the exercise of the right to freedom of expression shall be subject to the requirements of necessity and proportionality in a democratic society.

The coming to power of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) and the enactment of the FDRE Constitution gestured the way for a greater exercise of freedom of expression and the media with recognition of media-related rights. Several magazines and newspapers that covered a variety of issues, including political, social and economic matters that were hitherto unimaginable, started to proliferate. Nonetheless, the dawn of hope for political dispensation and the free exercise of freedom of expression and the media was short-lived.

1 The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta No. 1 Article 29(3).

2 FDRE Constitution Article 29

Particularly, in the aftermath of the 2005 election, the government started to limit freedom of expression and the media through various regulatory, administrative and political measures that crippled the ability of the media to function as an independent watchdog institution. Human rights organizations deemed Ethiopia's environment for free expression to be suffocating.³ The government frequently used to jam transmissions from abroad, threaten, arrest, convict their sources, and block foreign-based dissenting websites.⁴ The media faced a complex set of both severe and mild restrictions including administrative hurdles and measures against critical and independent media organisations, as well as intimidating journalists with dissenting views and forcing them to flee.⁵

The appointment of Prime Minister Abiy Ahmed on April 2, 2018, signalled a new hope for democratic transition. The prime minister wasted little time in accelerating the reform agenda, which included lifting the state of emergency, releasing political prisoners, and announcing plans to revise repressive laws. His government commenced a legislative reform process where most EPRDF-inspired legal frameworks that undermined human and institutional freedom and independence in the judiciary, elections, human rights, the media and CSOs were overturned, amended, revised or replaced to fit into a liberal democratic framework through a participatory and inclusive process.⁶

3 Human Rights Watch, Ethiopia: Events of 2015, available at <https://www.hrw.org/world-report/2016/countrychapters/ethiopia> (accessed on Feb 15, 2023).

4 For instance, see VoA News: US Criticizes Ethiopia for Jamming VOA Signals, available at: <https://www.voanews.com/a/ethiopia-criticized-by-us-for-jamming-voa-signals-88733542/153788.html> (accessed on February 12, 2023), Ethiopian Media Forum: Association for International Broadcasting denounces Ethiopia's intentional signal jam, available at: <http://ethioforum.org/association-for-international-broadcasting-denounces-ethiopiasintentional-signal-jam/> (accessed on Feb 12, 2023).

5 Semir Yusuf, Ethiopia's democratic predicaments State–society dynamics and the balance of power, Institute for security studies, 2022.

6 Same as above.

Media law reform was one of the focus areas of the legislative reform agenda. Acknowledging the problems that shackled freedom of expression and the media, PM Abiy expressed, in several instances, his government's commitment to media freedom and promised to make it an integral part of the government's undertaking to open up the political space and ensure respect for human and democratic rights.⁷ The Media law was revised in 2020, addressing some of the legislative obstructions that unduly limited freedom of expression and the media space in Ethiopia.



7 <https://ethiopianembassy.org/pm-expresses-commitment-to-foster-freedom-of-media-press-may-03-2019/> and <https://ethiopia.un.org/en/12667-world-press-freedom-day-2019>

OBJECTIVE

This brief research aims to interrogate the significance of the media legislation reform and offer some evidence on the status of its implementation. It will offer explanations on the different challenges faced during implementation.

It also provides some practical recommendations to prevent regression in the achievements of the reform process and to help ensure the gains of the legal reform are protected.



The specific objectives of the research include

- ▶ Explaining the major changes introduced by new media legislations along with their achievements, shortcomings and status of implementation;
- ▶ Analyse the specific challenges faced in the implementation of the legislations;
- ▶ Provide actionable recommendations for critical stakeholders to overcome these challenges, including through identifying opportunities for advocacy.

METHODOLOGY

The research used desk review and key informant interviews to gather data and collect evidence from a wide range of sources. Existing literature and analysis on the legislative reform and its implementation were analysed.

Key informant interviews with selected government actors, journalists and media stakeholders were conducted to provide additional evidence and anecdotal cases of what has transpired in the past two years. Initial findings were validated through a validation workshop that was also used to gather more inputs. An international expert has provided feedback on the draft that was useful in enriching the content and analysis.

LIMITATION

The short time allocated to conduct data collection was one of the main limitations that restricted the number of key informant interviews.

There were different research initiatives being undertaken during the same time which created interview fatigues among respondents. Alternative data sources were used to mitigate the limitations including widening the desk research. However, given the objective of the research, areas that are extensively written upon, such as detailed commentaries on major legislative changes, were sufficiently referenced for readers to make use of them rather than repeating them here.

2

THE PROCESS OF REFORMING MEDIA LEGISLATIONS



The process of reforming the Ethiopian media laws was as monumental as the outcome of the reform processes. In July 2018, shortly after Prime Minister Abiy Ahmed came to office, the government established an independent Legal and Justice Affairs Advisory Council (LJAAC) under the Federal Attorney General's office to advise the government on legislative amendments and subsequent implementation of reform efforts in the country, including media laws.⁸

The Media Law Working Group was one of the working groups established by the Council in August 2018. It was tasked with analysing the shortcomings associated with laws governing the media and making research-based recommendations for reform as well as drafting a new media law. The technical working group was composed of journalists, lawyers, sector representatives and scholars that were working on volunteer basis.

The diagnostic study undertaken by the working group identified the numerous legal provisions regulating the media and validated its findings through participatory consultations. Among the various legislations that impacted freedom of expression and the media in one way or another, the working group prioritised three legislations for revision; the Mass Media and Access to Information Proclamation No. 590/2008, the Broadcasting Service Proclamation and the Computer Crime Proclamation No. 958/2016.⁹

8 <https://www.ezega.com/News/NewsDetails/6415/Ethiopia-Establishes-Advisory-Council-to-Reform-Justice-System>

9 For a detailed account of the process of drafting the Media Proclamation No. 1238/2021, see general, Mesenbet Assefa and Solomon Goshu, 'Reflections on Ethiopia's Media Law Reform', 12 Ethiopian Human Rights Law Series (2020).

The first legislation that was drafted was the Media Law Proclamation. Following various consultations on the draft with relevant stakeholders, the law was passed by the parliament and came into force when it was published on the official gazette on 5th April 2021. The media proclamation repealed the Broadcasting Proclamation in its entirety and the media-related provisions of the Mass Media and Freedom of Information Proclamation. The working group has subsequently drafted revised freedom of information and computer crime legislation; and submitted drafts to the Ministry of Justice.

Compared to other legislative revisions undertaken through the advisory Council, the media law took a longer time to pass compared to the other repressive legislations identified for review. The Civil Society Proclamation was passed on March 2019 and the Anti-terrorism law was passed on March 2020. This was due to many reasons, including the wider scope and number of the media legislations under review, the extensive consultations undertaken and some bureaucratic/ administrative delays rather than a declining political will from the side of the government.¹⁰ But, for some, the fact that media law was included in the laws to be revised was in itself a huge gesture that gave some media houses based in foreign countries the confidence to consider returning back.¹¹

It must also be indicated that a progressive media policy was being developed during the same time by the then 'Broadcasting Authority'. Both the media policy and the Media law were being drafted and presented for discussion around the same time. There were some efforts to harmonise the policy and the legislative drafts at some stage of the drafting process.¹² The policy enumerated a multi- sectoral direction for media development in Ethiopia, and setting up an enabling

10 Interview with member of the media law working group, 22/02/2023.

11 Interview with owner and editor of an online media, 2/02/2023.

12 Interview with member of the media law working group, 22/02/2023.

legislative environment is only indicated as one aspect of creating an enabling environment for the media that needed to be complimented by numerous initiatives across the government.¹³

The process of the media law review was significant in at least two ways. Many agree that a robust diagnostic study was able to identify not only major gaps in media related legislations but also some practical and institutional challenges that limited the free exercise of freedom of expression and the media in Ethiopia. This was used and could be used as a basis for further action and intervention, including through advocacy or capacity building.¹⁴ The report and consultations on it have also helped the media sector itself to understand its problems in a holistic way.¹⁵

The process has also set a good precedent for the legislative process in Ethiopia. The drafting process was led by independent experts that contributed to its legitimacy but allowed enough space for actors that will be affected by it to have a meaningful say. It also meant that the working group spearheaded an inclusive participatory legislative and regulatory reform that enabled it to prevent influence from the state and other actors.¹⁶ There were a number of consultations on the draft legislation in Addis Ababa and regional cities, engaging media practitioners, owners and government stakeholders along with national and international experts.¹⁷

Such consultative and participatory process was also followed in drafting remaining legislations such as freedom of information, computer crime and subsidiary laws (directives) relating to the media. The fact that

13 FDRE Media policy, August 2021.

14 Interview with executive director of media development CSO, 24/02/2023.

15 Same as above.

16 Henok Semaegzer, Media reform during Ethiopia's political transition, October 2022.

17 Mesenbet and Solomon, cited above at 7.

non-state actors were involved in these processes paved the way for better implementation and respect by media actors and would help them adhere to proper interpretations of the law.¹⁸

This, however, does not mean that the government was consistent in following such processes of law-making, even during that period. In March 2020, the Parliament passed the Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185/2020, which the government drafted by itself without the participation of the media law working group. The main justification provided for that was the urgency of legislating on the matter which the government believed the Attorney General office was better suited to do.¹⁹



18 Henok, cited above at 14.

19 Interview with member of the media law working group, 22/02/2023.

3

MAJOR CHANGES UNDER THE MEDIA LAW

Achievements, shortcomings and
status of implementation



The reform process made significant improvements to the policy, legal, and regulatory framework, which would help build a sustainable, vibrant, independent, and viable media environment essential to democratic consolidation.²⁰ The Media Law Proclamation introduced a wide range of changes in media regulation in Ethiopia. It introduced new provisions that did not exist in previous media laws; it repealed some, revised some and reframed some provisions that could have a significant impact on media operations.

