

**JIMMA UNIVERSITY**

**COLLEGE OF LAW AND GOVERNANCE**

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**REGULATING HATE SPEECH IN ETHIOPIA: A HUMAN RIGHTS PERSPECTIVE**

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## **Declaration**

I hereby declare that, this paper prepared for the partial fulfillment of the requirements for LL.M Degree in Human Rights and Criminal Law entitled ‘Regulating Hate Speech in Ethiopia: A Human Rights Perspectives’ is my own work and that it has not previously been submitted for assessment to another University or another qualification. I also declare that any source used in the paper has been duly acknowledged.

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## **Abstract**

This paper assesses Ethiopian legal framework applicable to regulate hate speech, identify its gaps and explores the way to strengthen it through human rights perspective. With this end in mind, the author identifies the place of hate speech within freedom of expression as recognized by human rights instruments and Ethiopian legislations. It also assesses how these instruments help Ethiopia to regulate hate speech. Obviously, freedom of expression is a fundamental human right guaranteed in many international, regional human rights instruments and Ethiopian legislations. It is also restricted based on condition called ‘three part test principle’ and there is also totally prohibited grounds of expression. Therefore, the author analyzes the place of hate speech within these grounds of limitation.

Hate speech is a contested concept and there is also no common approach on the regulation of it. Some states and scholars try to justify hate speech as part of freedom of expression while others argue for the legal limitation of it. In this study, the author justifies the regulation of hate speech since it is not supported by theoretical justifications of freedom of expression, and harm it brings to rights of the victim.

Hate speech regulation in Ethiopia is not clear and comprehensive. In fact, there are many scattered pieces of legislations such as the 1995 FDRE Constitution, Broadcasting Proclamation, Freedom of the Mass Media and Access to Information Proclamation, the Procedure of Peaceful Demonstration and Public Political Meeting Proclamation, Advertisement Proclamation, the FDRE Criminal Code, Computer Proclamation and Telecom Fraud Offense Proclamation which are pertinent and tried to regulate it to some extent. However, the author finds that, though the country is vulnerable to the harms of hate speech, its regulation is still underdeveloped.

Therefore, the author argues for the regulation of it with clear and comprehensive law because of the following reasons. First, hate speech is not supported by the justifications given for the protection of the right to freedom of expression. Second, Ethiopia has the obligation to protect its citizens from the harms of hate speech that result in violations of numerous rights such as the right to equality and non discrimination, the right to human dignity, the right to life, and other human rights. Finally, the country also has the obligation to enforce human rights instruments ratified such as Article 20 of ICCPR and Article 4 of the ICERD.

### **Key Words**

Ethiopia, Discrimination, FDRE Constitution, Freedom of Expression, Hate Speech, Human Right, Incitement, Regulation

## **Acronyms**

ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and Peoples' Rights
ECHR	European Convention on Human Rights
CMW	International Convention on the Protection of the Rights of the all Migrant Workers and Members of their Families
CRC	Convention on the Rights of Child
ECtHR	European Court of Human Rights
FDRE	Federal Democratic Republic of Ethiopia
HRW	Human Rights Watch
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICTR	International Criminal Tribunal for Rwanda
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Economic, Social and Cultural Organization
UNHCHR	United Nations High Commissioner for Human Rights
UNHRC	United Nations Human Rights Committee

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## CHAPTER ONE: INTRODUCTION

### 1.1 Background of the Study

Freedom of Expression is one of the most fundamental human rights widely accepted and guaranteed in many international and regional human rights instruments and domestic legislations. For instance, the UDHR affords everyone the right to freedom of opinion and expression which includes: ‘...freedom to seek, receive and impart information and ideas through any media and regardless of frontiers’.<sup>1</sup> Likewise, the ICCPR expresses that the right to freedom of expression includes: ‘...freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media’.<sup>2</sup> Similarly, ECHR<sup>3</sup>, ACHR<sup>4</sup> and ACHPR<sup>5</sup> are also the major regional human rights instruments which protect freedom of expression. From all the above human rights instruments we can understand that Freedom of expression is one of the fundamental human rights which includes the freedom to be able to hold opinions and to impart and/or receive these as well as ideas and information to others in any form which may include oral, in writing, electronic and internet-based modes of expression.

Freedom of expression has its own rationales. As expressed by many scholars there are about four well known philosophical rationales for the protection of the right: The search for the truth, Individual self-development and fulfillment, Participation in democracy and Tolerance.<sup>6</sup> Those rationales are the justifications for the protection or limitation of the right because freedom of

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<sup>1</sup> Universal Declaration on Human Rights (1948), Art.19.

<sup>2</sup> International Covenant on Civil and Political Rights (1966), Art.19.

<sup>3</sup> This instrument recognized the right to freedom of expression as: ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.’ See European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Art.10.

<sup>4</sup> It expressed the right to freedom of expression as: ‘Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.’ See American Convention on Human Rights (1969), Art.13.

<sup>5</sup> This provision recognized the right as: ‘Every individual shall have the right to express and disseminate his opinions within the law’. See African Charter on Human and Peoples’ Rights (1981), Art.9.

<sup>6</sup> Barendt, E *Freedom of Speech*, (1987), pp.1-36; See also Schauer, F ‘The Phenomenology of Speech and Harm’ 103 *Ethics* (1993),P.635.; See also Timotheos, G ‘Freedom of Expression in Ethiopia: A Jurisprudential Dearth’ 4 *Mizan L.Rev.*(2010),pp.202-204.; See also Sadurski, W *Freedom of Speech and its Limits*, (1999), pp.7-31.; See also Carmi, G ‘Dignity-The Enemy From Within: A Theoretical and Comparative Analysis of Human Dignity as a Free Speech Justification’ 9 *J.Const’l L.*(2007), p.968.

expression is not absolute. Under human rights instruments, certain kinds of expressions are subject to limitation. For instance, under UDHR, concerns about speech advocating hate and violence are reflected in the general limitation clauses in Article 29. Specifically, Article 29(3) of the instrument indicates that rights in the Universal Declaration may in no case be exercised contrary to the purposes and principles of the United Nations, one of which is promoting and encouraging respect for human rights.<sup>7</sup> Thus, expressions that reject respect for human rights and for fundamental freedoms would therefore not be covered by Article 19 of the UDHR. The ICCPR also requires parties to prohibit by law, including, ‘*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*’<sup>8</sup> Similarly, the ICERD also requires parties to ‘*condemn all propaganda and all organizations which attempt to justify or promote racial hatred and discrimination in any form.*’<sup>9</sup> In particular, it obliges parties to criminalize dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, as well as participation in propaganda activities, which promote and incite racial discrimination.<sup>10</sup> From the above instruments we can understand that the grounds for the limitation of freedom of expression stated above directly implicate the issue of hate speech.

The concept of hate speech is a contested and evolving concept which is understood and used variously by different States, academics and persons in different contexts. For instance, C. R. Lawrence, Matsuda, Delgado, and Crenshaw defined it as ‘*speech that has a message of racial inferiority which is directed against a member of a historically oppressed group, and which is persecutory, hateful, and degrading.*’<sup>11</sup> Smolla also broadly defined it as ‘*a generic term that has come to embrace the use of speech attacks based on race, ethnicity, religion, and sexual*

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<sup>7</sup> On Article 1(3) of the UN charter, the Purposes of the United Nations are: To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. See United Nations Charter (1945), Art.1 (3).

<sup>8</sup> ICCPR, supra n 2, Art 20.

<sup>9</sup> International Convention on the Elimination of Racial Discrimination (1965), Art.4.

<sup>10</sup> Ibid.

<sup>11</sup> Lawrence, C Matsuda, J Delgado, R & Crenshaw, K ‘Introduction’ in Lawrence, C, Matsuda, J, Delgado, R & Crenshaw, K (eds.), *Words that wound: Critical race theory, assaultive speech, and the First Amendment* (1993),p.1.

*orientation or preference*'.<sup>12</sup> Here, Smolla used specific type of injuries that qualify to rationalize limiting of hate speech to define it. On the other hand, UNESCO also broadly defined it as '*expressions that advocate incitement to harm based upon the targets being identified with a certain social or demographic group.*'<sup>13</sup> Europeans also define it as '*all kinds of speech that disseminate, incite or justify national and racial intolerance, xenophobia, anti-Semitism, religious and other forms of hatred based on intolerance.*'<sup>14</sup> From the above definitions we can understand the difference of definition which lies on its scope, targets, and forms of communication. This lack of an agreed definition causes difficulty in determining when exactly an expression constitutes hate speech.

Hate speech has much harm and specifically it is very dangerous for the protection of human rights. Its harms are not as simple as we talk it in theory. As expressed by scholars in hate speech words are used as weapons to harm the physiological and emotional state of the targeted group and also lead to more serious human rights violations such as the right to equality, non discrimination, dignity, and other rights.<sup>15</sup> It is also described as a tool that disseminates the idea of racial superiority, incites violence, and reinforces stereotype,<sup>16</sup> which greatly harm human right principles such as the principles of human dignity, equality and non discrimination.

Historically, hate speech is the cause for gross violations of human rights by leading to the commission of international crimes such as genocide, crime against humanity or 'ethnic cleansing'.<sup>17</sup> This is also affirmed by the UN Tribunal in media case which found that mass

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<sup>12</sup> Smolla, R *Free Speech in an Open Society*, (1993), p.152.

<sup>13</sup> UNESCO, *Countering online hate speech* (2015), p.10.

<sup>14</sup> Council of Europe, *Recommendation (97)20 of the Council of Europe* (1997) as cited in PRISM Report, *Backgrounds, Experiences and Responses to Online Hate Speech: A Comparative Cross-Country Analysis*(2015) 6 available at <http://www.prismproject.eu/wp-content/uploads/2015/11/Backgrounds-Experiences-and-Responses-to-Online-Hate-Speech.pdf> visited on 10 December 2016.

<sup>15</sup> Bakircioglu, O 'Freedom of Expression and Hate Speech' 16 *Tulsa J. Comp. & Int'l L.* (2008), p.5.; See also Gloria Cowan et al., 'Hate Speech and Constitutional Protection: Priming Values of Equality and Freedom' 58 *J. of Soc. Issues* (2002), pp. 247-248.

<sup>16</sup> Waldron, J *The Harm in Hate Speech* (2012),p.4.

<sup>17</sup> Schabas, W 'Hate Speech in Rwanda: The Road to Genocide' 46 *MCGILL L.J.* (2000),p.144;See also Scheffler, A 'The Inherent Danger of Hate Speech Legislation: A Case Study from Rwanda and Kenya on the Failure of a Preventative Measure'(2015) Master's Thesis in Peace and Conflict Studies on the file at Philipps-university, Marburg Germany, p.24.;See also Mengistu, Y 'Shielding Marginalized Groups from Verbal Assaults Without Abusing Hate Speech Laws' in Herz,M and Peter Molnar,P (eds) *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (2012), p.360.

media hate speech can constitute genocide, incitement to genocide, and crimes against humanity.<sup>18</sup> If not properly regulated, the harm is harsh in multicultural societies because the protection of human rights in today's multicultural societies requires a balance between freedom of expression (i.e. the protection of the right to freedom of expression of the speaker) and prohibition of hate speech for the protection of human rights of the victim.

Even though hate speech has much harm, still there is no common agreement on the need to regulate hate speech and how to deal with it. It lies across a point of tension between two opposing ideas. On the one hand, some states like USA believe that speech must be specially protected against government interference which is done through legal restrictions on hate speech,<sup>19</sup> while states like Canada, Australia, Kenya, Rwanda and many European states have well-established a modest legal restrictions on hate speech. Supporting the second position this thesis also justifies for the legal regulation of hate speech arguing that the regulations serve as a human right protection tool that the government could use to promote human rights values and principles such as the right to equality and dignity between the various groups of the society which may be endangered by hate speech.

When we see the regulation of hate speech in human rights context, many human rights instruments relevant to the issue require the regulation of hate speech through legislation. For example, International Conventions, most notably the Genocide Convention<sup>20</sup>, ICERD<sup>21</sup> and ICCPR<sup>22</sup> put an obligation on their state parties to prohibit different forms of hate speech. Consequently, many states responded by enacting domestic law to address hate speech and its

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<sup>18</sup> *Prosecutor v Nahimana, Barayagwiza, & Ngeze*(Media case),ICTR, Case No. ICTR-99-52-T, (3 December 2003).

<sup>19</sup> Nowak, J & Rotunda, R *Constitutional law*, 4th edn.(1991), pp. 942-44 as cited in Catlin, S 'Proposal for Regulating Hate Speech in the United States: Balancing Rights under the International Covenant on Civil and Political Rights' 69 *Notre Dame L. Rev.* (1994), p.779.

<sup>20</sup> Article 5 of the Genocide Convention provides: '*The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III*'. See Convention on the Prevention and Punishment of the Crime of Genocide (1948), Art.5. Here one of the acts that enumerated under art 3(C) is '*direct and public incitement to commit genocide*'. Hate speech is one of the grounds to incite the public to commit genocide. See from Mengistu(2012),supra n 17. Therefore, the member states are required to regulate it.

<sup>21</sup> ICERD (1965), supra n 9.

<sup>22</sup> ICCPR (1966), supra n 2, Art.20.

harmful effects.<sup>23</sup> Under Ethiopian context the question is whether and how Ethiopia responded to hate speech based on those human rights instruments.

Under Ethiopian legal system the concept of hate speech and how it is regulated is not clear and comprehensive. When we see the FDRE Constitution, Article 29 sub-article 2 and 6 provides for the ‘Right to freedom of Expression’ in the following terms:

- 2) *Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.*<sup>24</sup>
- 6) *These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honor and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.*<sup>25</sup>

As we have seen above, the content of the right to freedom of expression expressed under Article 29(2) of the Constitution is similar with Article 19(2) of the ICCPR. But the controversy exists on the limitation of the right. Because like that of the ICCPR, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is not clearly stated as limitation of the right. On top of that it prohibits the limitations of the right on the ‘account of the content’ or ‘effect of the view point expressed’ other than those expressed in the constitution. Additionally, even though the constitution states the public expression of opinion intended to injure human dignity as a limitation for the right to freedom of expression, due to the lack of clarity on its meaning, the question of whether hate speech could be a ground for the limitation of the right to freedom of expression or not is not yet solved.