The following include some of the major changes along with their impacts and achievements so far, their shortcomings and status of implementation.



20 Henok, cited above at 14.

MIDWIFING AN INDEPENDENT STATE REGULATORY BODY

One of the main aspirations of the media law was to establish an independent and competent media regulator. The diagnostic report, which was conducted to identify major gaps in media-related legislations at the start of the revision process and the outcomes of the consultations during the drafting revealed that the national regulatory body, which was called the Ethiopian Broadcasting Authority, was not an independent and impartial organization. That was manifested in the appointment of its officials and its accountability to an executive branch²¹ making it vulnerable for political interference in design and practice.²²

The new media law tried to rectify the design flaws by making changes to the composition, accountability, appointment process, and powers and functions of what is now called the Ethiopian Media Authority (EMA). With the aim of reducing the government's influence and in line with international best practices, EMA has been established as an independent body that is directly accountable to the Parliament.²³ The board members are to be appointed by the Parliament through an

21 The Broadcasting Authority was accountable to the then Ministry of Information.

22 Broadcasting Proclamation, Article 4(2).

23 Media Proclamation, Article 4(2).

open and transparent selection process, including allowing the public to nominate members and announcing the shortlist nomination list to the public to gather opinions on candidates.²⁴

The Director General of EMA is to be appointed by the Parliament upon the recommendation of the Board.²⁵ To protect board members and the leadership of EMA from political interference, members or employees of a political party were prohibited from being nominated and assigned for a board membership or as a Director General or Deputy Director of the Authority.²⁶

Unfortunately, in practice, this is perhaps an area with the most blatant violation of the media law provisions. In the first place, the government took almost a year after the passing of the law to appoint a Board and when it finally did, the appointment contravened the law in process and in substance.

The Parliament approved the appointment of the nine members Board in April 2022. The appointment was widely criticized for violating the Media Proclamation, which provides for an open nomination process involving the public and prohibited party members from being nominated for membership.²⁷ There was no public participation in the nomination as required by the Media Law and the appointment included at least three members of the ruling Prosperity Party, including Ambassador Redwan Hussien, then State Minister of Foreign Affairs and the current national security advisor of the Prime Minister.²⁸

24 Media Proclamation, Article 9 (2).

25 Media Proclamation Article 11.

26 Solomon Goshu, Commentary on the Media proclamation, Mersa Media Institute, December 2022.

27 Media Proclamación, Article 9.

28 <https://addisstandard.com/news-analysis-parliament-appoints-govt-officials-as-board-members-of-media-authority/>

A number of media associations, including the Media Council²⁹ and the Ethiopian Mass Media Professionals Association³⁰, issued statements criticizing the appointment as utter non-compliance of the media law in a way that would undermine public confidence in the government and threatens the independence of the media; and requested the Parliament to rectify the mistake. When asked about the issue, the Deputy Director-General of the Ethiopian Media Authority said that only the Parliament can explain and respond to it.³¹

It was not only with the board appointments that the process of midwifing an independent media regulator faced a challenge. Many of the media practitioners interviewed for this research agree that EMA needed an organization overhaul to implement the new law with capacity. However, the much-needed organizational reform to be able to implement the new law took time and capacity still remains low.³²

The institution needed restructuring and building the capacity of its personnel in line with the new law and the new spirit which took time and most of its staff struggled to understand and apply the law with a new spirit.³³



29 <https://www.ethiopianreporter.com/78970/>

30 https://m.facebook.com/permalink.php?story_fbid=513324847108818&id=100231195084854

31 <https://addiszeybe.com/claims-over-the-illegal-appointment-of-media-authority-board-members-subsequent-media-freedom>

32 Interview with executive director of media development CSO, 24/02/2023

33 Interview with member of the media law working group, 22/02/2023.

PAVING THE WAY FOR SELF-REGULATION

Creating an enabling environment to allow the media to regulate itself, instead of by a state regulator has been one of the critical issues during the media law reform. There were demands from media associations, and particularly the Media Council, mainly at the stage of parliamentary public hearing on the draft legislation for the law to leave professional regulation to self-regulation mechanisms. However, the government argued that the Ethiopian context does not allow for full-fledged self-regulation, citing the lack of experience and legitimacy of associations; and the need to enforce professional standards.³⁴

An innovative compromise was reached to pave the way for media self-regulation. The media law included a provision that mandates EMA to allow self-regulation of the media to take precedence over government regulation after conducting an evaluation of whether self-regulation is effective, initially after 3 years of the passing of the law and every 3 years afterwards.³⁵ This would provide the necessary time for self-regulatory mechanisms to strengthen and gain experience.

The law also required EMA to strengthen media self-regulation mechanisms. It required the Authority to consult media self-regulation structures while developing and implementing professional standards and to provide adequate support to strengthen the organizational structure and operation of media self-regulation mechanisms.³⁶

The most likely body to assume such self-regulation tasks was the Ethiopian Media Council. The Council was established in 2016 after a decade long effort by media stakeholders, but it was unable to

34 Same as above.

35 Media Proclamation, Article 73(2).

36 Media Proclamation, Article 6(13).

become operational due to various challenges including challenges with registration until it was able to register under the Civil Society legislation.³⁷ It currently has 61 members and aims to provide capacity-building training to promote professionalism and advocate for media freedom by challenging improper intervention from the government.³⁸

The Council also aims to provide industry-wide accountability and ethical practice through voluntary self-regulatory mechanisms.³⁹ In 2021, it established an ombudsman and arbitration committee consisting of 18 members with the aim of investigating complaints according to the established set of standards.⁴⁰ The Council also signed an agreement with the media authority to work together to strengthen self-regulation by the Council and engage on professional standards for media actors in November 2022.⁴¹

However, two years after the passing of the law almost all media actors interviewed for this research believe that not enough progress have been made. The 3-year deadline for review of self-regulation mechanisms provided under the law is already approaching. However, the media self-regulatory bodies that are expected to put in place an effective system are yet to entertain cases and its improbable they will be prepared to take over in the next one year.⁴²

A member of EMA's senior leadership also reiterated EMAs commitment for self-regulation. EMA wants the Media Council to regulate its members professionally and even offered to start enforcing the Council's decisions using the enforcement capacity of the Authority, but they have been very weak.⁴³

37 Mersa Media Institute, Pathways to operationalise media self-regulation in Ethiopia, March 2021

38 Mulatu Alemayehu Mogus (PHD), Post 2018 media landscape in Ethiopia: a review, CARD, 2022.

39 Mersa Media Institute, cited above at 37.

40 Mulatu, cited above at 38.

41 <https://www.ema.gov.et/web/guest/w/news-1>

42 Interview with a member of the media law working group, 22/02/2023.

43 Interview with a senior management of Ethiopian media authority, 24/02/2023.

Although this appears to be a positive gesture, it's also problematic because if the enforcement of the state regulator is used in the decisions of self-regulatory bodies it is difficult to consider that as self-regulation and could result in unnecessary marriage between the Authority and self-regulators. This creates a situation that could defeat the whole objective of self-regulation.

EXPANDING MEDIA OWNERSHIP

The new media law modified the ownership rules contained in its predecessor in a way that promotes plurality of ideas and allows different members of society to own a media. In the repealed broadcast law, ownership of media was exclusively reserved to Ethiopians; and foreign citizens were excluded from media ownership.⁴⁴

The media proclamation allows foreigners to own up to 25% of media outlets in Ethiopia. This partial opening of the media industry to foreign nationals is believed to be an ideal step to balance both the State's interest not to be susceptible to monopolies of media by foreign actors and the required demand for improving the media industry.⁴⁵ The partial opening was aimed at encouraging foreign media houses to bring in capital, expertise, greater competition, technology transfer and diversity to the media landscape and attract media outlets owned by the Ethiopian diaspora to operate from Ethiopia.⁴⁶

44 Broadcast Service Proclamation Article 23(2) See also Freedom of the Media and Access to Information Proclamation, Article 7(5).

45 Mesenbet and Solomon, cited above at 7, P.17.

46 Same as above.

In practice these provisions did not result in significant influx of foreign interest in media ownership. Initially, the opening up sparked interest and some media houses showed interest in investing in Ethiopia's media sector.⁴⁷ However, it did not materialize due to the COVID-19 pandemic and the security problem. Still, the opening up is significant as it has already opened the gates for such influx when the context improves.⁴⁸

The law also allowed for sole proprietor ownership of periodical, online media and news services and allowed cross-ownership by permitting media houses to own one each from different types of media outlets.⁴⁹ This was mostly manifested in practice by the mainstream media that were able to increase their visibility and presence by expanding into online platforms.⁵⁰

RECOGNIZING NEW MEDIA TYPES

The Media Proclamation recognized at least three categories of media that were prohibited under the previous law or were not recognised. First, religious institutions that were prohibited from having a broadcasting licence, despite their expansion using satellite in Ethiopia, have been permitted to obtain a broadcasting service licence not using the limited radio spectrum.⁵¹ EMA reported that so far more than 30 religious institutions media were able to be registered legally.⁵²

47 Interview with the owner and editor of an online media, 2/02/2023.

48 Interview with a member of the media law working group, 22/02/2023.

49 Media Proclamation Article 24.

50 Interview with a member of the media law working group, 22/02/2023.

51 Media Proclamation Article 40 (3).

52 Interview with a senior management of Ethiopian media authority, 24/02/2023.

The second is the recognition of what are called Special Public Broadcasting Media. These are a radio or television broadcast service established by a civil society organization formed on the basis of the Civil Society Organization Proclamation with a mandate to provide content that guarantee public interest.⁵³

The recognition of such type of media which is not a for profit media is seen as one of the positive contributions of the media law. The main criticism on that is the fact that such arrangement is only allowed for broadcast media but should have been extended to online and other types of media outlets.⁵⁴

The third significant addition was the legal recognition of online media. Online media as defined by the proclamation is an internet-based information dissemination service by an organization whose principal business involves the collection, production, processing and dissemination of news or programs or news and programs, through online images, audio, video and websites or through a combination of the aforementioned means, in accordance with the editorial responsibility of a media service provider.⁵⁵ The recognition of new media, especially digital media helped in the emergence of vibrant and new media into the market.⁵⁶ It also allowed for legal recognition of media houses that were forced to operate as foreign media for lack of a legal regime. Such recognition has been the reason for some of these media houses to come and operate in Ethiopia.⁵⁷ It has allowed Ethiopia to catch up with the global trend on media, which indicates that most of public discourse is now shifting to online platforms.⁵⁸

53 Media Proclamation Article 2 (12).

54 Interview with the owner and editor of an online media, 2/02/2023.

55 Media Proclamation Article 2(4)

56 Interview with a member of the media law working group, 22/02/2023.

57 Interview with the owner and editor of an online media, 2/02/2023.

58 Interview with a media development expert, 23/02/2023.

The most obvious consequence of these new additional types of media has been an increase in the number of media operating in Ethiopia by contributing to the emergence of new and vibrant media houses; and, in turn for more freedom of expression. Research conducted in March 2021 indicates that at that time, there were 168 public, commercial and community legally registered media outlets operating in Ethiopia. That included 10 public radio and 12 public television stations, 15 commercial radio and 26 commercial television stations, 54 community radio and television stations, 3 educational radio broadcasters, and 13 publicly owned newspapers and 10 magazines, both at federal and regional levels, in addition to another 13 and 12 independent newspapers and magazines, respectively.⁵⁹

In October 2022, a year and a half after the passing of the law, the number reached 236 with 67 public and 50 commercial radio and television channels, 18 commercial/ privately owned and 11 state-owned newspapers and magazines, 56 community broadcasters and 34 registered digital media outlets in Ethiopia.⁶⁰

EASING REGISTRATION AND LICENSING PROCEDURES

Rigorous licensing and registration requirements and procedures have been used as an indirect means of censorship throughout the history of media across the world, including in Ethiopia.⁶¹ Registration and

59 Sepsibe Kebede, the long and arduous journey of self-regulation in Ethiopia in Mersa Media Institute, Pathways to operationalize media self-regulation, March 2021.

60 Mulatu, cited above at 38.

61 See generally, Melkamu Ogo Negerasha, Freedom of Expression and Prior Restraining factors in Ethiopia: Focus on Printing Media. College of Law and Governance Presented in a Partial Master of Laws (L.L.M.), unpublished, 2017.

licensing laws can severely limit Media's ability to operate independently and without undue government interference. The diagnostic study on media laws in Ethiopia also revealed that registration and licensing schemes were used to suppress independent media by allowing the government to arbitrarily deny registration or renewal for some media that it disapproves of.⁶²

The Media Proclamation retained the registration requirement for periodicals. There were arguments that registration for periodicals shall be scrapped as it has been in a number of other countries.⁶³ In the end the government decided that registration must be maintained to prevent duplication of names, recording shareholders and the identity of owners, and compiling information on dissemination of media outlets.⁶⁴ Failure to register a periodical will entail a fine not exceeding 50,000 ETB unless such failure is attributable to the Media Authority.⁶⁵

The Media law tried to make registration simple, less bureaucratic and provided safeguards from abuse. Once an application is made for registration by including all the required documentation which are enumerated under the law,⁶⁶ the Media Authority is duty-bound to issue a certificate of registration within 30 days of the application, and if it fails to do so, the applicant is presumed to be a registered media house for all legal purposes.⁶⁷

62 Diagnostic report on Media legislations, Media law working group, Legal and Justice Affairs Advisory Council (LJAAC) March 2019, (Amharic, Unpublished)

63 Solomon, cited above at 26

64 Mesenbet and Solomon, cited above at 7.

65 Media Proclamation, Article 75(1 (b)).

66 These include the names and addresses of the founders, the ownership condition, proof of nationality, the tax identification number (TIN), the name and address of the editor-in-chief, and a trade or business licence.

67 Media Proclamation, Article 26

Licensing is a mandatory requirement for all broadcasting services. The proclamation contains detailed criteria to be used to award licences to broadcast media, including broadcast service licence categories and licence terms and conditions.⁶⁸ The criteria for issuance of a licence include the applicant's financial capacity and means, reliability and adequacy to run the service and business record, if any; the expected technical quality of the proposed service and the capability of equipment and technologies listed in the applicant's project proposal to render the service, having regard to developments in broadcasting technology; and organizational capacity, experience and expertise of the applicant.⁶⁹ By including detailed criteria for broadcast licensing, the Media Law attempts to cure the criticism directed against previous laws for lack of clarity which contributed to abuse during the registration process⁷⁰

CONTROVERSIES AROUND THE REGISTRATION OF ONLINE MEDIA

The registration requirement for online media and its implication has been a source of confusion, including for EMA itself. EMA maintains that registration of online media under the law is presented as optional. This has created a serious predicament in terms of regulation and even an imbalance where pressure is exerted on mainstream media while online media platforms that are creating havoc and collecting substantial revenue remain unregulated.⁷¹

68 Media Proclamation, Article 31 and 46.

69 Media Proclamation, Article 37.

70 Diagnostic report, cited above at 62

71 Interview with senior management of Ethiopian media authority, 24/02/2023.

The media proclamation under Article 27 states that Ethiopian citizens, either privately or through a juridical person, may request for an online media registration by fulfilling requirements such as trade licence, name and address of the editor-in-chief, among others. The English term that the provision uses is ‘may’ which is different from the term ‘shall’ that it uses for periodicals.

For EMA, such a framing has meant that the law did not make registration mandatory for online media and it has taken a position that it only considers online media platforms that are registered as media and will extend content regulation and believes that some of the privileges under the law do not apply to online media that are not registered.⁷² It has taken a position that it has no mandate to regulate the content of online media that it does not register. EMA contends, for instance, how it could verify whether the ownership criteria under the law are fulfilled if online media platforms are not able to register and set professional standards.

EMA’s interpretation is that when it comes to online media, those who are registered are the ones that must be considered as media and are entitled to protection. Any other online actors who have not registered can be viewed as individuals exercising their freedom of expression through an online platform.

There is a different interpretation on this. As long as an online media satisfies the criteria of having being registered as an organisation (have trade licence) and an editorial responsibility as per Article 2(4), it does not necessarily need to be registered by EMA to be recognised as a media. Registration is seen as an unnecessary restriction on media freedom and has been scrapped in different context. The proclamation retained registration for periodicals, and left it optional for online media to avoid repetition of names and keep records of owners, shareholders and media houses and has nothing to do with recognition as a media

72 Interview with senior management of Ethiopian media authority, 24/02/2023.

and if an online media chooses not to be registered by EMA and but satisfies the trade licence and editorial standard criteria's, it should be considered as media.

The state of social media regulation in Ethiopia is a significant factor contributing to the confusion surrounding the registration of online media under the Media Law. It must be clear that social media is out of the scope of the media law, as outlined under Article 2(1). However, we need to differentiate between individual platforms users (Facebook, Twitter, etc.) who do not perform media activities, and users, who may, in some cases, be media actors engaging in media activities and using social media as a distribution platform. For the latter, the rights and duties under media law extend to their social media activities.

Therefore, the protection and the content regulation under the media law does not apply to individual Facebook, Twitter, TikTok users as long as they do not satisfy the organisational (trade licence) and editorial decision-making criteria stated under the definition of online media. These individuals are not considered as media under the Media Law which requires organisational capacity and editorial responsibility. They are, however, bound by laws such as the Hate Speech and Fake News Proclamation, the criminal law and other legal regimes when exercising their freedom of expression. More generally, there should also be some sort of social media regulation in Ethiopia including dealing with the platforms on content moderation.