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<sup>23</sup> For example, Rwanda has reacted by adopting legislation against various forms of hate speech. Similarly Kenya included the term that prohibits hate speech in her new Constitution. See Scheffler(2015), supra n 17; See also Rosenfeld, M ‘Hate Speech in Constitutional Jurisprudence: A Comparative Analysis’ 24 *Cardozo L.Rev.*(2003), p.1525.

<sup>24</sup> The Constitution of the Federal Democratic Republic of Ethiopia proclamation No. 1 of 1995, Art 29(2)

<sup>25</sup> Ibid, Art.29 (6).



In addition, as we have seen above, limitations of freedom of expression can only be made through law. Therefore, in order to talk about limitation of freedom of expression in general and hate speech as a ground of limitation of freedom of expression in particular, we have to assess the legislations relevant to the issue. Accordingly, Freedom of the Mass Media and Access to Information Proclamation, Broadcasting Service Proclamation, the FDRE Revised Criminal Code of 2004, the Telecom Fraud Proclamation, An Advertisement Proclamation, Computer Crime Laws, Proclamation to Establish the Procedure for Peaceful Demonstration and Public Political Meeting, the 1960 Civil Code and other relevant legislations are the subjects of scrutiny to find whether they properly regulated the issue of hate speech in general and from the human rights perspective in particular.

Generally, this thesis will analyze the place of hate speech within freedom of expression. Then by offering an overview of recent debates on the concept of hate speech and justifications for its regulation, it will assess human rights frameworks developed on the regulation of hate speech at international and regional level and try to indicate how they help Ethiopia to regulate hate speech.

## 1.2 Literature Review

There is a scarcity of research on the issue the regulation of hate speech under Ethiopian legal system in general and from the human rights perspective in particular. In academics this is the most neglected one in Ethiopia. According to my knowledge and access until the writing of this proposal, there is no research conducted directly on the issues of hate speech regulation in Ethiopia. But there are some attempts to deal with the issues directly and indirectly. For instance, Iginio Gagliardone, Alisha Patel and Matti Pohjonen have written a working paper on the title, ‘mapping and analyzing hate speech online: Opportunities and Challenges for Ethiopia’<sup>26</sup> and they tried to provide an introductory remark on hate speech, especially as communicated through online media in divided societies in general and Ethiopia in particular. But they failed to discuss hate speech in full context because they only focused on online hate speech which does not include offline (real life) transmission of hate speech. Additionally even though their title says ‘Challenges and opportunities in Ethiopia’, they did not analyzed about the regulation of hate

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<sup>26</sup> Iginio G, Alisha P& Matti P, *Mapping and Analyzing Hate Speech Online: Opportunities and Challenges for Ethiopia*(2014) available at [http://www.academia.edu/18072175/Mapping\\_and\\_Analysing\\_Hate\\_Speech\\_Online\\_Opportunities\\_and\\_Challenges\\_for\\_Ethiopia](http://www.academia.edu/18072175/Mapping_and_Analysing_Hate_Speech_Online_Opportunities_and_Challenges_for_Ethiopia)visited on 18 November 2016.

speech in light of human rights other than indicating the relationship between the media and the state, and ethnic divisions and the use of online hate speech for political ends which is out of legal concept. Thus, since the focus of my research is on the regulation of hate speech under Ethiopian legal system in general and from human rights perspective in particular, it is a new idea.

Additionally, Gideon Timothewos on his article titled as ‘freedom of expression in Ethiopia: the jurisprudential dearth’<sup>27</sup>, tried to indicate the jurisprudential dearth relating to the scope, content and legitimate limitations of freedom of expression. He also explored its causes and possible implications. In fact, while discussing the grounds of limitation of the right to freedom of expression, even though he failed to use the term ‘hate speech’, he systematically addressed the question of whether the view point which has the effect of unleashing ethnic or religious conflict and violence (for me this kind of speech may be hate speech) could be limited or not. Even though, the author feels difficult to answer this question either in positive or negative way in absence of any qualification, he does not justify it from the human right perspective in detail. Moreover, since the main focus of the article is to show the jurisprudential dearth on the freedom of expression in Ethiopia, the issue of hate speech and the way of its regulation is not mainly addressed by the author.

Therefore, considering the lack of sufficient literatures on this field of study, this thesis will try to contribute its own share to fill this gap.

### **1.3 Statement of the Problem**

Today, the right to freedom of expression is one of the most important human rights which are guaranteed by different human rights instruments. However the right to freedom of expression has considerable importance, it is limited in the case of at least some forms of speech. The limitation of the right to freedom of expression is restricted by most human rights instruments depending on two conditions: Three-part test principle and when there are totally prohibited grounds expressions. The principle of three part test is nothing but it explains about three steps/preconditions for the restriction of the right to freedom of expression. This means any restriction must be provided by law, pursue one of the legitimate grounds for restriction such as

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<sup>27</sup> Timothewos(2010), supra n 6.

respect of the rights or reputation of others, protection of national security or public order, or public health or morals and necessary to achieve one of the goals listed above.<sup>28</sup> The totally prohibited grounds of expressions are also stated in many human rights instruments.<sup>29</sup> The issue of hate speech is implicated within the above two conditions of the limitation of the right to freedom of expression.

But when we see the concept of hate speech, yet there is no universally acknowledged definition. This lack of an agreed definition causes difficulty in determining when exactly an expression constitutes hate speech. Each state defines and prohibits hate speech in accordance with their contexts, if any. Under the Ethiopian contexts, the problem starts from this because there is no clear and comprehensive law on the regulation of hate speech. Only scattered legislations are there to regulate hate speech. So, identifying the place of hate speech within freedom of expression under relevant human rights instruments and under Ethiopian legal frame work is the main point which needs clarity.

Hate speeches have much harm. Many scholars often describe it as ‘poisonous’, ‘toxic’ and ‘the match that lights up the fire’.<sup>30</sup> Historically its devastating corollaries are evident in the examples of genocide, crime against humanity or ‘ethnic cleansing’ in Rwanda,<sup>31</sup> Kenya,<sup>32</sup> the former Yugoslavia,<sup>33</sup> Holocaust<sup>34</sup> and others. When we see the implication of the harms of hate speech for Ethiopia, the logic is that since hate speech led to genocide, summary execution and other violent acts in Rwanda, Kenya and other diversified societies, then ipso facto, the same danger haunts Ethiopia. There are also revealed acts or behaviors and allegations that constitute elements of hate speech through different Medias or in person. For instance, as expressed by

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<sup>28</sup> See for example, ICCPR (1996), supra n 2, Art 19(3); Convention on the Rights of the Child (1989), Art 13(2); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), Art.13.

<sup>29</sup> See for example, ICCPR (1966), supra n 2, Art 20.

<sup>30</sup> Scheffler (2015), supra n 17, p. 22; see also Benesch, S ‘Vile Crime or Inalienable Right: Defining Incitement to Genocide’ 48 *Virg.J.Int'l L* (2008), p.523; See also Genocide Watch *Can we prevent Genocide by preventing Incitement?* (2010) available at [http://www.genocidewatch.org/images/Articles\\_Can\\_we\\_prevent\\_genocide\\_by\\_preventing\\_incitement.pdf](http://www.genocidewatch.org/images/Articles_Can_we_prevent_genocide_by_preventing_incitement.pdf) visited on 10 November 2016; See also Waldron(2012), supra n 16, pp. 3, 16, 59

<sup>31</sup> Schabas(2000), supra n 17.

<sup>32</sup> Scheffler(2015), supra n 17, p.22.

<sup>33</sup> United States Holocaust Memorial Museum’s Center for the Prevention of Genocide, *Countering Dangerous Speech, Protecting Free Speech: Practical Strategies to Prevent Genocide* (2014), p.1.

<sup>34</sup> Ibid.

Yared L. Mengistu, Ethiopia experienced the harms of hate speech during May 2005 elections which resulted in the death of many citizens.<sup>35</sup>

Hate speech through social media which is rapidly increasing has also the potential to reach much larger audience and increases the problem in Ethiopia. To indicate this problem, PM Hailemariam Dessalegn, an Ethiopian leader at 71<sup>th</sup> UN General Assembly conference said that ‘...social media has certainly empowered populists and other extremists to exploit people's genuine concerns and spread their message of hate and bigotry without any inhibition’.<sup>36</sup> So, regulating such kind of speech has no other option.

Moreover, when we see Ethiopia, the country is always identified as the country of diversified Nations, Nationalities and Peoples, who need to live together on the basis of equality and without any sexual, religious or cultural discrimination.<sup>37</sup> But since hate speech destructs respect and equality rights of the societies as an individual and as a group which is the foundations to any stable society, it has become much riskier for multi-racial, multi-ethnic, multi-faith and multi-lingual societies like Ethiopia. If not effectively regulated, it incites racial tension and other forms of discrimination and abuse which directly violate human rights of the victim. Thus, the importance of protecting human rights of Ethiopian societies such right to equality, the right to freedom from non-discrimination, the right to honor and dignity might have been worse without the regulation of hate speech.

Furthermore, there have been pressures at the international and regional level for efficacious legislation and creative responses to address hate speech and its consequences particularly from the human right treaties perspective. For instance, International Conventions, most notably the Genocide Convention<sup>38</sup>, ICERD<sup>39</sup> and ICCPR<sup>40</sup> put an obligation on their state parties to prohibit

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<sup>35</sup> Mengistu expressed that, ‘*there is unsettled resemblance between the hate propaganda used during the Rwandan genocide and the hate campaign surrounding the May 2005 elections in Ethiopia Fortunately, Ethiopia did not experience killings of genocidal proportions, although the election air was charged with hate, recrimination, and bloodshed.*’ Mengistu(2012), supra n 17, p.361.

<sup>36</sup> Prime Minister Hailemariam Desalegn Speaking on 71st UN General Assembly available at [https://www.youtube.com/watch?v=8yjT-eB\\_YmY&t=519s](https://www.youtube.com/watch?v=8yjT-eB_YmY&t=519s) visited on 11/10/2016; See also UN News Center, The Ethiopian Leader Speech at 71<sup>st</sup> UN Assembly, available at <http://www.un.org/apps/news/story.asp?NewsID=55022#.WH6wKdIrLIU> visited on 11/10/2016.

<sup>37</sup> FDRE Constitution(1995), supra n 24, preamble.

<sup>38</sup> Genocide Convention(1948), supra n 20.

<sup>39</sup> ICERD(1965), supra n 9.

different forms of incitement which constitutes hate speech. Consequently, many states have reacted by adopting legislation against various forms of hate speech, for instance, by explicitly criminalizing some hate speech based on specified grounds such as race, sex, ethnicity and others.<sup>41</sup> When we see the situation of Ethiopia, there is no consistent and comprehensive legal framework to regulate hate speech in light of those instruments. Of course, there are provisions of the constitution which impose limitation on freedom of expression<sup>42</sup>, some criminal law provisions that criminalize defamation<sup>43</sup> or insults<sup>44</sup>, and other scattered legislations on the regulation of hate speech but they are not clear and comprehensive to deal with the each and every aspect of the issues of hate speech as required by human rights instruments relevant to the issue.

Thus, by showing the vulnerability of the country to the harms of hate speech particularly its harm on the rights of the victim and justifying its regulation, the paper identifies the place given to the regulation of hate speech under Ethiopian legal framework, identifies its shortcomings and finds the way of strengthening it.

## **1.4 Objective of the Research**

### **1.4.1 General Objective**

The general objective of this study is to provide an overview and analysis of the Ethiopian legal framework applicable to regulating hate speech, identify its shortcomings and exploring the opportunities to strengthen the current Ethiopian legal framework on the regulation of it through human rights perspective.

### **1.4.2 Specific Objectives**

- To examine the place of hate speech within freedom of expression as recognized under international, regional human right instruments and Ethiopian legal frameworks.
- To examine the concept of hate speech, its harms and justifications for restricting hate speech.

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<sup>40</sup> ICCPR(1966), supra n 2.

<sup>41</sup> For instance Kenya, Rwanda and most western states criminalized hate speech in different forms. See generally Scheffler (2015), supra n 17; See also Rosenfeld(2003), supra n 23, p.1525.

<sup>42</sup> FDRE Constitution(1995),supra n 24.

<sup>43</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414 of 2004, Art 613.

<sup>44</sup> Ibid, Art 615.

- To discuss human rights frameworks regulating hate speech at international, regional and national level that binds Ethiopia and how they help to challenge hate speech within the country.
- To examine Ethiopian legal frameworks on the regulation of hate speech in light of relevant human rights instruments, identify its shortcomings and recommending its way outs based on those instruments.

### **1.5 Research Questions**

The research will answer the following questions:

- 1) What is the place of hate speech in freedom of expression?
- 2) What are the harms of hate speech on the protection of human rights justifying its regulation?
- 3) What is the status of the regulation of hate speech under Ethiopian legal system?
- 4) What approaches do international and regional human rights instruments adopt to regulate hate speech and what are the lessons for Ethiopia?

### **1.6 Scope of the Study**

The issue of hate speech can be regulated through legal and non-legal measures. The focus of this thesis is only on the regulation of hate speech through legal measures. Additionally, within the legal regulation, the issue of hate speech is a wide concept encompassing wide range of areas and state practices. But this study will focus only on the issue of regulating hate speech under Ethiopian legislations. Additionally, the issue of hate speech needs multi dimensional analysis of its concept and regulation such as from sociological perspective but this study only discuss the issue from human rights perspective.

### **1.7 Limitation of the Study**

There was a shortage of time in order to effectively deal on each and every aspect of the subject matter. Additionally, the shortage of materials on the topic and similar issues in Ethiopian context also hindered the detail consideration of the issues.

### **1.8 Significance of the Research**

The study is important to assess the status of the regulation of hate speech and help to judge the adequacy of legal regulation of hate speech under Ethiopian legal system.

Likewise, the study also helps to appreciate how international and regional human rights instruments and jurisprudence help Ethiopian legal system on the regulation of hate speech.