EMA believes that the most straightforward way to address this is to make registration mandatory for online media to be able to extend media privileges but also impose content obligations on them.⁷³ In the meantime, it is making efforts, including calls to encourage voluntary registrations stating that online media have an advantage if they

register as it will give them the legal recognition and make it easier for them to get technical and material support from other stakeholders and EMA.⁷⁴

PROHIBITION OF PRE-TRIAL DETENTION FOR MEDIA CRIMES

The new Media Law prohibited pre-trial detention of any person suspected of having committed an alleged crime under the criminal law or other laws, through the media. According to Article 86 of the Proclamation, a person charged with committing an offence through the media shall be brought promptly before a court without being remanded for further investigation pursuant to the provisions of the Criminal Procedure Code. Hence, the accused is required to appear before the court only after the charge is filed against them and cannot be remanded for further investigation. This is a special protection provided for media personnel. In ordinary criminal cases, arrested persons could remain in detention until the completion of the police investigation.

This provision is very important for the protection of the right to liberty of journalists, as most human rights violations occur when accused persons remain in the hands of law enforcement organs for extended period of time. The Prohibition of pre-trial detention is the biggest guarantee of the media law that has boosted the confidence of journalists and provided a framework of protection.⁷⁵

74 <https://www.facebook.com/ethiopian.media.authority/posts/pfbid0gqZHp6P8AWHKsNXbEfSDeM9a-cy89ss9FHzBECpaLJoWK3XTU6p3LzsEAcm5Ehntxl>

75 Interview with the owner and editor of an online media, 2/02/2023.

In practice, this has been one of the most violated provisions of the law. According to the EHRC's annual human report, between June 2021 and May 2022, about 39 media professionals were arrested at different times, spending days and months in prison.⁷⁶ They were arrested without their families being notified and their whereabouts unknown.

The Chief Commissioner of the EHRC, Daniel Bekele (PhD) on a number of occasions expressed that the Ethiopia's media law clearly prohibits pre-trial detention for any alleged offence committed through media, and all detained media personnel should be released.⁷⁷ He added at a different time that no claim about the alleged offence committed through media justifies violation of the newly adopted media law which clearly prohibits pre-trial detention of persons charged with committing an offence through the media.⁷⁸

The Committee to Protect Journalists, in its August 2022 report, listed Ethiopia as one of the worst jailors of journalists in sub-Saharan Africa.⁷⁹ In the latest Press Freedom Index, which assesses the state of journalism in 180 countries and territories, ranked Ethiopia 114th, dropping 33 places from its ranking in 2021.⁸⁰

Such continued unlawful arrests and detentions are regrettable. For EMA, although there could be some violations of such protection, the media law did not define who qualifies as a journalist and most of these individuals that were arrested work in online media that have not been registered and therefore the protection shall not extend to them.⁸¹ EMA believes that such privileges should only extend to media personal

76 Ethiopian Human Rights Commission, Annual Human Rights Situation Report, 8 July 2022.

77 <https://ehrc.org/detention-of-journalists-and-media-personnel-update/>

78 <https://ehrc.org/over-a-dozen-media-personnel-in-unlawful-detention/>

79 <https://cpj.org/2022/08/journalists-face-growing-hostility-as-ethiopias-civil-war-persists/>

80 <https://rsf.org/en/index>

81 Interview with a senior management of Ethiopian media authority, 24/02/2023.

working in registered media and not individual social media activists that claim to have an online media without being registration by the Media authority.⁸²

This is a very problematic interpretation. The national human rights institution, EHRC, declared its opposition to this line of interpretation and argued that the provisions of the law must be interpreted broadly and should extend to media personnel irrespective of their registration status, as long as they are jailed for freedom of expression related offence through the media.⁸³

It is also not compatible with international human rights standards. Defining who qualifies as a journalist would be extremely delicate as it might lead to the exclusion of certain individuals by state authorities and is against human rights standards.

Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere. In addition, general State systems of registration or licensing of journalists are incompatible with the right of freedom of expression.⁸⁴ As such, journalism may also encompass the activities of individuals such as bloggers, activists, etc, when they disseminate information on matters of public interest and based on certain standards of accuracy and such protection must be extended to them.

82 Interview with a senior management of Ethiopian media authority, 24/02/2023.

83 Interview with a senior management at Ethiopian Human rights Commission, 28/02/2023.

84 Human Rights Committee, general comment No. 34 (2011)

DECRIMINALIZATION OF DEFAMATION

Defamation is a false statement of fact that is harmful to someone's reputation and published "with fault," meaning as a result of negligence or malice.⁸⁵ While defamation laws aim to provide individuals protection for public statements that may harm their reputation or honour, they frequently come into conflict with the right to freedom of expression.⁸⁶ Through criminalisation of defamation, states in various contexts have misused it as a powerful weapon to stifle free speech and quell dissent.

A number of international human rights standards have called for the decriminalisation of defamation. As consolidated in General Comment No. 34 of the Human Rights Committee, there seems to be a considerable consensus among international organizations in favour of the decriminalization of defamation laws. The broad agreement is that there needs to be a remedy for those who believe that their reputation has been unfairly undermined. This should take the form of a civil suit by the person who claims their reputation is damaged.⁸⁷

Ethiopia was one of the countries that retained the criminalisation of defamation. Article 613 of the Criminal Code provided a broad definition of defamation, which unreasonably requires establishing the truth of the defamatory statements.⁸⁸ The mere fact that the statement is true does not guarantee the legitimacy of the defence; rather, it must be demonstrated that there is no intent to harm and that a higher interest is invoked.

The Freedom of the Mass Media and Access to Information Proclamation contained broad prohibitions on defamation and false accusations, including allowing prosecution of defamatory or false

85 Electronic Frontier Foundation, Online Defamation Law.

86 See Dent and Kenyon, 'Defamation Law's Chilling Effect' (2004) 9 Media & Arts Law Review.

87 ARTICLE 19, Defining Defamation: Principles of Freedom of Expression and Protection of Reputation, accessible at [https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-\(online\)-.pdf](https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-(online)-.pdf).

88 Diagnostic report, cited above at 62

accusations on constitutionally mandated legislative, executive or judicial authorities without the requirement of the victim's complaints. This has had a chilling effect on political reporting and was one of the causes of self-censorship by the media.⁸⁹

The Media Law made substantial changes to these provisions and decriminalised defamation. It provides that when an act of defamation is committed through media, it just entails civil liability and no criminal responsibility. Furthermore, in the context of civil liability, the law puts conditions that exculpate liabilities for defamation and provides truth and good faith as a defence for civil liability.

The decriminalization of defamation is believed to be “one of the most progressive aspects of the media law reform process” and could lay down “a strong normative basis” to ensure the adequate protection of freedom of expression and the media.⁹⁰ An expert working on media development indicated that while defamation used to dominate charges against media personnel prior to the new media law, there have not been such cases on a media practitioner after its passing.⁹¹

Some have criticised the increase in the maximum moral compensation for defamation committed by the media from 100,000 ETB to 300,000 ETB.⁹² They argue that the presence of these “hefty fines” for civil defamation could derail enforcement and realization of the right to freedom of expression and the media.⁹³ The cap was increased in line with the economic development in the country along with financial capacity of media actors to have an effective deterrent effect along with safeguards that are stated as factors to take into account in determining the exact amount.

89 Yesuneh Aweke Kabtiyemer, *Defamation Law in Ethiopia: The Interplay between the Right to Reputation and Freedom of Expression*, Beijing Law Review, Vol.9 No.3, September 2018

90 Mesenbet and Solomon, cited above at 7.

91 Interview with the executive director of a media development CSO, 24/02/2023.

92 Media Proclamation, Article 84(2).

93 Yohannes Enyew: *Will the New Media Proclamation set the press free? Enforcing the right to freedom of expression in Ethiopia* Ethiopian Human Rights Law Series Volume XIII (2021).

PUTTING SAFEGUARDS ON IMPOUNDING

Freedom of speech is not absolute, in certain circumstances, it could be restricted.⁹⁴ In this connection, states may prohibit or impound the publication of the press in the pipeline through a narrow, clear regulation when a certain press outlet or broadcasting service, if published or transmitted, poses a national security threat under strict conditions.

One of the most debated provisions in the making of the new Media Law was on retaining impounding provisions of the previous law. There were two competing positions. Some argue that the fragile nature of the country's politics and the fear of ethnic strife and conflict require impounding of publications or transmissions in exceptional circumstances.⁹⁵ Others on the other hand, argue that any contemplation of the notion of impounding, even in the narrowest possible circumstances, is dangerous as it provides the government with a weapon to control unfavourable publications and transmissions, and it may amount to censorship.⁹⁶

Government opted for including a provision allowing for a limited and narrow application of impounding with additional safeguards to prevent abuse and with more rigorous procedures on how to make an impounding decision. Under the previous law, any public prosecutor could seize or impound a printed matter without obtaining a court warrant in an emergency. The new law states that only the Attorney General (Currently the Ministry of Justice) is entrusted with such power

94 Ariel L. Bendor, *Prior Restraint, Incommensurability, and the Constitutionalism of Means*, 68 *Fordham L. Rev.* 289 (1999). Available at: <https://ir.lawnet.fordham.edu/fir/vol68/iss2/2>. P.290.

95 Mesenbet and Solomon, cited above at 7, P. 12ld. P. 11.

96 Sam as above.

to order the periodical to be impounded or forbid the transition of a broadcasting service.⁹⁷ It shall still inform the court within 48 hours, and if it fails to do so the restriction would be considered inapplicable.

To add a layer of accountability it was maintained that, the public prosecutor is liable for a malicious exercise of its powers regarding prior restraint or impounding. Some experts argue that even these safeguards are not sufficient and impounding should have been scrapped. In practise, there has not been a case of impounding since the coming into force of the law.

INCREMENTAL ADMINISTRATIVE MEASURES WITH SAFEGUARDS

The diagnostic study has revealed that in the previous media law, the types of administrative violations were not properly listed, and the measures provided were excessive and disproportionate to the breaches, and were enforced by the regulatory body in a manner that erodes the independence of the media.⁹⁸

The objective of administrative measures under the new media law was made a deterrent than punishment. To that effect administrative measures for media that violate provisions of the law were given incremental sanctions to allow them gradual self-corrections. As a result, the most common administrative measure for rule violations is a warning.

97 Media Proclamation, Article 85(2).

98 Mesenbet and Solomon, cited above at 7, P 24.

The law includes provisions that try to ensure administrative measures are taken in a fair and transparent manner, respect the due process principles of justice, and are proportional and appropriately tailored to the seriousness and repetitiveness of the breach. It is only in cases of persistent, serious and repeated violations of rules that fines may be imposed. Finally, measures such as licence suspension or even revocation are taken only as a last resort and when other measures are unable to stop the breach and decision is made by the Board than the executives of the EMA.⁹⁹

Taking some of these major decision-making powers from the executive wing of EMA and giving it to the Board was seen as one way of safeguarding for the media. EMA believes this has taken a lot of executive power away from it by giving it to the board, which makes it ineffective operationally.¹⁰⁰

But this has been practically proven advantageous. The case at point will be the suspension of Addis Standard by EMA's executive before its Board was even appointed. Addis Standard made a case stating that EMA cannot take such measures before the Board with such authority has not been constituted. EMA leadership acknowledged that the action to suspend Addis Standard's online content publication violated the legal procedure and rescinded the decision.¹⁰¹

99 Media Proclamation, Article 73.

100 Interview with senior management of Ethiopian media authority, 24/02/2023.

101 <https://addisstandard.com/statement-of-fact-on-the-suspension-of-addis-standard-content-publication-subsequent-discussion-with-ethiopian-media-authority/>

4

OTHER MEDIA-RELATED LAWS: THE LAWS THAT PASSED AND THE LAWS DID NOT PASS



THE HATE SPEECH AND DISINFORMATION PREVENTION AND SUPPRESSION PROCLAMATION

In March 2020, the Ethiopian House of People’s Representatives adopted the Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185/2020. The law was controversial both in process, as indicated above, and content. Some commentators argue that whatever liberalization the media law reform brought, the hasty passing of the hate speech proclamation in a parallel process and passing it even faster than the Media law, is indicative of the government’s mixed commitment to genuinely liberalise the media space.¹⁰²

The initial debate during the making of the hate speech proclamation was on whether or not Ethiopia needed such a proclamation in the first place. However, under international laws, states are not only allowed but are required to prohibit expression that amounts to “incitement” to discrimination, hostility or violence.¹⁰³

Some also argued existing laws and provisions, though fragmented and broader, could regulate hate speech instead of coming up with a new law. The most notable of this was Article 486 of the Criminal Code which provided that anyone who by whatever accusation or any other means foments dissension, arouses hatred, or stirs up acts of violence or political, racial or religious disturbances is guilty of a crime.¹⁰⁴ Furthermore, the Criminal Code punishes blasphemous speeches under

102 Interview with media academic, 14/02/2023.

103 Article 20 of ICCPR and Art. 4 of the International Convention on the Elimination of All Forms of Racial Discrimination)

104 The Criminal Code of the Federal Democratic Republic of Ethiopia 2004), Article 486(b).

petty offenses.¹⁰⁵ The broadcasting law, which was in force at the time, also sanctioned programs intended for transmission that cause dissension among nationalities or instigate dissension among peoples; or incite war.¹⁰⁶

The Ethiopian government's position was that hate speech, both online and offline, was becoming a serious and growing problem in Ethiopia and needed specific legal regulation proportionate to its scale. The law was drafted against the backdrop of serious communal violence that may have been provoked or exacerbated by online speech that fomented ethnic tension and violence.

Particularly, the relative advancement of internet and telecommunications technology in the country has given rise to the speedy dissemination of hate speech and disinformation that threatens the political and social fabric of communities in the country. It has contributed to the growing ethnic tensions and conflicts across the country that has caused serious human rights violations and a huge number of internal displacements.¹⁰⁷

In that connection, the Government asserted that the law emerged out with a genuine intention to control hate speech and fake news; and respond to existing realities on the ground. The stated objective of the law is to ensure that individuals do not engage in speech that incites violence, is likely to cause public disturbance or promotes hatred and discrimination against a person or an identifiable group or community based on ethnicity, religion, race, gender or disability in their exercise of freedom of expression.¹⁰⁸

105 Criminal code Article 816.

106 Broadcasting Service Proclamation, Article 30(4)

107 Felix Horne(2018), Tackling Hate Speech in Ethiopia Criminalizing Speech Won't Solve Problem, available at <https://www.hrw.org/news/2018/12/03/tackling-hate-speech-ethiopia>, accessed, on February 23, 2023.

108 Hate Speech and Disinformation Prevention and Suppression Proclamation No 1185/2020.

Ethiopia is not special in passing such laws. With the exception of the United States, a majority of developed, democratic as well as developing nations have enacted hate speech legislation. However, countries have struggled with legislating against hate speech because it is not always simple to distinguish where freedom of expression ends and legitimate restriction on expression begins.¹⁰⁹ It is, therefore, critical to ensure, such legislation does not impose restrictions on freedom of expression and does not give the government the chance to restrict freedom of expression and the media.¹¹⁰ To that effect, the Rabat Plan of Action sets out a six-part threshold test States must take into account in passing legislations to regulate hat speeches that include the context; status of the speaker; intent; content and form of speech; reach of the speech; and likelihood of risk and should consider including robust definitions of key terms such as hatred, discrimination, violence, hostility, among others.¹¹¹

With that regard, the Ethiopian law has attracted criticism for having overbroad definitions that could be abused along with harsh penalties that would weigh heavily on freedom of expression.¹¹² The UN Special Rapporteur on freedom of expression cautioned that the Ethiopian hate speech proclamation might go far beyond the limitations required under international law and have an advert effect on the exercise of freedom of expression.¹¹³

109 For an elaborate discussion on the topic, see Anderson, Luvell and Michael Barnes, "Hate Speech", The Stanford Encyclopedia of Philosophy (Spring 2022 Edition), available at <https://plato.stanford.edu/entries/hate-speech/> accessed on February 25, 2023.

110 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, October 2012.

111 Same as above.

112 Collaboration on International ICT Policy for East and Southern Africa (CIPESA), Analysis of Ethiopia's Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185 /2020, July 2020.

113 <https://reliefweb.int/report/ethiopia/visit-ethiopia-report-special-rapporteur-promotion-and-protection-right-freedom>

As per the Proclamation, hate speech happens if there is a deliberate incitement of hatred, discrimination or violence against a target group, a person or discernible group based on ethnicity, religion, race, gender or disability.¹¹⁴ It should be noted that the Amharic version of the Proclamation, which is the authoritative version, uses the term “incitement” which is more severe than the term “promotes” used in the English version.