Furthermore, the study also advances knowledge on the regulation of hate speech under Ethiopian legal system and specifically helps to understand the limitation and legal gaps of Ethiopian laws on the regulation of hate speech. Specifically, the study also helps to reveal how some Ethiopian laws which needed to regulate hate speech failed to address the issue.

Moreover, the study will inform the policy makers to make a new legislation or amend the existing legislation in order to regulate hate speech in light of major human right instruments without affecting the protection of other human rights.

Finally, the study also contributes to the academic literature since there is not a much of a research conducted on the area of study.

### **1.9 Research Methodology**

In order to address the issues identified above, the study is conducted with doctrinal research method. To this end, the study is conducted with due regard to qualitative research methodology. A qualitative analysis of relevant theoretical concepts, international and regional human rights instruments and Ethiopian legal framework is made.

In doing this research, both primary and secondary sources are employed to study various issues involved in the research. Primary sources such as Constitutions, Laws, Documents, Cases, International Human Rights Instruments (Covenants and Treaties), and decisions given by International and Regional Human Rights Organs are used while secondary sources are Books, Journals, Websites, Scholarly Articles, Bar Reviews, Reports and Unpublished thesis.

### **1.10 Structure of the Study**

This thesis provides contents that systematically answer issues raised in the research questions. Therefore, the thesis will contain four chapters, which is organized as follows:

*Chapter one* is an introduction which contains the proposal of the thesis.

*Chapter two* covers the general overview of the right to freedom of expression and the regulation of hate speech. Under this topic the concept of freedom of expression, justifications of freedom

of expression, the recognition of the right to freedom of Expression under Human Rights Instruments and its restrictions will be discussed. Then the issue of hate speech and its regulation particularly its definition, discern of it from freedom of expression and justifications for the regulation of hate speech are one of the issues which will be discussed here. Then place of hate speech within freedom of expression and its regulation under human rights instruments are also the subject which will be discussed. Finally the experiences of some selected jurisdictions will be assessed to know how the issue of hate speech is regulated by them.

*Chapter three* of this thesis, which is the main part of the paper discuss about the regulation of hate speech under Ethiopian legal system. This part show justifications for regulating hate speech in Ethiopia and assesses whether there is a comprehensive legal framework to regulate it. Finding the vulnerability of the country to harms of hate speech and absence of clear and comprehensive legal frame works to regulate it, this chapter also analyses the way out of the gaps based on binding human rights.

*Chapter four* will draw some conclusions and indicate some recommendations on how to effectively address the issue of hate speech based on human rights.



**CHAPTER TWO**  
**FREEDOM OF EXPRESSION AND THE REGULATION OF HATE SPEECH: A**  
**GENERAL OVERVIEW**

**2.1 Introduction**

Freedom of Expression is one of the most fundamental human rights widely accepted and guaranteed in many international and regional human rights instruments and domestic legislations. This right as recognized by many human rights instruments, it includes the freedom to be able to hold opinions and to impart and/or receive these as well as ideas and information to others in any form which may be oral, written, electronic and internet-based modes of expression.

This right is not absolute. There are two main grounds for the limitation of this right: the limitation based on three part test and totally prohibited grounds. Both grounds of the limitation of the right to freedom of expression directly implicate the issue of hate speech which is one of the most contested one starting from its definition and then on the recognition and its regulation.

Therefore, under this chapter, the author will discuss the following main issues. First, the concept of freedom of expression which includes definition, justification, scope and limitations will be discussed to understand what hate speech means and its place within freedom of expression. Then the author will discuss the concept of hate speech and its regulation. Under this topic the definition of hate speech, the place of hate speech within freedom of expression, the regulation of hate speech, whether justifications of freedom of expression supports regulation of hate speech, the harm of hate speech on human rights of the victim, how hate speech were regulated under human rights instruments and the experience of the regulation of hate speech under different jurisdictions such as USA, Europeans and from Africa, Kenya and Rwanda are the main points of discussion.

**2.2 The Concept of Freedom of Expression**

The concept of freedom of expression, as recognized by human rights instruments, has been evolving. In 1946, United Nations General Assembly for the first time passed one resolution that recognized ‘freedom of information’ as a fundamental human right which implies the right to

gather, transmit and publish news anywhere and everywhere without restraints.<sup>45</sup> Here the resolution used the term ‘freedom of information’, the scope of which is limited, instead of freedom of expression but the content of the right recognized under it resembles the concept of freedom of expression. Then, in December 1948, the General Assembly adopted UDHR which protects freedom of expression under Article 19 the scope of which is defined as, including, freedom to hold opinions without interference and to seek receive and impart information and ideas through any media and regardless of frontiers.<sup>46</sup> Since then, several international human rights treaties have been used freedom of expression in expanded way as one of the fundamental human rights which includes the freedom to be able to hold opinions and to impart and/or receive these as well as ideas and information to others in any form which may include oral, in writing, electronic and internet-based modes of expression.<sup>47</sup> This right may also apply to freely expressed ideas of all kinds including those that may be hatred.

Most of the time terms like ‘freedom of speech’, ‘free speech’ and ‘liberty of speech’ are used interchangeably with freedom of expression,<sup>48</sup> while those terms have different dictionary meaning and scope.<sup>49</sup>

### 2.3 Justifications of Freedom of Expression

To identify which categories of speech deserve strong protection and which one should be excluded, we have to know its justifications.<sup>50</sup> Freedom of expression and its limitations have their own justifications. As expressed by many scholars the major justifications for the protection

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<sup>45</sup> UN General Assembly, *Calling of an International Conference on Freedom of Information* ( 1946), UNGA Res 59(1), UN Doc A/229, A/261. Preamble.

<sup>46</sup> UDHR (1948), supra n 1.

<sup>47</sup> ICCPR(1966),supra n 2;ECHR(1950), supra n 3;ACHR(1969),supra n 4; ACHPR(1982),supra n 5.

<sup>48</sup> Yong, C ‘Does Freedom of Speech Include Hate Speech?’17 *Res Publica*(2011) p.387.; see also <http://www.dictionary.com/browse/freedom-of-speech> visited on 29 January 2017.

<sup>49</sup> The definition and scope of freedom of expression, freedom of speech, Free speech and liberty of speech is different. For example, Oran’s law dictionary defined freedom of expression as the combination of freedoms of religion, speech, and press while freedom of speech is defined as ‘the right to say what you want as long as you do not interfere with others’ rights.’ See Oran,D *Oran’s Dictionary of the Law*, 3rd edn, (2000); Black’s law dictionary also considered freedom of assembly, freedoms of religion, speech, and press as an element of freedom of expression while defining freedom of speech as ‘the right to express one’s thoughts and opinions without governmental restriction.’ See Garner,B *Black’s Law Dictionary*, 9th edn, (2009). But, under this thesis the author only uses freedom of expression as the scope of it is defined in human right instruments.

<sup>50</sup> Bear in mind that while discussing the justifications of freedom of expression, it is not only to review the main justifications for the protection of freedom of expression but also to examine the implications of it on the limitation of some forms of speech including hate speech.

of the right to freedom of expression are the search for the truth, individual self-development and fulfillment, participation in democracy and tolerance.<sup>51</sup>

### 2.3.1 The Search for the Truth

The search for the truth is expressed as one of the earliest and better known justifications for freedom of expression.<sup>52</sup> According to this justification, freedom of expression is described as the best way for attaining the truth and to advance the ability to criticize or converse one another without fear.<sup>53</sup> As rightly expressed by Mckeown this philosophical justification was originated in John Milton's *Areopagitica* and then developed by John Stuart Mill's *On Liberty* and later endorsed by court in Justice Holmes' dissent in *Abrams v United States* case.<sup>54</sup>

According to John Milton, freedom of expression is a prerequisite for the already discovered truth to advance and for undiscovered truth to be discovered.<sup>55</sup> This idea was also upheld by John Stuart Mill in his famous essay '*on Liberty*', where he provided a defense of freedom expression based on truth.<sup>56</sup> For him, freedom of expression gives the opportunity to learn the truth which is not discovered yet and make clearer the partial knowledge of the truth.<sup>57</sup> As pointed by Mckeown citing Ronald Dworkin '*Mill was of the opinion that society should endure even the speech it hates, because in an open debate where no opinion has been excluded, the truth will triumph*'.<sup>58</sup> This means he justifies the absolute protection of freedom of expression based on justification of truth.

After that this philosophical justification was repeated by Justice Holmes in his famous dissent of ideas in the case of *Abrams v United States* as '*... [T]he ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted*

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<sup>51</sup> Regarding this issue there are many literatures. For example, Barendt(1987),supra n 6; Schauer(1993),supra n 6; Timothewos(2010), supra n 6; Sadurski(1999),supra n 6; Carmi(2007),supra n 6.

<sup>52</sup> Timothewos(2010), supra n 6.

<sup>53</sup> Mendel, T 'Study on International Standards Relating to Incitement to Genocide or Racial hatred for the UN Special Advisor on the Prevention of Genocide' (2006),p.9 available at [http://www.concernedhistorians.org/content\\_files/file/To/239.pdf](http://www.concernedhistorians.org/content_files/file/To/239.pdf) visited 20 December 2016.

<sup>54</sup> Mckeown, T 'Hate Speech and Holocaust Denial: The Prohibition of False Historical Discourse in Modern Society' (2014) LLM Research Paper on file at Faculty of Law Victoria University of Wellington,p.33.

<sup>55</sup> Milton, J *Areopagitica: A Speech for the Liberty of Unlicensed Printing, to the Parliament of England* (1644, reprinted in 2008), p.48. See also Timothewos(2010), supra n 6,p.202.

<sup>56</sup> Mill, J *On Liberty* (1859, reprinted in 2001), p.50.

<sup>57</sup> Timothewos(2010), supra n 6,p.202-203.

<sup>58</sup> Mckeown(2014),supra n 54.

in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out'.<sup>59</sup> Therefore, according to this justification, freedom of speech has a larger benefit for society to discover the truth and to challenge ideas while its restriction is judged as a real social loss.<sup>60</sup>

### 2.3.2 Democracy and Self-Government

Advocates of this principle argue that effective democratic participation of citizens depends on their access to information about the actions of the government.<sup>61</sup> For example, Meiklejohn, a famous proponent of this justification, argued that the protection of free speech is justified because of its prerequisite for democratic self governance.<sup>62</sup> Others also claim that democracy, as a system of self governance requires that citizens be well informed of issues of public interest so that they could make informed and intelligent decisions taking into account all available alternatives.<sup>63</sup>

According to this justification, freedom of expression must be protected to enable citizens to govern themselves because it allows for all citizens to participate in their systems of governance through communication or action that ensures the communication of their will.<sup>64</sup>

### 2.3.3 Individual Self-development and Fulfillment

According to this justification, free speech is seen as something that is justified because it makes possible the autonomous personal fulfillment and development by making individuals to develop critical reasoning skills and a sense of "self".<sup>65</sup> This justification states that an individual cannot fully develop their personality and be autonomous moral agents with self respect without the respect of their freedom of expression.<sup>66</sup>

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<sup>59</sup> *Abrams v United States* U.S. Supreme Court, Judgment, File No. 316, (10 December 1919),p.630.

<sup>60</sup> Sunstein, C 'Free Speech' in Sunstein, C *Why Societies Need Dissent* (2003), pp. 96-110.

<sup>61</sup> Mendel(2006), supra n 53, p.29; Mckeown(2014),supra n 54,p.37.

<sup>62</sup> See generally Meiklejohn, A *Free speech and its relation to Self-government* (1948).

<sup>63</sup> Timothewos(2010), supra n 6, p. 203.;See also Sadurski(1999),supra n 6, p.20.

<sup>64</sup> Ibid.

<sup>65</sup> Parekh, B 'Is There a Case for Banning Hate Speech?'in Michael Herz, M and Molnar, P (eds) *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (2012), p.43.

<sup>66</sup> Timothewos(2010), supra n 6, p. 203; See also Scanlon, T 'A Theory of Freedom of Expression'(1972) 1(2) *Ph.Pu.Aff.*(2015),p.2026.; See also Richards, D 'Free Speech and Obscenity Law: Toward a Moral Theory of the First Amendment' 123 *Univ.Penn.L.Rev* (1974), pp.68,91.

### 2.3.4 Tolerance

The justification of tolerance is intended and designed to perform a self-reformation function for the general community.<sup>67</sup> One of the famous proponents of this justification is Lee Bollinger. This scholar on his book titled as '*The Tolerant Society*' argued that 'freedom of expression should be protected to promote the right attitudes of tolerance among the audience that speech-acts call for higher protection other than for the sake of protecting speakers.'<sup>68</sup> This justification shifts the focus of the arguments of freedom of expression away from the speakers towards the audience.

### 2.4 The Recognition of Freedom of Expression under Human Rights Instruments

Freedom of Expression is one of the most fundamental human rights widely recognized under many international and regional human rights instruments. From the international human rights instruments UDHR, ICCPR, CRC and CMW are the main ones which recognize it while all regional human rights instruments similarly do.

The UDHR<sup>69</sup> and ICCPR similarly afford everyone 'the right to freedom of opinion and expression which includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.'<sup>70</sup> When we see the scope of freedom of expression under these documents, it contains three interrelated elements. These are the right to hold opinions without interference, the right to seek and receive information, and the right to impart information and ideas of all kinds through any media and regardless of frontiers.

UN human rights committee explained those elements of the right. Accordingly, the right to hold opinions without interference includes the right to change an opinion whenever and for whatever

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<sup>67</sup> Bollinger, L *The Tolerant Society*(1986), p.134.; See also Sadurski(1999),supra n 6, p.32.

<sup>68</sup> Ibid.

<sup>69</sup> The right recognized under UDHR favor discussion here because, though not legally binding since it left on the status of resolution, it set a standard of measurement by which government treats its own citizens and then it received a widespread support. Currently it is considered as having the status of customary international law. See Berman, A 'Human Rights Law and Racial Hate Speech Regulation in Australia: A Reform and Replace?' 44(45)GA. J. INT'L & COMP. L(2015), p.50; See also Hannum, H 'The Status of the Universal Declaration of Human Rights in National and International Law' 25 *GA.J.INT'L & COMP.L.*(1996), p. 319; Boon, K The United Nations As Good Samaritan: Immunity and Responsibility, 16 *CHI. J. INT'L L.* (2016), p.385. Therefore, the right to freedom expression guaranteed by this document cannot be ignored and it has a binding effect on states.