From the definition and the different penalties imposed under Article 7 of the Proclamation, it is clear to understand that violence is not a requirement for hate speech to exist. Under the Proclamation, hate speech exists, regardless of whether the speech has or is likely to trigger public disturbances or violence against the target group. However, the penalty is more severe when an attack against a person or a group occurs as the result of hate speech.¹¹⁵ But even if it did not lead to disturbance or violence, courts have the discretion to sentence offenders to community service, rather than imprisonment or fine, which still is short of the recommendations under the Rabat plan of action.¹¹⁶

The criminalisation of disinformation which is defined in the Proclamation as: “speech that is false is disseminated by a person who knew or should reasonably have known the falsity of the information and is highly likely to cause a public disturbance, riot, violence or conflict”¹¹⁷ has also been criticised. The criminalisation of disinformation has been held unconstitutional in many jurisdictions.¹¹⁸ The UN special reporter on freedom of expression also opined that international laws

114 Hate Speech and Disinformation Prevention and Suppression Proclamation Article Article 2(2).

115 Hate Speech proclamation, Article 7(2).

116 Hate Speech Proclamation Article 7 (6).

117 Hate Speech Proclamation Article 2 (3).

118 CIPESA, cited above at 114.

do not call for criminalization of untruthful information and; the broad nature of disinformation laws allowed governments to use them against journalists, political opponents and human rights defenders.¹¹⁹

The Proclamation does not punish hate speech or disinformation per se. It is the spread of hate speech or disinformation “for many people” that is punishable regardless of the intent with which it was disseminated.¹²⁰ The law does not clearly indicate how many people should be considered “many” which opens it to abusive interpretation. In addition, the fact that the aim of the dissemination is not taken into consideration is against internationally accepted standards on freedom of expression, as dissemination of information may not necessarily be aimed at promoting hate speech or disinformation.¹²¹

The law is also criticized for introducing harsh penalties, contrary to international human rights instruments.¹²² The punishment for hate speech may reach up to two years imprisonment or up to 100,000 ETB fine.¹²³ The punishment for disinformation may reach up to one-year imprisonment or up to 50,000 ETB fine.¹²⁴ There are certain aggravating and mitigating circumstances stipulated in the proclamations. Hence, if hate speech leads to an attack on a person or a group, the offender will face imprisonment between one and five years, without the option of a fine.¹²⁵ And if it is committed through social media accounts with more than 5,000 followers or through television, radio or print media, the punishment can reach up to three years imprisonment and fine of up to

119 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Disinformation and freedom of opinion and expression, April 2021

120 Article 2(7) defines “Dissemination” as “spread or share a speech on any means for many persons, but it does not include like or tag on social media”.

121 CIPESA cited above at 114.

122 CIPESA cited above at 114. See also Yohannes Enyew, Defining ‘Hate Speech’ under the Hate Speech Suppression Proclamation in Ethiopia A Sisyphean exercise? 2020

123 Hate Speech Proclamation Article 7(1).

124 Hate Speech Proclamation, Article 7(3).

125 Hate Speech proclamation, 7(2)

100, 000 ETB. As per the Amharic version, both imprisonment and fine can be imposed concurrently, different from put in the English version. If violence or public disturbance occurs due to the dissemination of disinformation, the punishment shall be rigorous imprisonment from two year up to five years.¹²⁶

On a positive note, the proclamation also included some good exceptions in line with international best practices. A person charged with a crime of hate speech can defend him/herself by raising facts such as the absence of intention to incite or disseminate hate speech.¹²⁷ Truth is a defence against charges of disinformation and an accused can exonerate him/herself by demonstrating the accuracy of information or they had no knowledge of the falsity of information and made efforts to verify accuracy.¹²⁸ Moreover, no criminal charge shall result from hate speech or disinformation if speech or information is presented in the form of political commentary, rather than a statement of fact or news report; or if the speech or information was part of an academic study or scientific inquiry, news report, analysis or political critique, artistic creativity, performance or other forms of expression; or religious teaching.

Another positive aspect of the Proclamation is that it does not solely depend on punishment for suppressing hate speech and disinformation. The criminal punishment is further complemented by various duties imposed on social media service providers, EMA and the Ethiopian Human Rights Commission. The Proclamation imposed obligations on EMA to promote public awareness and media literacy campaigns to combat disinformation,¹²⁹ and on the Ethiopian Human Rights

126 Hate Speech proclamation, 7(5).

127 Hate Speech proclamation. 2(2).

128 Hate Speech proclamation, Arts. 2(3) cum 6(2).

129 Hate Speech proclamation, 8(5).

Commission (EHRC) to conduct public awareness campaigns to combat hate speech.¹³⁰ In that connection, EMA has already announced a free public hotline, 9192, for the public to report fake news and hate speech.

Social Media Servicing Enterprises is defined as “an enterprise which delivers a social media network or platform to the users” under the law.¹³¹ The law imposed on such enterprises the duty to “endeavour to suppress and prevent the dissemination of disinformation and hate speech through its platform”.¹³² They have the obligation to “remove disinformation or hate speech upon receiving notifications within 24 hours.”¹³³ Even if it is stated as a progressive duty, such duty is incompatible with human rights standards as measures aimed at holding intermediaries liable for content policing would in practice entail the delegation of speech policing powers to private companies and imposes a general monitoring obligation.¹³⁴

Many agree that hate speech and fake news are becoming real problems in Ethiopia. Both the state and citizens do not have experiences of functioning in a relatively free media landscape and the polarised political context created an environment for proliferation of hate speech and incitement for violence, which forced the government to take restrictive measures.¹³⁵

In practise, most media personnel are now being arrested using other laws such as the criminal law, the anti-terrorism proclamation and the hate speech and fake news proclamation for media-related offences as

130 Hate Speech proclamation, 8(6).

131 Hate Speech proclamation, Art.2(10)

132 Hate Speech proclamation, Art.8(1).

133 Hate Speech proclamation, Art. 8(2).

134 CIPESA, cited above at 114.

135 Interview with senior management at Ethiopian Human rights Commission, 28/02/2023.

enumerated under the media law.¹³⁶ There are only few charges to date based on the hate speech proclamation but prosecutors have used it to ask for a continuance during pre-trial detention.

In addition, lack of proper monitoring and assessment mechanisms for hate speech and misinformation are major challenges in Ethiopia. This would require more work on non-legal interventions such as building the capacity of media organizations to address this threat, building an understanding among state actors implementing the hate speech law for finding balance between protecting peace and creating a chilling effect on free expression on the other.¹³⁷

THE LAWS THAT DID NOT PASS: FREEDOM OF INFORMATION AND COMPUTER CRIME LEGISLATIONS

As indicated above, the media law working group prioritised three media-related legislations for revision. The working group has prepared and submitted the drafts of Access to Information Proclamation and the computer crime proclamation for the Ministry of Justice. Consultations were conducted and inputs were collected from relevant stakeholders on the drafts before they were submitted.¹³⁸ The laws are not yet passed and there is not ongoing deliberation on the laws at the time of writing

136 Interview with senior management of Ethiopian media authority, 24/02/2023.

137 Henok, cited above at 14.

138 Interview with member of the media law working group, 22/02/2023.

this research paper. According to an expert at the Ministry of Justice, the proclamation is still at the Ministry of Justice and are not among the priorities of legislative initiatives for the government.¹³⁹

The diagnostic study identified numerous problems on these legislations. The access to information provisions were full of exceptions and without proper sanctions for refusing to provide information. The list of “exempted information” is too long and broad that the principle of access to information under the hands of the government is guaranteed in exceptional circumstances.¹⁴⁰

Interims of institutional arrangements as well, various studies showed that the Ethiopian Institution of the Ombudsman (EIO), which was designated as the responsible organ for the implementation of freedom of information, has not been effective. According to these studies, the EIO does not have the resources to evaluate how effectively the individual public bodies implement the legislative requirements.¹⁴¹

The draft freedom of information legislations tried to address many of these problems identified in the diagnostic study. It included provisions to allow for ease of access of information by media personnel and had an aspiration to establish an independent information commission to oversee the enforcement of access to information.

The Computer Crime Proclamation, which was adopted in 2016, enables surveillance by security forces and broadens the definition of criminal defamation. The diagnostic assessment found that the law on computer crimes includes some provisions that are overly broad and could restrict freedom of speech and expression. This included, for example, a provision that provides for imprisonment for disseminating through a computer system any written, video, audio, or any other picture that

139 Interview with an expert at the department of legal drafting, ministry of justice, 01/03/2023.

140 Diagnostic report, cited above at 62

141 Same as above

incites violence, chaos, or conflict among persons. It also had broadly stated provisions which would dissuade whistle-blowers and journalists pursuing information relevant to the public.¹⁴²

The Draft Computer Crime Proclamation addressed these problems and incorporated a number of progressive rules relating to computer crimes. It has provisions emphasising the pre-eminence of international and constitutional guarantees of freedom of expression and seeks to limit the powers of enforcement authorities to what is genuinely required to address computer crimes. The draft attempted to balance the need of law enforcement and respect of human rights.

These draft legislations needed to be passed to make the media reform complete. The fact that the access to information proclamation is not passed, for example has enabled the continuation of one of the major challenges of media operations in Ethiopia, which is access to information.

Access to information is one of the biggest obstacles for day-to-day operations of the media, which journalists claim has gotten worse.¹⁴³ It has particularly become a challenge now because government entities are now focused on social media reach and; if not legally required by law to provide information to them, they prefer activists and respond to social media engagements which will undermine the effective operations of media organizations.¹⁴⁴

142 Computer Crime Proclamation No. 958/2016. Article 3 (illegal Access) and Article 4 (illegal interception),

143 Interview with a media development expert, 23/02/2023.

144 Interview with owner and editor of an online media, 2/02/2023.

5

IMPACT OF THE CONFLICT AND POLITICAL CONTEXT ON THE IMPLEMENTATION OF THE MEDIA LAW REFORM



It is never simple to transition to stable democratic governance anchored in independent public institutions and a vibrant media, but Ethiopia's political transition has been rather bumpy where numerous crises threatened progress.¹⁴⁵ As much as the political liberalisation which has been underway in Ethiopia since PM Abiy came to power in 2018 gave hope to many that the country was moving towards a significantly better future, the long-simmering conflicts re-surfaced, raging across the country, and with a magnitude rarely witnessed since the establishment of the FDRE in 1995.¹⁴⁶ There was a surge in violence that caused unimaginable human suffering in many different parts of the country.

The political transition coinciding with a time when militant ethno-national sentiments were on the rise and political divisions were deepening, contributed to the proliferation of violence since late 2018.¹⁴⁷ The conflict took a devastating turn with the start of the war in the northern part of the country in November 2020, which began in Tigray region and spread to neighbouring Afar and Amhara regions and continued until the signing of a cessation of hostilities agreement in November 2022.

The impact of these conflicts has been consequential. The surge in violence has caused widespread internal displacement and serious violations of human rights. During the course of the conflict in northern part of Ethiopia for instance, atrocious human rights violations have been committed by all parties to the conflict at different stages.¹⁴⁸

145 Henok, cited above at 14.

146 Semir Yusuf, *Drivers of ethnic conflict in contemporary Ethiopia*, Institute for security studies, 2019.

147 T.Yared, *Conflict dynamics in Ethiopia: 2019-2020*, Institute for Security Studies, 2021.

148 Joint report by EHRC& OHCHR-EARO, see also *Afar and Amhara Regions: Ethiopian Human rights Commission Report on Violations of Human Rights and International Humanitarian Law in Afar and Amhara Regions of Ethiopia*, 11 March 2022.

For some, including EMA, the most serious challenge for the media reform has been the conflict and political context, not only the war in the north but in many different places in the country.¹⁴⁹ The conflict context has affected the media reform at least in the following ways;

1 Reduced the government's media reform commitment; implementing reforms no longer a priority: The conflict did not only cause major human rights and humanitarian crises but slowed down or might have even reversed the gains of the legislative reforms in terms of widening the democratic space and it curtailed their implementation. Violence and conflict remain to be major reasons behind deteriorating human rights conditions and had a bearing on the general promotion and protection of rights, including freedom of expression.

It was clear from the beginning that the law by itself would not address all the challenges and problems the media faces. Other concerted actions that the government needed to demonstrate to have a transformative effect on the media and improve the context did not happen.¹⁵⁰ The conflict had a clear chilling effect in reducing the political will and commitment of the government.¹⁵¹

2 Exacerbated political polarization and the risk of instrumentalization of the media for political reasons: The Government tried to co-opt the media, especially after the conflict where it tried to influence the media to advance its own agenda and interest.¹⁵² Ethiopia's state and politically owned media were used to propagate partisan messages.¹⁵³

149 Interview with senior management of Ethiopian media authority, 24/02/2023.

150 Interview with a media development expert, 23/02/2023.

151 Interview with executive director of media development CSO, 24/02/2023.

152 Interview with member of the media law working group, 22/02/2023.

153 Henok, cited above at 14.

There was a tendency to control the narrative and centralize the media as the state felt threatened during the conflict¹⁵⁴ During the height of the war for instance, senior state officials in some regions gathered journalists and instructed them to either support the government or stop obstructing it, referring to any critical commentary on the war.¹⁵⁵ The intimidation of media houses did not only come from state actors but also from non-state actors, including vigilante groups and social media personalities.¹⁵⁶ The role of this interest groups has become an emerging challenge during the course of the conflict.¹⁵⁷

In addition to intimidation and direct interference, the government wants to influence media operation by making sure every media presents a similar narrative.¹⁵⁸ It did that by flooding the space with a lot of information and pressuring the media to follow suit with a clear intention of instrumentalization and cooption.¹⁵⁹

The media sector in general, in addition to serving as a platform for political discourse, has gotten increasingly polarized along ethnic and political lines exacerbated by the conflict. Media were forced to become parties to the conflict along ethnic and political lines as the polarization also affects them. Even if data shows the increase in pluralistic media landscape it is also married with significant polarization fuelled by ethno-nationalistic sentiments indicative of the tendency of media to align with their ethnic background.¹⁶⁰

The media faced a challenge because of the polarized landscape, polarized nationalistic views and diversified political views coupled with their own limitations to be inclusive of diversity and operate

154 Interview with senior management of Ethiopian media authority, 24/02/2023.

155 Semir Yusuf, cited above at 5.

156 Henok, cited above at 14.

157 Interview with senior private media journalist, 28/02/2023.

158 Interview with senior private media journalist, 28/02/2023.

159 Interview with owner and editor of an online media, 2/02/2023.

160 Terje Skjerdal and Mulatu Alemayehu Moges, The ethnicification of the Ethiopian media, February 2021

professionally.¹⁶¹ The emergence of objective and professional media was inhibited as the media became reflective of this political and ethnic polarization.¹⁶²

3 Security trumps rights, abuses tolerated or even condoned: During the course of the conflict the State went back to its old ways of intimidation and restrictions to curtail the operations of the media, despite legal and institutional reforms. There were two formal state of emergency declarations during the period and numerous de facto states of emergencies that seriously restricted exercise of rights.

The government's treatment of critical journalists took a new turn during the conflict where more stringent media control was introduced, including harsher measures against national and foreign journalists, ranging from forcing specific narratives to revoking licences and arrests.¹⁶³

Numerous arrests were reported during the conflict period. Research by CPJ shows that in 2022, Ethiopia ranked with Eritrea as sub-Saharan Africa's worst jailer of journalists.¹⁶⁴ While many have been released without being formally charged, they claim to have gone through human rights violations while in custody.¹⁶⁵ The Government returned to its old ways as a gatekeeper citing the security crises and seemed to condone some of the violations as a necessary evil.

161 EHRCA Annual report, cited above at 79.

162 Interview with senior management of Ethiopian media authority, 24/02/2023.

163 Semir Yusuf, cited above at 5.

164 <https://cpj.org/thetorch/2022/08/journalists-face-growing-hostility-as-ethiopia-civil-war-persists/>

165 Semir Yusuf, cited above at 5.

6

OVERALL STATE OF THE MEDIA LAW REFORM



+ Fundamental gains under the media laws are not fully tested

The gains of the legislative reform have not been tested on the ground for many different reasons, including the political situation and conflicts. In addition, awareness about the law and the changes it introduced has changed especially among media actors and professionals, is still lacking.¹⁶⁶

There are a number of provisions that are not yet utilized to expand the media landscape. For instance, only one broadcaster has so far been registered as a special public broadcaster and the partial opening up of the media for foreign investors has not been utilized.¹⁶⁷

+ The law was successful in setting normative framework for a right enforcement

The provisions and standards set by the media law were used by media houses to ascertain their right and advocate for decisions in their favor, as seen in many of the bail litigation and the reversal of the decision of suspension in the case of Addis Standard.¹⁶⁸

It also provided legal grounds for courts and institutions like EHRC to make cases for ascertaining the rights of media personnel from pretrial detentions.¹⁶⁹

+ EMA not entirely happy with the law and wants an amendment

There are issues EMA ascertains need revisions from the media law. A member the senior leadership of EMA stated that his institution has a strong stance that the law needs to be amended not only to revise

166 Interview with senior private media journalist, 28/02/2023.

167 Interview with senior management of Ethiopian media authority, 24/02/2023.

168 Interview with member of the media law working group, 22/02/2023.

169 Interview with senior private media journalist, 28/02/2023.

provisions that are found problematic such as making online registration mandatory and more inclusive regulation for non-broadcast media, but in its overall objective.

According to the respondent, the end objective of the media law should have been fostering peace, public safety, development and democracy, not media freedom. The media must be seen as a means and national interest should get supremacy. The law must be adjusted with realities in the ground to fit with the Ethiopian context, level of media literacy and security interests.¹⁷⁰

However, this view is challenged by many of the media professionals interviewed for this research. Such a view is an instrumentalist approach to media which has proven to be problematic in Ethiopia as the previous laws were crafted with such thinking and many problems emanated from that.¹⁷¹ It is also not compatible with the pre-eminence of freedom of expression as a human right with very limited and narrowly justified restrictions.