<sup>70</sup> UDHR (1948), supra n 1; ICCPR(1966),supra n 2.

reason.<sup>71</sup> It includes all forms of opinion: political, scientific, historic, moral or religious. This right is not subject to restriction except when the expression of that opinion infringes one of the legitimate grounds for restriction.

Likewise the right to seek and receive information and ideas of all kinds is also part of the right to freedom of expression. It includes access to communications of every form that are capable of transmission to others.<sup>72</sup>

The right to impart information and ideas of all kinds through any media and regardless of frontiers is the other content of the right to freedom of expression which is very important for this thesis because the issue of hate speech is directly related with this scope of the right to freedom expression. As articulated above, all people are free to impart information and ideas of all kinds through any media, regardless of frontiers. This means that the right applies regardless of State boundaries and borders. Forms of dissemination also include all forms and modes of audio-visual, electronic and internet-based expression, as well as spoken, written and sign language and non-verbal expression such as images and objects of art. Written forms of expression include but are not limited to: books, newspapers, pamphlets, banners, dress and legal submissions.<sup>73</sup>

The CRC and CMW also recognized the right to freedom of expression on their own perspective in the same words of ICCPR on article 13.<sup>74</sup> Though not recognized in detail manner, the ICERD<sup>75</sup> and ICESCR<sup>76</sup> have also recognized the right to freedom of expression.

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<sup>71</sup> UN Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34. [Hereinafter General Comment No. 34] para.9; See also Bresner, K 'Understanding the Right to Freedom of Expression' (2015), p.26 available at [http://ihrp.law.utoronto.ca/utfl\\_file/count/media/Understanding%20Freedom%20of%20Expression%20Primer%20ENG%20-%20web.pdf](http://ihrp.law.utoronto.ca/utfl_file/count/media/Understanding%20Freedom%20of%20Expression%20Primer%20ENG%20-%20web.pdf) visited on 02 April 2017.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid; See also General Comment No. 34(2011), supra n 71, para.12.

<sup>74</sup> The CRC recognized the right to freedom of expression in its own perspective on Art 13(1) as 'The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.' See from Convention on the Rights of the Child (1989), Art 13(1). similarly CMW, on Art 13 recognized the right as 'Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.' See from International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), Art. 13(2).

Like that of the above international human rights instruments, among regional human rights instruments,<sup>77</sup> ACHPR also guarantees the right to freedom of expression in article 9 as follows:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinions within the law.*<sup>78</sup>

The ACHPR did not recognize the right in detail manner just like that of ICCPR and other human right instruments because it only recognized the right to receive information and express and disseminate opinions the scope of which is not clear.

To elaborate this right, Declaration of Principles on Freedom of Expression in Africa was adopted by the African Commission in 2002.<sup>79</sup> This declaration stresses the ‘fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms’.<sup>80</sup> It also seeks to address limitations to the right and obligation of states to the right. On top of that just like that

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<sup>75</sup> The ICERD also recognized the right to freedom of expression under Article 5(d) (viii) without defining its scope. But on Art 4 it stated a ground of restriction to the right to freedom of expression. See from ICERD (1965), supra n 9.

<sup>76</sup> The ICESCR do not used the term freedom of expression but it recognized one of the constitutive elements of the right to freedom of expression under Article 15(3) which is the right to respect for the freedom of scientific research and creative activity. See from International Covenant on Economic, Social and Cultural Rights (1966), Art 17. Here the right to respect for scientific research and creative activity may be considered as the recognition of the right to freedom of expression because it can be interpreted as it includes the recognition of expressions through modern technologies such as through social Medias. The recognition of any scientific creative activity may also include the activities of modern technologies used to receive and impart ideas and information.

<sup>77</sup> The ECHR recognized the right to freedom of expression as: ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.’ See from ECHR (1950), supra n 3. The ACHR, the multilateral human rights treaty of the Organization of American States on Art 13 recognizes the right to freedom of thought and expression which expressed it as it includes the freedom to seek, receives, and imparts information of all kinds, regardless of frontiers, through any medium. See from ACHR (1969), supra n 4. The Arab Charter of Human Rights, a regional organization of Arab countries in the Middle East and North Africa which was adopted by the Arab League in 2004 and came into force in 2008, also guarantees on Art 32 the right to freedom of expression as it includes the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries. See from League of Arab States (2004), Art 32.

<sup>78</sup> ACHPR(1981), supra n 5.

<sup>79</sup> Declaration of Principles on Freedom of Expression in Africa(2002).

<sup>80</sup> Ibid, preamble.

of ICCPR and other regional human rights instruments it defined freedom of expression in detail.<sup>81</sup>

Regarding freedom of expression, one of the most controversial one is on the content of the right that is permissible or not. Among that the issue of hate speech is one of the most controversial one as its place is not identifiable without difficulty. In the following title I will discuss on the issue of the limitation of the right in general and then try to show the place of hate speech within freedom of expression.

## **2.5 Restriction of Freedom of Expression**

Freedom of expression is not absolute. All human rights instruments which recognized the right impose restrictions on certain forms of expressions in their context. However, there are variations on the extent of limitation of the right. As it is inferred from international and regional human rights instruments, there are two main circumstances subsequent to which the state may make limitations in respect of the exercise of the right to freedom of expression. The first one is the limitation which is based on the three-part test subsequent to which the states impose limitations on the right to freedom of expression.<sup>82</sup> The second one is the circumstances under which expression may be prohibited totally.<sup>83</sup> We will see each in detail below.

### **2.5.1 The Principle of Three-Part Test for Restricting Freedom of Expression**

The principle of three part test is nothing but it explains about three steps/preconditions for the restriction of the right to freedom of expression. This means any restriction must be provided by law; pursue one of the legitimate grounds for restriction: respect of the rights or reputation of

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<sup>81</sup> The declaration guarantees Freedom of Expression like ICCPR on no. I(1) as follows: 'Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.' See *ibid*, Art I(1).

<sup>82</sup> ICCPR(1966),*supra* n 2, Art 19(3); ACHPR(1981), *supra* n 5, Art 9(2).

<sup>83</sup> Article 20 of the ICCPR requires parties to '*prohibit [...] by law, inter alia, [a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence...*'. See from ICCPR (1966), *supra* n 2. Similarly, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires parties to condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form. In particular, it obliges parties to criminalize dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, as well as participation in propaganda activities, which promote and incite racial discrimination. See from ICERD(1965),*supra* n 9.



others; protection of national security or public order, or public health or morals; and be necessary and/or proportionate to achieve one of the above goals.

Under the international and regional human rights instruments that outline the right to freedom of expression in the context of their subject matters, this principle was outlined as a pre-conditions of the restrictions on freedom of expression. For instance, under UDHR, though this right is not limited by specific limitation clause under Article 19, it is qualified by a general limitation clause in Article 29(2) which states as follows:

*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*<sup>84</sup>

The UDHR recognized the first two preconditions leaving the pre-condition of necessity and/or proportionality.

Under the ICCPR the exercise of freedom of expression is restricted as per Article 19(3). This provision states that the exercise of freedom of expression may be subject to certain restrictions which shall only be provided by law and are necessary for the respect of the rights or reputations of others and for the protection of national security or of public order (ordre public), or of public health or morals.<sup>85</sup> As we see from the above provision the three part-tests for the limitation of the right to freedom of expression is clearly indicated. The HRC also expressed the same idea.<sup>86</sup>

This three part test pre-conditions for the restriction of the right to freedom of expression is also expressed in the CRC under Article 13(2)<sup>87</sup> and article 13 of the ICMW<sup>88</sup>. In addition to the

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<sup>84</sup> UDHR(1948),supra n 1, Art 19(3).

<sup>85</sup> ICCPR(1966),supra n 2, Art 19(3).

<sup>86</sup> Human Rights Commission, *General Comment No.10: Freedom of Expression (Art. 19)*, (Jun. 29, 1983), U.N.Doc.HRI/GEN/1/Rev. 1, par.4. [hereinafter, General Comment No. 10].

<sup>87</sup> Article 13(2) of the convention on the rights of the child stated as:

*The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (ordre public), or of public health or morals.*

This provision is a copy of ICCPR art 19(3). See from CRC (1989), supra n 78, Art 13(2).

<sup>88</sup> Article 13(3) of the CMW stated the restriction of the right as:

above expressed purposes of restriction, ICMW recognized restrictions for the purpose of preventing any propaganda for war and for the purpose of preventing any advocacy or national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence which is totally prohibited by ICCPR without any condition.<sup>89</sup>

However, unlike human rights instruments discussed above, the African charter on human and people right on Article 9(2) only stated as the right to freedom of expression is restricted by law. This provision is general and lacks clarity and the other two preconditions: necessity and/or proportionality and legitimate aims were not stated. But the principle of three part test on any restriction on freedom of expression is clearly and fully affirmed by the Declaration of the Principles on Freedom of Expression in Africa.<sup>90</sup>

Above, we have discussed that the principle of the three part test for the restriction of freedom of expression were recognized by international and regional human rights instruments that binds Ethiopia except CMW.<sup>91</sup> But it is far from clear on what those elements mean. Now, let us discuss what those elements mean one by one.

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*The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputation of others;*

*(b) For the protection of the national security of the States concerned or of public order (ordre public) or of public health or morals;*

*(c) For the purpose of preventing any propaganda for war;*

*(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*

See from CMW(1990),supra n 77, Art 13(3).

<sup>89</sup> This two listed purposes were expressed as total prohibitions by other human rights instruments such as ICCPR and ICERD but this instrument combined it with other purposes of the limitation of freedom of expression. But the author has the position that it is good if it is totally prohibited without any precondition just like it is recognized under ICCPR and ICERD. See ICCPR(1966),supra n 2, Art.20 and ICERD(1965),supra n 9.

<sup>90</sup> Though not binding, the declaration recognized the conditions of restriction of freedom of expression on Art. II (2) as ‘any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society’. See Declaration of the Principles on Freedom of Expression in Africa(2002), supra n 79, Art II (2).

<sup>91</sup> Currently, Ethiopia is not a signatory member of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW) but it is in the process of ratification. See Federal Democratic Republic of Ethiopia, *the Fifth and Sixth Periodic Country Report (2009-2013) on the Implementation of the African Charter on Human and people’s rights in Ethiopia* (2014), p.1.

### **2.5.1.1 Provided by Law**

As it is clear from the term itself, ‘provided by law’ mean that the restriction should be stated in the State’s domestic legislation or the limit must be clearly spelt out in a law.<sup>92</sup> The question that needs answer here is about what the law should fulfill. Regarding this question, the UN Special Rapporteur has stated a number of criteria that the laws must fulfill.<sup>93</sup> Those criteria are: Any legislation that restricts the right must be applied by an independent body, free of any political, commercial or other unwarranted influences, and is one that is also able to provide safeguards against abuse, in addition to space for challenges and remedies against its abusive application.<sup>94</sup> The report also indicated that the laws must be accessible, precisely worded and unambiguous.<sup>95</sup> It is also stated that the law must also be compatible with international human rights law.<sup>96</sup> Finally, the laws must clearly set out the remedy against or mechanisms for challenging the illegal or abusive application of that limitation or restriction, including judicial review by an independent court or tribunal.<sup>97</sup>

### **2.5.1.2 Pursue a Legitimate Aims for Restriction**

The restriction of freedom of expression should also pursue a legitimate aim. When we assess human rights instruments that recognized the restriction on freedom of expression, we can find the following legitimate aims: Respect for the rights or reputations of others and Protection of national security, public order, public morals and etc.

### **2.5.1.3 Necessary and Proportionate**

The third criterion stated by human rights instruments for the restriction of the freedom of expression is the requirement of necessity. The UNHRC on General Comment No. 34 also reaffirms the requirements of necessity and proportionality. Accordingly, the limitation or restriction on the right to freedom of expression which is provided by law must also be necessary and proportionate to achieve one of the goals outlined as a legitimate ground for restriction.<sup>98</sup>

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<sup>92</sup> Bresner(2015), supra n 71, p.31.

<sup>93</sup> Frank, R, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (2010), A/HRC/14/23 para. 79.

<sup>94</sup> *ibid*, para.79(e-f).

<sup>95</sup> *ibid*,para. 79(d).

<sup>96</sup> *ibid*.

<sup>97</sup> *ibid*,para. 79(e).

<sup>98</sup> General Comment No. 34(2011), supra n 71, para.36.

Necessary, here, means that there are no other options to achieve the stated goal apart from restricting or limiting freedom of expression. In determining whether a restriction on the right to freedom of expression is necessary, there are no objective criteria. But the ECtHR stated that, there should be an assessment of whether or not there is a “pressing” or “substantial need” for the restriction or limitation and the restriction of the right must be rationally connected to protecting the interest at stake. With regard to the proportionality, Toby Mendel stated that the restriction would not be justified unless the benefit of protecting the interest must outweigh the harm caused by restricting freedom of expression.<sup>99</sup>

In general, we can conclude that the right to freedom of expression is restricted when the above three criteria is fulfilled.

### **2.5.2 Totally Prohibited Grounds**

In addition to the three part test, freedom of expression is also limited by totally prohibited grounds expressed by human rights law. For example, these kinds of prohibitions are apparently recognized under sub-article 3 of Article 29 of the UDHR which reads as: ‘These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations’.<sup>100</sup>As provided on Article 1(3) of the charter promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion is one of the purposes of UN.<sup>101</sup> Therefore, we can say that the exercise of the right to freedom of expression contrary to the promotion and respect for other human rights is prohibited.

Under the ICCPR, freedom of expression may also be limited by invoking Article 20 of the Covenant, which requires States Parties to prohibit by law any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Though there were great challenges during the draft,<sup>102</sup> finally ICCPR provided a compulsory restriction on this type of speech on the right to freedom of expression.<sup>103</sup>

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<sup>99</sup> Mendel, *supra* n 53, p.19; see also Bresner(2015), *supra* n 71, p.34.

<sup>100</sup> UDHR(1948), *supra* n 1, Art 29(3).

<sup>101</sup> UN Charter(1945), Art 1(3).

<sup>102</sup> During the drafting of this Article some states expressed their concern about the adoption of such an article on the ground that it may lead to abuse and have a detrimental impact upon the right to freedom of expression. They argued that legislation would not be an effective method of dealing with the problem of national, racial, religious hostility, and that if propaganda for war or advocacy of hatred posed a serious threat to public peace, Article 19 (3) could be

The ICERD also totally prohibited all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.<sup>104</sup> Under this ground of limitation, freedom of expression is totally prohibited without the requirement of any precondition.

## 2.6 Hate Speech and its Regulation under International Human Rights Law

### 2.6.1 Defining Hate Speech

Hate speech is an evolving concept which is understood at different times with several terms,<sup>105</sup> and it is also a contested concept which is defined and used variously by different States, academics and persons. For example, C. R. Lawrence, Matsuda, Delgado, and Crenshaw defined it as speech that has a message of racial inferiority which is directed against a member of a historically oppressed group, and which is persecutory, hateful, and degrading.<sup>106</sup> Here they defined narrowly only from the perspective of race. In the same year, Smolla also narrowly defined it as '*a generic term that has come to embrace the use of speech attacks based on race, ethnicity, religion, and sexual orientation or preference.*'<sup>107</sup> Here, Rodney used the harm principle to define hate speech by identifying only four grounds of attack: race, ethnicity, religion, and sexual orientation or preference.

The definition of hate speech is also given by Coliver who defined it as '*expression which is abusive, insulting, intimidating, harassing and/ or which incites to violence, hatred or discrimination based on that person's identification with a group on such grounds as race,*

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invoked. See Boerefijn, I and Oyediran, J 'Article 20 of the international Covenant on Civil and Political Rights', in Sandra Coliver et al. (eds), *Striking a Balance, Hate Speech, Freedom of Expression and Non discrimination* (1992), p.29.; See also McGoldrick, D & O'Donnell, T 'Hate-speech Laws: Consistency with National and International Human Rights Law' 18 *LEGAL STUD.*(1998),p.471.

<sup>103</sup> Joseph, S, Schultz, J and Castan, M, *The International Covenant on Civil and Political Rights: cases, materials, and commentary, 2nd edn*, (2004), p. 517.

<sup>104</sup> ICERD(1965),supra n 9.

<sup>105</sup> In general, racist speech, hate speech, hate expression, racial hatred, group libel and racial vilification are the terminologies that are used throughout the history as an alternative term. For example, in the late 1920s and early 1930s it was known as 'race hate', in the 1940's it was generally called 'group libel', in 1980's 'hate speech', 'hate expression' and 'racist speech' became the most common terms to express similar idea. See Samuel Walker, S *Hate Speech: The History of an American Controversy* (1994) as cited in Banks, J *European Regulation of Cross-Border Hate Speech in Cyberspace: The Limits of Legislation* 19 *EJC.CL.CJ* (2011), PP.1-2.

<sup>106</sup> Lawrence et al(1993),supra n 11.

<sup>107</sup> Smolla,R *Free Speech in an Open Society* (1993), p.152.

*ethnicity, national origin or religion*'.<sup>108</sup>This definition seems comprehensive and broader than the definition given above.

Similarly UNESCO also defined hate speech as '*expressions that advocate incitement to harm [...] based upon the targets being identified with a certain social or demographic group*'.<sup>109</sup>This definition is again narrowly defined in comparable with the understanding of hate speech by council of Europe. The Council of Europe stated that hate speech is understood as:

*....all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.*<sup>110</sup>

Here, UNESCO only recognizes expressions that advocate incitement to harm while Council of Europe recognizes all forms of expression which spread, promote or justify hatred in addition to incitement. On the other hand, the potential targets recognized by Council of Europe are minorities, migrants and immigrants while UNESCO recognizes social or demographic groups in general terms. This indicates that hate speech is defined differently in the context of each organ.

However, since the above definitions given by different scholars and other bodies had its foundation in the ICERD<sup>111</sup> and ICCPR,<sup>112</sup> for the purpose of this thesis we can define it based on those human rights instruments. As per Article 20(2) of the ICCPR, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Likewise as per article 4 of ICERD all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin are

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<sup>108</sup> Coliver, S (Eds.) *Striking a Balance: Hate Speech, Freedom of Expression and Non-discrimination* (1992), p.363.

<sup>109</sup> UNESCO, *Countering online hate speech* (2015) as cited in PRISM, *Backgrounds, Experiences and Responses to Online Hate Speech: A Comparative Cross-Country Analysis* (2015) p. 6.

<sup>110</sup> Council of Europe, *Recommendation (97)20 of the CoE*, (1997) as cited in PRISM, *Backgrounds, Experiences and Responses to Online Hate Speech: A Comparative Cross-Country Analysis* (2015), p.6.

<sup>111</sup> Article 4 of ICERD declares among other things the prohibition of all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin.

<sup>112</sup> Most of the definitions given on hate speech were defined in words similar to those used in Article 20 of the ICCPR such as speech "advocating" or "inciting" acts of discrimination or violence towards a group of people or an individual based on hatred for their nationality, race, religion, or any other immutable characteristic.

prohibited. Therefore, from the cumulative reading of the provisions of article 19(2) of ICCPR and article 4 of ICERD, for the purpose of this thesis hate speech is defined as any kind of expression that disseminates, advocates or incites hatred, discrimination or violence toward an individual or group on the basis of an identified characteristics such race, color, religion, national, ethnic origin and other identified discriminatory grounds.

### **2.6.2 How Hate Speech Discern from Freedom of Speech?**

Next to the definition of hate speech the other burning question often asked is about the boundaries of free speech and hate speech. Yet, the finding of the concrete boundaries of the right to freedom of speech is the difficult one because of the absence of the agreed definition and scope of both terms. Therefore in order to draw the line that separates protected from unprotected speech or allowable free speech from prohibited hate speech, a thorough assessment of the circumstances of each case is necessary.

For the time being it is important to note regarding this issue that in 2012 Office of the United Nations High Commissioner for Human Rights(OHCHR) issued an important guiding principles called '*Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*'.<sup>113</sup> This principle proposed a six-part threshold test which is used to discern prohibitions which include hate speech from freedom of expression depending on Article 20(2) of the ICCPR. These are:

1. The social and political context prevalent at the time the expression was made and disseminated, in terms of the existence of conflicts or tensions within society, among groups; present or historic acts of violence or discrimination targeting members of particular groups; or frequent negative stereotyping of particular groups.
2. The speaker, in terms of his position or status and his influence or authority over the audience.
3. The intent, which could be indicated by analyzing the language the speaker uses, as well as the scale and repetition of expressions.

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<sup>113</sup> Office of the United Nations High Commissioner for Human Rights(OHCHR), *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Conclusions and recommendations emanating from the four regional expert workshops organized by OHCHR, in 2011, and adopted by experts in Rabat (2012)*.

4. The content of expression, in terms of the degree to which the expression was provocative and direct; the severity of the harm advocated; and the form, style, and nature of the arguments used.
5. The extent of speech, in terms of its reach, public nature, magnitude, frequency and the medium of dissemination.
6. The likelihood of the occurrence of the harm in terms of the existence of its degree of risk and reasonable probability.

These six criteria are an important one to identify hate speech, expression that disseminates advocates or incites hatred, discrimination or violence toward an individual or group on the basis of identified characteristics such race, color, religion, national, ethnic origin and other identified discriminatory grounds, from free speech which is allowable.

### **2.6.3 Regulation of Hate Speech**

There is no common agreement on the regulation of hate speech. On the one hand some states like USA and some scholars oppose the regulation of hate speech by arguing hate speech as part of freedom of expression and advocating only very limited restriction of freedom of expression.<sup>114</sup> Those who oppose the regulation of hate speech argue that any restrictions on hate speech will open the door to unacceptable restrictions on speech that ought to be protected since there is no principled way of drawing a line between the two.<sup>115</sup> For example, Irene Nemes opposed the regulation of hate speech expressing with example that *'if today the Nazis are prevented from marching on a street with a high Jewish population, then tomorrow anti-government political demonstrations may also become illegal'*. Again Nemes added that *'when there is government regulation banning cross burning today, tomorrow it may also uphold government regulation preventing political dissent against any action of the government'*.<sup>116</sup> So, they opposed the limitation of the right to freedom of expression by government regulation of hate speech.

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<sup>114</sup> Bakircioglu(2008),supra n 15),p.14; Mchangama, J 'The Problem with Hate Speech Laws'13 *The Rev.of Faith &Int'l Affairs*(2015),p.75.

<sup>115</sup> See supra note 102.

<sup>116</sup> Nemes, E 'Regulating Hate Speech in Cyberspace: Issues of Desirability and Efficacy' 11 *Inf. Com. Tech.L*(2002),pp.193-195.



On the other hand, there are also many scholars and states who argue for the regulation of hate speech based on different grounds.<sup>117</sup> Under this title the author will discuss the justifications of the regulation of hate speech which is based on the theoretical justifications of the right to freedom of expression itself and the harms it brings particularly the harm of hate speech on human rights of the victim.

### **2.6.3.1 Justifications of Freedom of Expression vs. Regulation of Hate Speech**

When someone thinks about the regulation of hate speech, the question of whether hate speech fulfils any of the justifications underlying freedom of expression needs an answer because when speech does not fulfill any of the rationales for free speech protection, it is justifiable to introduce restrictions.<sup>118</sup> Therefore, this part is devoted to the analyses of the issues of whether the regulation of hate speech is supported by justifications given for the protection of freedom of expression.

#### **2.6.3.1.1 Justifications from Truth vs. Hate Speech**

Those who support for the absolute protection of free speech argue that making hate speech as a limitation of the right to freedom of expression injures the operation of the marketplace of ideas.<sup>119</sup> Because they believe that unregulated freedom of expression will ultimately lead to the discovery of truth. According to this argument allowing even harmful hate speech contributes to a greater diversity of opinions more likely to yield truth in the long run than prohibiting it. They assert that all should be heard as the truth will emerge from the differing voices.

However hate speech does not fulfill this theoretical justification. Firstly, assuming that everyone can equally access and participate in the expression is wrong because most of the time in multinational societies, the hate mongers and the victim's of hate may not equally express their idea. For instance, minorities cannot understand and speak the language of which hate messages were expressed. Secondly, victims of hate speech especially members of a minority group are not

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<sup>117</sup> For example, some scholars justify for the regulation of hate speech arguing that hate speech has no purpose in society. See Mendel, supra n 53,p.9. Others also argue for the regulation of it based on the harm of hate speech. Waldron (2012), supra n 16; Benesch(2008),supra n 30,p.497; Lawrence et el.(1993),supra n 11.

<sup>118</sup> Wolfson,N *Hate Speech, Sex Speech, Free Speech* (1997), PP.1-2.;See also Mackeown(2014),supra n 54,p. 32.

<sup>119</sup> Baez, B *Affirmative Action, Hate Speech and Tenure: Narratives about Race and Law in the Academy* (2013), p.46.

encouraged to defend their opponents majority hate speech. Thirdly, hate speech is a direct attack on victims' identity rather than encouraging victims to add their voice to the marketplace.<sup>120</sup>

Therefore, since truth cannot be achieved by silencing victims of hate speech by attacking with hate speech, this argument supports the prohibition of hate speech.

#### **2.6.3.1.2 Justifications from Democracy vs. Hate Speech**

According to this justification, democracy is best served through a number of opinions being aired freely.<sup>121</sup> For this justification, if the government involved in regulation of certain ideas through prohibition, the government would no longer be democratic, and thus its citizens could no longer be free and equal persons.

Again this argument does not justify non-regulation of hate speech because of the following reasons. First, as rightly stated by Mackeown, Barendt and Regel, justification from democracy is primarily concerned with the protection of political speech against the government and it carries less weight when concerned with hate speech by private individuals directed at other private individuals.<sup>122</sup> This means the theory is limited to the protection of political speech,<sup>123</sup> and would not extend to hate speech. Additionally, Thesis also stated that, '*Hate speech provokes racial fears and hatred, and is thus antithetical to the social and political pluralism upon which democracy is based.*'<sup>124</sup> Wolfson also persuasively argued that when the speech is communicated in a society where racial prejudice exists, that society cannot be viewed as promoting democracy.<sup>125</sup>

Furthermore, assuming the government who regulates hate speech as 'undemocratic and its citizens could no longer be free and equal persons' is not supported with facts on the ground

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<sup>120</sup> Wolfson(1997),supra n 118,p.84; Leets, L 'Experiencing Hate Speech: Perceptions and Responses to Anti-Semitism and Antigay Speech' 58 *J of Soc. Sci.Iss.*(2002), pp.341-344; Mackeown(2014),supra n 54,p.36.

<sup>121</sup> Mackeown(2014),supra n 54,p.37.

<sup>122</sup> ibid; Barendt(1987), supra n 6,p. 22; Regel, A 'Hate Propaganda: A Reason to Limit Freedom of Speech' 49 *Sask LR*(1984-1985), p.308.

<sup>123</sup> ibid 317; Sadurski(1999),supra n 6, pp.21-22.

<sup>124</sup> Tsesis, A 'Dignity and Speech: The Regulation of Hate Speech in a Democracy' 44 *Wake For. L Rev*(2009),pp.505 - 512.

<sup>125</sup> Wolfson(1997),supra n 117,pp.86-87; Mackeown(2014),supra n 54,p.37.

because many western states which prohibited hate speech are democratic.<sup>126</sup> On this point Boyle strongly argued that a democratic society cannot be measured by restriction in particular cases.<sup>127</sup> For Boyle a society that respects freedom of expression is not one where there are no restrictions on that freedom and even a society that does not fight against the seeds of its own destruction cannot be deemed healthy.<sup>128</sup>

Therefore, we can conclude that since hate speech increases the existing inequalities and undermine democracy,<sup>129</sup> again this justification supports the regulation of hate speech.