Some consider the idea of amendment and revision at this stage as very dangerous for the media sector as some of the normative and institutional changes that are brought by the law have not fully crystallized.¹⁷² Especially given the fact that some of the proposed amendments by EMA target provisions that were included to prevent excess regulation by the Authority and serve as safeguards from abuse. Therefore, one ground for collective action by the media must be to prevent such an early revision of the media law.¹⁷³

170 Interview with senior management of Ethiopian media authority, 24/02/2023.

171 Interview with media academic, 14/02/2023.

172 Interview with member of the media law working group, 22/02/2023.

173 Interview with owner and editor of an online media, 2/02/2023.

+ Regulation still preferred

The old media law was tilted towards regulation and the new law was crafted with a spirit of creating a conducive environment and enabling the media with reasonable regulation.¹⁷⁴ Many agree, still now regulation is the main orientation and EMA is still predominantly operating as a regulator.¹⁷⁵ Most of its work is still regulation even though enabling is one of its objectives.¹⁷⁶

One reason for that is the institutional orientation and capacity at EMA. The new direction has not yet trickled down to all administrative ranks and some still see the media through the prism of the old law and the need to control it.¹⁷⁷ EMA also agrees with this that it takes time, not only for EMA but from the government in general to divert from regulatory orientation.¹⁷⁸

EMA believes the orientation under the new law has shifted from some strong regulation to almost no regulation. They believe on holding people accountable for instance, government was forced to release some individuals that violated the law with political pressure from all directions.¹⁷⁹ This must have had nothing to do with the desire to abuse because such government action is aimed at ensuring rule of law which is its prerogative.¹⁸⁰

EMA acknowledges the gaps in terms of its enabling role, despite some positive steps that are not adequate. There are gaps in implementing the media policy and a lot of the incentives that are not being

174 Explanatory note, Media proclamation, Media law working group.

175 Interview with senior private media journalist, 28/02/2023.

176 Interview with a media development expert, 23/02/2023.

177 Interview with owner and editor of an online media, 2/02/2023.

178 Interview with senior management of Ethiopian media authority, 24/02/2023.

179 Interview with senior management of Ethiopian media authority, 24/02/2023.

180 Interview with senior management of Ethiopian media authority, 24/02/2023.

implemented.¹⁸¹ For a sustainable impact, legislative reforms need collaboration with commercial and other incentives as indicated in the media policy for sustainability and viability.¹⁸²

+ Public media remains mostly the same as before the reform

Ethiopia's broadcasting landscape remains dominated by state controlled and politically affiliated media, which, at the onset of the reform began to open their coverage to a wider array of voices, but needed broader reforms to their governance structures and editorial policies.¹⁸³ In terms of professional standards, some assumed that the public media will conform to professional standards, as it will also be an expression of political will of the government to professionalize the media and the private media would follow.¹⁸⁴ That did not happen.

Legacies of the past remain and state media have increasingly turned into mouthpieces of the ruling party. The effects of history persist and official media outlets have become more aligned with the ruling party. Reporters employed by state-associated television channels shared that they receive talking points from party-connected officials outside of their workplaces. These talking points are then passed down to editors, and journalists are criticized for covering negative stories about conflict instead of focusing on the government's successes.¹⁸⁵

Due to their inherent structural deficiencies and vulnerabilities for being instrumentalized, public media are still stuck in the past and regional state media houses have become worse. Regional media houses are

181 Interview with senior management of Ethiopian media authority, 24/02/2023.

182 CIMA: Media reform in Ethiopia: summary from stakeholder and expert roundtable, May 2019.

183 Same as above

184 Interview with member of the media law working group, 22/02/2023.

185 Semir Yusuf, cited above at 5.

accountable to regional governments and they are given directions from there. The impact of professional standards under the new media law has been minimal on them.¹⁸⁶

+ Professional standards not trickling down

Many of the professional standards under the media legislation have not trickled down. Numerous studies on the state of media indicate a general lack of professionalism by media practitioners.¹⁸⁷ Corporate media culture has not been created and private media still struggles for financial sustainability.¹⁸⁸ Professional media leadership still remains a huge gap which adds up to the hindrance on the emergence of a professional media sector.¹⁸⁹

+ Abuses and violations indicate waning commitment

Many agree that the government's commitment to media freedom has become uncertain or even might have backslidened. Glaring violations of the law and abuses by the government are indicative of this and have impeded the enthusiasm and momentum of the media reform.¹⁹⁰

It is becoming clear that the reform has not been successful in addressing the deeply ingrained culture of suppressing freedom of thought and expression in the country, especially when the government relapsed to its restrictive behaviours.¹⁹¹

186 Interview with senior management of Ethiopian media authority, 24/02/2023.ammed

187 Henok, cited above at 14.

188 Interview with senior private media journalist, 28/02/2023.

189 Interview with owner and editor of an online media, 2/02/2023.

190 Interview with member of the media law working group, 22/02/2023.

191 Interview with senior management at Ethiopian Human rights Commission, 28/02/2023.

Outright breaches of some of the provisions of the law such as on pretrial detention, have become widespread and normalized by the government.

The abuses and arrests have now taken a different form. Media professionals are no longer jailed for long periods but rather are arrested frequently, with each arrest lasting for a few months. In addition, their property is often confiscated and not returned.¹⁹² This reality has forced the private media to self-censor in order to ensure self-preservation and avoid coercive pressure from the government.

Reform requires political willingness, commitment and alignment of government policies and practices towards the envisioned goal. However, the government, from the federal to regional authorities, were not aligned with the reform.¹⁹³ Some studies indicate that in addition to abuses and harassments, journalists reported that government officials attempted to influence the content of their work through intimidation presented as advice.¹⁹⁴

EMA's leadership argues that the commitment should not be analyzed as backsliding and the trust in the governments will to maintain its commitment must remain. It testifies that the government's direction of actions taken on the media, including the desire to make some amendments in the law, is as long as it is in line with the promise made to open the media space.¹⁹⁵

The desire is to continue the reform not to reverse it and some of the abuses seen here and there shall be analyzed as separate incidents and not indicative of systemic and structural desire for regression.

192 Interview with owner and editor of an online media, 2/02/2023.

193 Interview with senior management at Ethiopian Human rights Commission, 28/02/2023.

194 Semir Yusuf, cited above at 5.

195 Interview with senior management of the Ethiopian Media Authority, 24/02/2023.ammed

+ Collective action from the side of the media, still lacking

The first line of defense to ensure the gains of the media reform are protected is the media sector itself. But if asked what the sector did collectively when faced with several challenges, in the form of abuses, violations and other actions, the answer is not enough or even quite minimal.¹⁹⁶ Such lack of response gave the impression the reforms were not earned but rather granted by the government and made the reform dependent on the political situation¹⁹⁷

The collective bargaining structures of the media sector remain divided and lack a shared vision and values in articulating the sector's challenges.¹⁹⁸ The growing significance of regional mass media agencies also meant that journalists are beginning to form alliances along regional and ethnic lines.¹⁹⁹

The process of democratic consolidation does not happen overnight and requires a concerted effort among stakeholders. That's why the media sector needs to organize itself, fight for its rights, respond to such opportunities and take advantage of opportunities.²⁰⁰ EMA also agrees that the media sector lags behind in creating collective campaigns and advocacy work to help the sector move forward.²⁰¹

196 Interview with executive director of media development CSO, 24/02/2023.

197 Interview with executive director of media development CSO, 24/02/2023.

198 Same as above

199 Terje and Mulatu, cited above at 163.

200 Same as above

201 Interview with senior management of Ethiopian media authority, 24/02/2023.

RECOMMENDATIONS



Below are some recommendations for a wide range of key stakeholders, along with some actions needed to help consolidate the gains and prevent further backslide on the implementation of the hard-earned media law reform.

Government

- ▶ Reiterate its commitment to media reform and opening up the media space.
- ▶ Re-appoint Board members of the Ethiopian Media Authority that fulfil the procedural and substantive criteria under the Media law.
- ▶ Start the process of engaging with social media platforms to enable better social media regulation.
- ▶ Take concrete steps to implement the incentives indicated in the media policy to ensure increased sustainability of media.
- ▶ Ensure public and affiliated media's professionalization, in line with standards of the media proclamation.
- ▶ Pass freedom of information and computer crime proclamations that are drafted under the auspice of the media law reform in alignment with applicable human rights standards.

Ethiopian media authority

- ▶ Reiterate its commitment to enforce the media law with the spirit of enabling media freedom rather than regulation.

- ▶ Pull back its efforts to call for the amendment of the media law before its provisions have been fully tested.
- ▶ Undertake institutional capacity building to implement the media legislation with a different orientation.
- ▶ Increase its efforts to create an enabling environment for media operation.
- ▶ Continue to encourage registration of online media through non-coercive actions.
- ▶ Advocate for the passing of the freedom of information and computer crime proclamations that are drafted under the auspice of the media law reform.
- ▶ Act independently, free from political influence.

The media sector and the Media associations

- ▶ Increase the sector's awareness of the opportunities under the media legislation and seize the potential possibilities.
- ▶ Advocate for the completion of the media law reform and the passing of draft legislations such as the freedom of information proclamation.
- ▶ Undertake collective advocacy with the government to rectify violations and abuses of the media law.
- ▶ Undertake collective advocacy for the implementation of the media policy.
- ▶ Encourage online media houses to have editorial standards as required under the media law and encourage registration.

- ▶ Undertake collective advocacy to prevent early amendment of the media law and changes to its enabling provisions.
- ▶ Increase the solidarity and collective bargaining structures of the media sector by creating a common vision and articulating the needs of the sector
- ▶ Strengthen media self-regulation mechanisms to put in place an effective system in the remaining one year to realize self-regulation.

Actors working on media development

- ▶ Devise action and intervention, including through advocacy or capacity building, to address the practical and institutional challenges faced by the media.
- ▶ Support in building the capacity of EMA and media associations to implement the legislative reforms better.
- ▶ Support the media sector to trickle down professional standards in accordance with the media legislation.









Development partners providing support on media

- ▶ Engage in diplomatic advocacy with the government to rectify violations and abuses of the media law.
- ▶ Continue to support the professionalization of media and self-regulation mechanisms.
- ▶ Ensure donor coordination to avoid duplication of efforts.

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IN ETHIOPIA

A REVIEW

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