### **2.6.3.1.3 Justifications from Individual Self-Development and Self-fulfillment vs. Hate Speech**

According to this justification through exercising freedom of expression, individuals develop critical reasoning skills and a sense of self,<sup>130</sup> and any restrictions placed on freedom expression of an individual will hinder his or her personal growth and development.<sup>131</sup> This justification views freedom of expression, as a vital to human self-development because it assumes that self-development is an absolute right that should not be affected by other interests, such as respect for the dignity of all members of society.<sup>132</sup>

Again this justification cannot work for hate speech because of the following reason. First of all this justification only assumes individual self fulfillment and self-development from the perspective of the speaker without the consideration of its harm on targeted groups. Hate speech has been demonstrated to have damaging physical and psychological effects on its targets and the wider racial group of which they are or perceived to be a member.<sup>133</sup> For this reason, regulations restricting racist hate speech actually promote self-development, and the chief reasons advanced

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<sup>126</sup> For example, Germany, France, Canada, Great Britain and Sweden among others, where government commitment to freedom of expression is strongly held, but they limited this right by prohibiting hate speech.

<sup>127</sup> Kevin Boyle, K 'Freedom of Expression and Restriction on Freedom of Expression' *Tulsa J. Comp. & Int'l L.* (2002) as cited in Mackeown(2014),supra n 54,p.2.

<sup>128</sup> Bakircioglu(2008),supra n 15, p.14.

<sup>129</sup> Tsesis(2009),supra n 124; Mackeown(2014),supra n 54,p.39.

<sup>130</sup> Parekh, B 'Is There a Case for Banning Hate Speech' in Michael Herz and Peter Molnar (eds) *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (2012), P.43.

<sup>131</sup> Barendt(1987), supra n 6, p.14.

<sup>132</sup> Kretzmer, D 'Freedom of Speech and Racism' 8 *CARDOZO L. REV.*(1987), pp.482–83.

<sup>133</sup> Berman(2015), supra n 69, p.82.

in support of free speech do not justify protecting speech inciting racial discrimination, hatred, and violence.<sup>134</sup>

#### **2.6.3.1.4 Justifications from Tolerance vs. Hate Speech**

As we have seen above, freedom of expression should be protected to promote the right attitudes of tolerance among the audience. Similar to other justifications this justification does not protect hate speech since there no tolerance in hate speech. Tolerance may be promoted only when hate speech is regulated.

In general, hate speech is inconsistent with the free speech justifications, and thus the legal regulation of it can be defended on theoretical grounds.

#### **2.6.3.2 The Harm of Hate Speech on Human Rights of the Victim**

All human rights are universal, indivisible, interdependent and interrelated.<sup>135</sup> These principles are obvious in the discussion of hate speech in relation to other human rights because under the umbrella of freedom of expression, hate speech poses a substantial risk to the protection and promotion of other human rights of individuals unless properly restricted. Hate speech damages human rights of the victims which are related with personal freedom, dignity, and personhood.<sup>136</sup> So, since there is no convincing rationale for legally restricting hate speech until we establish that hate speech is harmful to the rights of its targets, the discussion of rights endangered by hate speech is necessary here.

##### **2.6.3.2.1 The Right to Non-discrimination**

The principle of non-discrimination is one of the fundamental principles of human rights. Various formulations of prohibition of discrimination are contained in, for example, the Charter of the United Nations,<sup>137</sup> the UDHR,<sup>138</sup> the ICCPR,<sup>139</sup> and the CRC.<sup>140</sup> Some instruments are

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<sup>134</sup> *ibid*; Mackeown(2014),supra n 54,p.43.

<sup>135</sup>Vienna Declaration and Programme of Action (1993), para.2&5 available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?Opendocument) visited on 12 March 2017.; See also the Grand Bay (Mauritius) Declaration and Plan of Action (1999), Art 1 available at <http://www.achpr.org/instruments/grandbay/> visited on 12 March 2017; See also Kigali Declaration (2003),Art 1 available at <http://www.achpr.org/instruments/kigali/> visited on 12 March 2017.

<sup>136</sup> Gloria Cowan et al.(2002),supra n 15; Bakircioglu(2008),supra n 15, p.5.

<sup>137</sup> UN Charter (1945), supra n 7, Art 1(3), 13(1) (b), 55(c) and 76.

<sup>138</sup> UDHR(1948), supra n 1, Art 2 and 7.

<sup>139</sup> ICCPR(1966), supra n 2, Art 2(1) and 26.

also expressly aimed at addressing specific prohibited grounds for discrimination. For example, the CERD and CEDAW are the major one in which Race and Women are specifically addressed respectively. Other instruments are also aimed at addressing the prohibition of discrimination in the exercise of one or several rights. For example, While ILO 111 dealt with discrimination in the exercise of the right to work, and the UNESCO convention dealt against discrimination in women.

Discrimination is defined by different human rights instruments as it refers to: Any distinction, exclusion or preference, be it in law or in administrative practices or in practical relationships, between persons or groups of persons, made on the basis of race, color, sex, religion, political opinion, nationality or social origin, which have the effect of nullifying or impairing the equal enjoyment of any human rights.<sup>141</sup>

When we see the impact of hate speech on this right, it is clear that the concept of discrimination lies at the very heart of hate speech,<sup>142</sup> because hate speech destructs this right by inciting to discrimination, exposing to hatred and contempt based on certain characteristics, like their way of living, religion, language, physical aspect, ideology and others. For example, Jews during the Third Reich were depicted as wealthy parasites responsible for the crisis and poverty of German people.<sup>143</sup> Roma today, in Italy and elsewhere, are generally represented as thieves, dirty and lacking of discipline.<sup>144</sup> Migrants and asylum-seekers are described as a danger for European welfare. All these examples of hate speech are aimed at creating discrimination which is totally prohibited by human rights law. Generally, starting from the very definition of hate speech many expressions of hate are the danger for the right to non-discrimination.

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<sup>140</sup> CRC(1989),supra n 74, Art 2.

<sup>141</sup> CERD(1965),supra n 9, Art1 (1); Convention on the Elimination of All Forms of Discrimination against Women (1988), Art 1;Discrimination(Employment and Occupation) Convention (ILO 111)(1958), Art 1(1); Convention Against Discrimination in Education(1960), Art 1(1).

<sup>142</sup> See Preventing,Redressing and Inhibiting hate speech in new Media(PRISM), Hate Crime and Hate Speech in Europe: Comprehensive Analysis of International Law Principles, EU-wide Study and National Assessments(2015),p.15 available at <http://www.prismproject.eu/hate-crime-and-hate-speech-in-europe-comprehensive-analysis-of-international-law-principles-eu-wide-study-and-national-assessments/pdf> visited 12 December 2016.

<sup>143</sup> *ibid.*

<sup>144</sup> *ibid.*

### 2.6.3.2.2 The Right to Equality

The right to equality is also the heart of human rights as stated on many human rights instruments and Ethiopian legislations. The FDRE Constitution, for example, requires the full respect of individual and people's fundamental freedoms and rights to live together on the basis of equality.<sup>145</sup> Article 25 of the constitution also reiterated in the Constitution that 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.'<sup>146</sup> This right also requires the prohibition of discrimination on the bases of the list of non-exhaustive categories such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>147</sup>

However, the right to equality will be endangered when there is hate speech because it provokes the inferiority or superiority of some groups based on specified grounds.<sup>148</sup> It denies the members of the victimized group the right to participate as members of equal worth in the social life of the community of the State<sup>149</sup> and even the possibility of a fruitful dialogue and confrontation among the groups, based primarily on reciprocal respect and recognition of possible differences. It also fosters inequality by playing a major role in the construction of social reality from the demonization of targeted groups such as minority groups, immigrants, women and others. For example, the role of hate speech in the Holocaust is a recent memory.

### 2.6.3.2.3 The Right to Human Dignity

Dignity is a moral concept that is specially associated with considerations of rank, status, and hierarchy.<sup>150</sup> It is a matter of how one person is treated in light of the attitudes that prevail in her community, including her own attitudes, about her worth, standing, or esteem, relative to others, and relative to the community as a whole.<sup>151</sup> The dignity of persons is the basis for fundamental human rights and is inviolable and must be respected and protected.

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<sup>145</sup> FDRE Constitution (1995), supra n 24, Preamble.

<sup>146</sup> *ibid* Art 25.

<sup>147</sup> *ibid*.

<sup>148</sup> Berman(2015),supra n 69, p.52.

<sup>149</sup> Timmermann , W 'Incitement, Instigation, Hate Speech and War Propaganda in International Law'(2005) LL.M. thesis on file at Centre Universitaire de Droit International Humanitaire(CUDIHI) in International Humanitarian Law),p. 62.

<sup>150</sup> Simpson, R 'Dignity, Harm and Hate speech' 32(6) *L.Phil.* (2013), p.8.

<sup>151</sup> *ibid*; See also Waldron(2012),supra n 16,pp.105-106.

The principle of the protection of human dignity is expressed under many human rights instruments. Moreover, this right is clearer and detail under ACHPR.<sup>152</sup> The provision describes the right to be respected with dignity as ‘inherent in a human being’ and then lists certain examples of practices which would constitute violations of this right. The FDRE Constitution under Articles 24 also provides that ‘everyone has the right to respect for his human dignity, reputation and honor.’<sup>153</sup>

Human dignity is at the core of the harm of hate speech because at the first place the speaker undermines or gives no recognition to a person’s dignity.<sup>154</sup> For example, a racial insult or other hatred behaviors which advocates the superiority or inferiority of one group over the other, or any kind of discriminations are a direct violation of the victim’s right to be treated respectfully.<sup>155</sup> Additionally, it violates human dignity by humiliating human beings as treating or seeing them as nonhuman or subhuman.

#### **2.6.3.2.4 Other Human Rights**

Additionally, human rights of the target group – particularly the right to life and liberty – are also violated by hate speech because hate speech is particularly suited for the commission of crime against humanity and genocide by encouraging widespread or systematic attack directed against the victim group.<sup>156</sup> For example, the road to genocide in Rwanda which resulted in the killing of 800,000 lives and which displaced 1.8 internally and 2.1 migrants was preceded with hate

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<sup>152</sup> Article 5 of African Charter provides: ‘Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, in human or degrading punishment and treatment shall be prohibited.’ See ACHPR (1981),supra n 5, Art 5.

<sup>153</sup> FDRE Constitution(1995),supra n 24, Art 24.

<sup>154</sup> Waldron (2012), supra n 16, p.5; Delgado, R ‘Words that Wound: A Tort Action for Racial Insults, Epithets and Name Calling’ 17 *Harv.Civ.R—Civ. Libe. LR*(1982),p.133.

<sup>154</sup> Delgado,R & Stefancic, J *Must We Defend Nazis? Hate Speech, Pornography, and the New First Amendment* (1997), P. 8.

<sup>155</sup> *ibid.*

<sup>156</sup> Faustin, M ‘Preventing Genocide by Fighting against Genocide’4 *IJAR* (2016), p.117; see also Mengistu(2012), supra n 17, p.360-361. Supporting this fact, the International Criminal Tribunal for Rwanda (ICTR) in the media case opined that “...hate speech can constitute genocide, incitement to genocide, and crimes against humanity.” See *The Media Case* (2003), supra n 18; See also Dovell,E ‘Hate Speech Leads to Genocide’ *World Policy Blog*,11 November 2010 available at <http://www.worldpolicy.org/blog/2010/11/11/hate-speech-leads-genocide> visited on 11 April 2017.

speech.<sup>157</sup> Similarly, the harm of hate speech was manifested during 2007 Kenyan elections, and was considered as a key channel through which the violence was fuelled, which tragically claimed the lives of over a thousand people, and the displacement of over 600,000.<sup>158</sup>

From this, we can understand that hate speech is dangerous not only for the protection of human rights of the victim such as the right to equality, life, liberty, dignity and non discrimination in general, but also causes for international crimes such as genocide, summary execution and others. Many scholars also agree with this.<sup>159</sup> Even most of the liberals who argue for the non regulation of hate speech also accept that hate speech does not respect others' equality, dignity

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<sup>157</sup> In Rwanda, there were many examples of hate speech expressed by the media before the commencement of the genocide. For example, the newspaper called 'Kangura' had published hate speech such as 'Hutus who married Tutsi or engaged in business with Tutsi would be traitors', and that 'all posts in politics or administration should be reserved for Hutus exclusively'. See appeal to the Bahutu conscience (with the Hutu Ten Commandments),Kangura No.6 available at <http://www.rwandafile.com/Kangura/k06a.html> visited on 11 April 2017. In 1991 it also published a cartoon showing a Tutsi massacring Hutus with the caption, 'Flee! A Tutsi will exterminate the Hutus'. The station 'Radio-Télévision Libre des Milles Collines (RTLM) also advocated hate claiming that there is differences between Hutus and Tutsi on the disproportionate share of Tutsi wealth and power. It also recalled the horrors of past Tutsi rule and it encouraged listeners to fight, and even broadcasted names of individuals and places that were to be targeted. This and other hate speech expressed through different methods have resulted in the genocide which resulted in the loss of many lives. Schabas(2000),supra n 14; see also Mello, M 'Hagan v. Australia: A Sign of the Emerging Notion of Hate Speech in Customary International Law' 28 *Loy.L.A.Int'l &Comp.L.Rev.* (2006),p.368;See also Mengistu(2012), n 17, pp.360-361.

<sup>158</sup> In Kenya, the media, especially local language media expressed hate which called for the eviction of other ethnic groups. For example, the 'Kalenjin-language radio station KASS FM' called for the expulsion of the Kikuyu and is contributed to a climate of hate, negative ethnicity, and in the incitement of violence in the Rift Valley. During the campaign political opponents also used words that increased ethnic stereotypes. For example, the PNU argued a Kihii ('uncircumcised boy') as they would not be able to lead the country. This hate statement was directed at Odinga and his ethnic and cultural background. Additionally preceding and during the Kenyan violence, inciting messages widely disseminated not only through traditional media but also text messages and other social medias were also used. See from Kenya post election crisis(2008) available at <http://www.irinnews.org/in-depth/76116/68/kenya-s-post-election-crisis> visited on 29 February 2017; See also Kenya National Commission on Human Rights *on the brink of the precipice: A human rights account of Kenya's post-2007 election violence*(2008) available at [http://www.wikileakskenya.co.ke/wp\\_content/uploads/2012/02/KNChR-on-The-Brink-of-ThePrecipice-Final-August-2008.pdf](http://www.wikileakskenya.co.ke/wp_content/uploads/2012/02/KNChR-on-The-Brink-of-ThePrecipice-Final-August-2008.pdf) visited on 15 January 2017.

<sup>159</sup> Nowak, M *UN Covenant on Civil and Political Rights: CCPR commentary*(1993), p. 474;Partsch, K 'Freedom of Conscience and Expression, and Political Freedoms' in Louis Henkin(eds),*The International Bill of Rights: The Covenant on Civil and Political Rights* (1981) ,p.229; Catlin(1994), n 19,p.810;Kretzmer(1987),supra n 136,p.467; Altman, A 'Freedom of Expression and Human Rights Law: The Case of Holocaust Denial' in Maitra, I and McGowan, M (eds) *Speech and Harm: Controversies over Free Speech* (2012),p.31;See also Elbahtimy, M 'The Right to be Free from the Harm of Hate Speech in International Human Rights Law'(2014),p.6.



and other human rights of the victim.<sup>160</sup> Therefore, it is not surprising if we regulate statements which deny those human rights.<sup>161</sup>

Having the harms of hate speech and the absence of persuasive justifications for its protection in mind, now let us turn our discussion to assess relevant human rights law and identify the place of hate speech given to it within freedom of expression.

### **2.6.3.3 The Place of Hate Speech within Freedom of Expression under Human Rights Instruments**

As we have seen above the right to freedom of expression and its limitation were recognized under different international and regional human rights instruments and domestic legislations. Under this topic the author will assess the place given to hate speech within the limitation of freedom of expression under different human rights instruments which bind Ethiopia.

#### **2.6.3.3.1 Hate Speech as a Limitation of Freedom of Expression under UDHR**

The UDHR does not have a specific limitation for freedom of expression. But the right to freedom of expression is subject to the restrictions found in the general limitation clause of Article 29,<sup>162</sup> as well as in Article 7, which prohibits incitement to discrimination. After proclaiming the right to equality before the law and to the equal protection of the law, in its second sentence, Article 7 stated that all are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination. As expressed by Fariior, this clause was adopted with the understanding of the protection against propaganda of national, racial and religious hostility and hatred, as well as expression that incites discrimination.<sup>163</sup>

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<sup>160</sup> ibid 13; See also Baker, E 'Autonomy and Hate Speech', in Ivan Hare and James Weinstein (eds.), *Extreme Speech and Democracy* (2009), p. 143.

<sup>161</sup> Bear in mind that the inherent dignity, freedom from non discrimination and equality of every individual is the foundational axiom of international human rights which have risen to the level of customary international law. See Catlin(1994),supra n 163, p.796.

<sup>162</sup> Art 29 of the UDHR stated a general limitation clause that 'In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.' See UDHR(1948),supra n 1.

<sup>163</sup> Fariior, S 'Molding the Matrix: The Historical and Theoretical Foundations of International Law Concerning Hate Speech' 14 *BERKELEY J.INT'LL.* (1996), pp.16-19.

Additionally, the prohibition of the use of rights to destroy others' rights is another argument raised by scholars to justify the place of hate speech as a limitation of freedom of expression under UDHR. Furthermore, the prohibition of the exercise of rights and freedoms listed under UDHR contrary to the purposes and principles of the United Nations which is stated under Article 19(3) of UDHR may also be raised as a justification for the limitation of freedom of expression based on hate speech. Because as per Article 1(3) of the UN Charter promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion is one of the Purposes of the United Nations.<sup>164</sup> According to this, freedom of expression should not be exercised endangering other human rights. Therefore, since hate speech endangers the right to equality, the right to honor and reputation and other fundamental rights and freedoms, it should also be restricted.

Generally, we can conclude that, though not expressly recognized, the wordings of the UDHR stated under Article 29(2), along with Article 7, permit the limitations of freedom of expression based on hate speech.<sup>165</sup> However, since there is no clear recognition of hate speech, such kind of recognition does not make the regulation of hate speech effective as it is prone to different interpretations.

#### **2.6.3.3.2 Hate Speech as a Limitation of Freedom of Expression under ICCPR**

The place of hate speech as a limitation of freedom of expression is clearly recognized under ICCPR. This instrument clearly stated hate speech as a prohibited ground of expression. The first and most important provision regarding this issue is Article 20(2) which establishes that '*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*'. This provision requires states to prohibit expressions promoting racial, national and religious hatred that constitute incitement to racial discrimination, hostility or violence.

Additionally, hate speech is also considered as a limitation of the right to freedom of expression as per Article 19(3) based on the three part principle. According to this provision the exercise of freedom of expression may be subject to certain restrictions which shall only be provided by law

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<sup>164</sup> UN Charter(1945), supra n 7, Art 1(3).

<sup>165</sup> Farior(1996), supra n 163, pp.12-14; See also Edger, R 'Are Hate Speech Provisions Anti-Democratic?: An International Perspective' 26 *Am.U.Int'l L.Rev.* (2010), pp.126–27.; See also Berman(2015), supra n 69,p.51.

and are necessary for the respect of the rights or reputations of others. Therefore, since hate speech has the effect of violating the rights and reputation of others, it should be limited by law.

On a plenty of cases the UNHRC has also expressly indicated that the right to freedom of expression stated under Article 19 of the ICCPR does not offer protection for spreading racial or religious hatred. For instance, in the case of *J.R.T. and the W.G. Party v. Canada*,<sup>166</sup> in which Article 20 was directly invoked, the UNHRC found the anti-Semitic opinions disseminated through the telephone system constituted the advocacy of racial hatred and should be limited. In *Faurisson v. France*,<sup>167</sup> the Committee also clarified its position with respect to speech that involves Holocaust-denial stating that statements of holocaust denial violates the rights and reputation of others and that the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism and was necessary since the denial of the existence of the Holocaust constituted the principal vehicle for anti-Semitism. This case clarified holocaust denial as part of hate speech which should be limited.

Additionally, the jurisprudence of the UNHRC also show that other utterances of hate speech such as stereotyping of migrant communities, anti-Semitic attitudes and declarations<sup>168</sup>, and ideas based on racial superiority or hatred<sup>169</sup> were also considered as hate speech which should serve as a limitation of freedom expression.

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<sup>166</sup> On this case, a political party (W.G. Party) promoted the party's policies via tape-recorded messages that anybody could listen to simply by dialing a number. The messages were meant to warn any caller of the dangers of international finance and international Jewry leading the world into wars, unemployment and inflation and the collapse of world values and principles. On this case the defendant claimed his right to freedom of expression, but the Human Rights Committee found the defense inadmissible on the ground that the opinions that the applicant sought to disseminate through the telephone system obviously constituted the advocacy of racial or religious hatred, which Canada had an obligation under Article 20 (2) of the Covenant to prohibit. See *J. R. T. and the W. G. Party v. Canada*, Communication No. 104/1981, U.N. Doc. CCPR/C/OP/2, (1984), p.25.

<sup>167</sup> In this case, the Mr. Faurisson, in an interview, expressed his personal conviction that there had been no homicidal gas chambers for the extermination of Jews in Nazi concentration camps. See *Robert Faurisson v. France*, Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993(1996).

<sup>168</sup> In the case of *Malcolm Ross v. Canada*, a teacher was subjected to certain disciplinary measures because of his anti-Semitic attitudes and declarations. See from *Malcolm Ross v. Canada*, UN Human Rights Committee, CCPR/C/70/D/736/1997, (2000).

<sup>169</sup> In the Jewish community of Oslo and others case, statements of Mr. Sjolie as 'people and country are being plundered and destroyed by Jews' and 'Jews suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts', which is invoked based on the authority of Rudolf Hess and Adolf Hitler was considered as hate speech which should be limited because the committee has considered these statements to contain ideas based on racial superiority or hatred and it should be taken as incitement at least to racial discrimination, if not to violence.

In general, it is vivid that ICCPR and jurisprudence of UNHRC show that hate speech is considered as a limitation of freedom of expression which all member states should prohibit.

### **2.6.3.3.3 Hate Speech as a Limitation of Freedom of Expression under ICERD**

The ICERD was adopted in 1965 which is chronologically prior to ICCPR. This instrument is the most comprehensive one in which the issue of hate speech as a limitation of freedom of expression was indicated. This is apparent from Article 4 of the Convention.<sup>170</sup>

According to this provision hate speech is not only prohibited but also it imposes a further step on the state parties the obligation to criminalize it. The Committee on the Elimination of Racial Discrimination<sup>171</sup> also manifested a similar idea by giving general recommendations on the scope and requirements of Article 4 of the instrument. Accordingly, the committee noted that: Article 4 (a) requires States parties to penalize four categories of misconduct which is part of the definition of hate speech: The dissemination of ideas based upon racial superiority or hatred;

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See from, *The Jewish community of Oslo et al. v. Norway*, Communication No. 30/2003, U.N.Doc.CERD/C/67/D/30/2003 (2005).

<sup>170</sup> Article 4 of ICERD reads as follows:

*States parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia:*

*(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;*

*(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;*

*(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.* (emphasis added) See CERD(1965), supra n 9.

<sup>171</sup> The Committee on Elimination of Racial Discrimination is the organ responsible for monitoring compliance with the International Convention on the Elimination of All Forms of Racial Discrimination.

Incitement to racial hatred; Acts of violence against any race or group of persons of another color or ethnic origin; and Incitement to such acts.<sup>172</sup>

#### **2.6.3.3.4 Hate Speech as a Limitation of Freedom of Expression under ACHPR**

ACHPR is a regional treaty to protect human rights and fundamental freedoms in Africa. It recognized freedom of expression as fundamental right which is found in Article 9 of the convention which reads as:

*1. Every individual shall have the right to receive information.*

*2. Every individual shall have the right to express and disseminate his opinions within the law.*<sup>173</sup>

As understood from this provision, it does not stated clearly about the issue of limitation of freedom of expression in general and based on hate speech in particular. It only contains a claw back clause provision, ‘within the law’. There is no further qualification in such limitation unlike other human rights instruments like Article 19(3) of the ICCPR. But we can interpret the provisions of Article 2, 27 and 28 to justify the indirect recognition of hate speech as a limitation of freedom of expression.

As per Article 27, ACHPR stated that ‘*rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.*’<sup>174</sup>

Article 28 also states ‘*every individual shall have the duty to respect and consider his fellow beings without discrimination and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance*’.<sup>175</sup> Article 2 of the charter also guarantees equality and prohibits discrimination on a number of grounds namely race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status. Therefore, since hate speeches jeopardize other human rights like the right to equality, the right to dignity, the right to life and other similar rights of other fellow beings by inciting hate

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<sup>172</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No.15: Measures to eradicate incitement to or acts of discrimination* (1993), U.N. DOC. A/48/18 AT 114 (1994), par.3; See also Committee on the Elimination of Racial Discrimination, *General Recommendation No.7 Measures to eradicate incitement to or acts of discrimination*(1985), U.N. DOC. A/40/18 AT 120 (1985) par.3.

<sup>173</sup> ACHPR(1981),supra n 5.

<sup>174</sup> *ibid* Art 27.

<sup>175</sup> *ibid* Art 28.

and discrimination, we can say that freedom of expression could be limited on the ground of hate speech under Article 2, 27 and 28 of ACHPR. But still, just like that of UDHR, the place given to hate speech under this instrument is not clear and effective way of regulating hate speech because it does not put an obligation on states to regulate hate speech with clear wordings just like that of ICCPR and ICERD.

#### **2.6.3.4 The Experience of the Regulation of Hate speech under Different Jurisdictions**

Nations responded by enacting domestic and treaty law to address hate speech and to prevent its harmful effects.<sup>176</sup> But there are variations of the national approaches to the regulation of hate speech. Under this title the author wants to discuss the experience of USA, EU and from Africa, Rwanda and Kenya because EU member states, Kenya and Rwanda were the most experienced of all states on the harms of hate speech and regarding its regulation while on the contrary USA is one of the most proponent of freedom of expression.

##### **2.6.3.4.1 USA**

Freedom of expression is one of the most respected rights in USA. However, unlike other Western nations, where hate speech is prohibited entirely, the American approach allows hate speech under the protection of freedom of speech.<sup>177</sup> Under the jurisdiction of United States the laws prohibiting hate speech are impermissible unless they meet the ‘fighting words’<sup>178</sup> exception.<sup>179</sup> The First Amendment to the United States Constitution prohibits the state from restricting speech based on content. The U.S. approach argues that the best way to counter hate speech is through more speech rather than the suppression of such speech.<sup>180</sup>

The jurisprudence of the court has also showed that any expression should not be limited unless the expression is directed to incite or produce imminent lawless action and produce a clear and

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<sup>176</sup> Mello (2006), supra n 157, p.365; See also Rosenfeld (2003), n 23.

<sup>177</sup> Mello(2006),supra n 157,p.372;ibid.

<sup>178</sup> The Supreme Court in *Chaplinsky* held that fighting words are those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. See from *Chaplinsky v. New Hampshire*, U.S. Supreme Court, Appeal Judgments, File No. 255, (5 February 1942),p.568.

<sup>179</sup> Nemes(2002),supra n 116.

<sup>180</sup> McNamara, L & Solomon, T ‘the Commonwealth Racial Hatred Act 1996: Achievement or Disappointment’ 18 *ADELL.REV.*(1996) 259,273.

present danger. For example, in the case of *Terminiello v. the City of Chicago*, the Court decided that:

*Free speech should be protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. There is no room under our Constitution for a more restrictive view.*<sup>181</sup>

Likewise, in *Brandenburg v. Ohio*, the Court declared that the freedom of speech of the petitioner, a member of Ku Klux Klan, had to be protected, because the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.<sup>182</sup>

The court permitted under the guise of the exercise of the right to freedom of expression even the Nazi March in ethnically Jewish town of Skokie in the outskirts of Chicago.<sup>183</sup> Likewise cross burning were also protected as freedom of speech as it was decided by the court arguing that the state may choose to prohibit only those forms of intimidation that are most likely to inspire fear of bodily harm.<sup>184</sup>

In general in the United States, expressions of hatred are generally protected as free speech unless they constitute incitement to imminent violence.

#### **2.6.3.4.2 Europeans**

As a result of the Second World War and its bitter memories, the European approach to the regulation of hate speech is considerably different from the United States' approach. The European States have been more alert against the harm that might emerge from hate speech. For this reason, they concluded various conventions which directly regulate the issue of hate speech in its modern sense.

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<sup>181</sup> *Terminiello v. the City of Chicago*, U.S. Supreme Court, Judgment, File No. 272, (16 May 1949).

<sup>182</sup> *Brandenburg v. Ohio*, U.S. Supreme Court, Judgment, File No. 492,(9 June 1969).

<sup>183</sup> *National Socialist Party v. Skokie*, U.S. Supreme Court, Judgment, File No. 76-1786, (14 June 1977).

<sup>184</sup> *Virginia v. Black et al.*, U.S. Supreme Court ,Certiorari to the Supreme Court of Virginia, File No. 01-1107, (7 April 2003); *R.A.V. v. City of St. Paul*, U.S. Supreme Court, Judgment, File No.90-7675, (22 June 1992).

For instance, Council of Europe has approved the Convention on Cybercrime<sup>185</sup>, by taking the issue of hate speech very seriously. This convention was backed up by a Protocol that defines and outlaws hate speech on computer networks.<sup>186</sup> Accordingly, nations that adopt the Protocol will be required to criminalize the commission of racist or xenophobic acts through computer systems (such as posting ‘hate speech’ material on the Internet).<sup>187</sup> The Protocol also makes it mandatory for ratifying nations to enact domestic legislation making the proscribed acts criminal offences, as well as enacting effective enforcement provisions.

The European Union also made the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law which affirms racism and xenophobia as a direct violations of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles upon which the European Union is founded and which are common to the Member States.<sup>188</sup> This Decision obliges each Member State of the European Union to take the measures necessary to ensure that public inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin, as well as publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes to make punishable.

In addition to the above joint action, many European states also regulated hate speech by penalizing and taking other measures with their national laws. For example, among other states Germany,<sup>189</sup> Denmark,<sup>190</sup> France,<sup>191</sup> Netherlands,<sup>192</sup> and United Kingdom<sup>193</sup> criminalized the act of hate speeches.

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<sup>185</sup> Convention on Cybercrime(2001).

<sup>186</sup> Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems(2003).

<sup>187</sup> *ibid*, Art 3(1), 4, 5(1), and 6(1).

<sup>188</sup> The Council Framework Decision of European Union No. 2008/913/JHA of 2008.

<sup>189</sup> Germany enacted hate speech laws covering defamation, slander, public incitement to commit crimes and threats of violence backed up by prison sentences for Holocaust denial or inciting hatred against minorities. It now aims to update these rules for the social media age. See from Reuter’s news available at <http://www.reuters.com/article/us-germany-fakenews-idUSKBN16L14G> visited on 11 December 2016.

<sup>190</sup> Article 266(b) of the Danish Criminal Code criminalizes "expressing and spreading racial hatred" available at <http://www.legal-project.org/issues/european-hate-speech-laws> visited on 11 December 2016.



### 2.6.3.4.3 Africa: Kenya and Rwanda

Kenya has witnessed the devastating corollaries of hate speech that fuelled violence post 2007 election. Learning from this harms, Kenya started the legislation of hate speech by ‘The Prohibition of hate Speech Bill’.<sup>194</sup> Then by the adoption of the 2010 Constitution of Kenya, hate speech legislation has an express constitutional endorsement.<sup>195</sup> The revised Penal Code of 2009 also included two paragraphs, which are particularly relevant for the regulation of hate speech.<sup>196</sup> Additionally, Kenya have signed and ratified the ICCPR, ICERD and ACHPR among the relevant international instruments on hate speech. Therefore, Kenya will also bound by the obligations of ICCPR and ICERD in regulation of hate speech.

Similarly, Rwanda also signed and ratified the ICCPR, the Genocide Convention and the ICERD and is thus obliged to implement the international criteria prescribed by those conventions. Additionally, Rwandan government also introduced a series of laws on the regulation of hate

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<sup>191</sup> Section 24 of the press law of 1881 of France criminalizes incitement to racial discrimination, hatred, or violence on the basis of one's origin or membership (or non-membership) in an ethnic, national, racial, or religious group. A criminal code provision likewise makes it an offense to engage in similar conduct via private communication. Available at <http://www.legal-project.org/issues/european-hate-speech-laws> visited on 13 December 2016.

<sup>192</sup> Articles 137(c) and 137(d) of the Dutch Criminal Code operate to prohibit making public intentional insults, as well as engaging in verbal, written, or illustrated incitement to hatred, on account of one's race, religion, sexual orientation, or personal convictions available at <http://www.legal-project.org/issues/european-hate-speech-laws> visited on 11 December 2016.

<sup>193</sup> Section 18(1) of the public order Act of 1986 (POA) states that ‘*a person who uses threatening, abusive, or insulting words or behavior, or displays any written material which is threatening, abusive, or insulting, is guilty of an offence if: a) he intends to thereby stir up racial hatred, or; b) having regard to all the circumstances racial hatred is likely to be stirred up thereby*’ available at [http://www.legislation.gov.uk/ukpga/1986/64/pdfs/ukpga\\_19860064\\_en.pdf](http://www.legislation.gov.uk/ukpga/1986/64/pdfs/ukpga_19860064_en.pdf) visited on 10 December 2016.

<sup>194</sup> The Prohibition of hate Speech Bill of Kenya(2007)

<sup>195</sup> Article 33 (2) that “the right to freedom of expression does not extent to-

- a) propaganda for war;
- b) incitement to violence;
- c) hate speech; or

- d) advocacy of hatred that (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or (ii) is based on any ground of discrimination specified or contemplated in 27 (4).” See Kenya’s Constitution of 2010, Art 33(2)

<sup>196</sup> Section 77 on Subversive Activities refers to, inter alia, incitement to violence as well as the promotion of feelings of hatred and provides a penalty of up to seven years.

speech. Among that ‘Discrimination and Sectarianism’<sup>197</sup> of 2001 and ‘Genocide Ideology’<sup>198</sup> of 2008 are the major one which specifically regulates hate speech.

## 2.7 Conclusion

Freedom of Expression is one of the most fundamental human rights widely recognized under many international human rights instruments such as UDHR, ICCPR, CRC and CMW and all regional human rights instruments. From those instruments, one can understand that the right has three main elements: the right to hold opinions without interference, the right to seek and receive information, and the right to impart information and ideas of all kinds through any media and regardless of frontiers. The right is not absolute but subject to certain restrictions. In general under human rights law, we can find two main circumstances subsequent to which the state may make limitations in respect of the exercise of the right to freedom of expression: The limitation which is based on the three-part test and the circumstances under which expression may be prohibited totally. The issue of hate speech comes into discussion under the context of the above two conditions.

Hate speech is an evolving and contested concept which is understood at different times with several terms and defined and used variously by different States, academics and persons. There is also no common agreement on the regulation of hate speech. On the one hand some states like USA and some scholars oppose the regulation of hate speech by advocating for the protection of it under the umbrella of freedom of expression except very limited circumstances of limitation while others support the regulation of hate speech. This paper argued that theoretical justifications given for the right to freedom of expression itself does not support unregulated freedom of expression in general and based on hate speech in particular. Additionally, the harms of hate speech it brings on the protection of human rights of the victim such as the right to

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<sup>197</sup> The Law on the Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism in section 3 states that “the crime of discrimination occurs when the author makes use of any speech, written statement or action based on ethnicity, region or country of origin, color of skin, physical features, sex, language, religion or idea with the aim of denying one or a group of persons their human rights.” See from Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism Law No 47 of 2001, chapter 3.

<sup>198</sup> This law also states that “the genocide ideology is an aggregate of thoughts characterized by conduct, speech, documents and other acts aiming at exterminating or inciting others to exterminate people basing on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war.” See Relating to the Punishment of the Crime of Genocide Ideology Law No.18/2004 of 2008, chapter 2. Article 3 (1) of the same law outlaws “threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred.” *ibid* Art 3(1).

equality, dignity, non-discrimination, life and other rights also justifies for the regulation of hate speech. Likewise, as we have witnessed from history of Rwanda and Kenya, hate speech were served as a source of genocide and other international crimes which also requires immediate action of hate speech regulation. On top of that, though not clearly and comprehensively stated, the place of hate speech under human rights instruments which is recognized as the limitation of freedom of expression expressly or impliedly under Articles 29(2) and 7 of UDHR, Articles 19(3) and 20 of ICCPR, Article 4 of ICERD and Articles of 2, 27 and 28 of ACHPR obliges the state parties to clearly regulate hate speech by enacting domestic legislations. However, still there are variations of the national approaches on the regulation of it. For instance, any European and African states regulated hate speech by criminalizing hate speech while still there are states like USA who oppose the regulation of hate speech unless there is imminent danger caused by fighting words.

## **CHAPTER THREE**

### **THE REGULATION OF HATE SPEECH IN ETHIOPIA**

#### **3.1 Introduction**

Just as it was done under international and regional human rights instruments, freedom of expression is acknowledged as one of the fundamental rights and freedoms under Ethiopian legal system. It is not absolute right too. Its limitations are provided based on conditions discussed as ‘three part test’ in chapter two and there are also absolute prohibitions of some expressions. But, with regard to the place of hate speech within freedom of expression, one cannot identify it without difficulty. So, identifying the place of hate speech under Ethiopian legal system is one of the most important issues which need discussion.

The vulnerability of Ethiopia to hate speech which underpins the importance of the regulation of hate speech and the challenges of the regulation is also the other issue which will be discussed under this chapter. Accordingly, the paper argues that the regulation of hate speech should be made in light of human rights by taking care of its abuse. Many states of the world try to regulate it by ratifying international and regional human rights instruments relevant to the issue and by enacting their own domestic legislations accordingly. Ethiopia is also ratified important human rights instruments such as ICCPR and ICERD which are important to regulate hate speech. There are also many scattered pieces of legislations found to regulate hate speech. Therefore, this chapter will assess the pertinent laws of the country to identify whether the issue of hate speech has been regulated in light of human rights instruments.

#### **3.2 Freedom of Expression in Ethiopia**

Like that of the international and regional human rights instruments, Ethiopian legislations like FDRE Constitution and Media laws have also recognized freedom of expression and also specified its scope and limitation. Before dealing with the issue of hate speech regulation under Ethiopian legal system, it is better to first discuss the recognition, scope and limitation of freedom of expression recognized under Ethiopian legal system.

### 3.2.1 FDRE Constitution

Historically, freedom of expression has been given constitutional recognition in Ethiopia for more than half a century<sup>199</sup> as its history traces back to the 1955 revised constitution.<sup>200</sup> But under this constitution there is no reference on the scope of this right. Additionally, the limitation of the right is confused with claw-back clause marked by the phrase ‘*in accordance with the law*’. Then, the 3<sup>rd</sup> written constitution of Ethiopia, the 1987 Constitution of the Peoples’ Democratic Republic of Ethiopia, also gave recognition to freedom of expression on Article 47.<sup>201</sup> This constitution guaranteed the right to freedom of expression without any limitation for the Ethiopians. However, this right had only paper value.<sup>202</sup>

After the fall of Dergue regime the transitional charter of Ethiopia<sup>203</sup> has recognized the right to freedom of expression by declaring the full respect of freedom of expression by referring to UDHR.<sup>204</sup> After that the FDRE Constitution has come into force on 21 August 1995 by stipulating the right to freedom of expression in detail manner.<sup>205</sup> All elements of the right to

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<sup>199</sup> Timothevos(2010), supra n 6,p.204.

<sup>200</sup> The 1955 revised constitution recognized the right to freedom of expression as follows: ‘*Freedom of speech and of the press is guaranteed throughout the Empire in accordance with the law.*’ See from Article 41 of the 1955 Revised Constitution of the Empire of Ethiopia.

<sup>201</sup> Accordingly, sub-article 1 of this provision provides: ‘*Ethiopians are guaranteed freedom of speech, press, assembly, peaceful demonstration and association.*’ See from the Constitution of the Peoples’ Democratic Republic of Ethiopia (1987), Art 47(1).

<sup>202</sup> Timothevos(2010), supra n 6,p.205.

<sup>203</sup> The transitional charter merits discussion here because of the fact that after the fall of the Dergue in 1991, the new regime promulgated a Transitional Charter which served as the temporary constitution of Ethiopia for the period of 1991-1994 until the promulgation of the FDRE Constitution. Tsegaye Regassa also called the Charter as ‘*the supreme law of the land which qualifies the de facto constitution of the time.*’ See Regassa, T ‘Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia’ 3(2) *Mizan L.R* (2009), p.299.

<sup>204</sup> Article 1 of the transitional charter stated that:

*based on the Universal Declaration of Human Rights of UN, adopted and proclaimed by the General Assembly by resolution no 217 A(III) of 10,Dec. 1948, individual human rights shall be respected fully, and without any limitation whatsoever. Particularly every individual shall have: The freedom of conscience, expression, association, and peaceful assembly.*’ See from *Transitional Period Charter of Ethiopia (1991), Article 1(a)*. See Article 1 of the Transitional charter of Ethiopia.

<sup>205</sup> Article 29 of the FDRE Constitution provides for the ‘Right of Thought, Opinion and Expression’ in the following:

1. *Everyone has the right to hold opinions without interference.*
2. *Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.*

freedom of expression are recognized in the first five sub-articles of Article 29. Sub-article 1 recognizes the right to hold opinions without interference while sub-article 2 recognizes the right to seek and receive information and the right to impart information and ideas of all kinds through any media and regardless of any frontiers. Freedom of the press and other mass media and freedom of artistic creativity, which is part of the freedom of expression, is also clearly protected under sub-article three up to five.

The grounds and conditions for limiting freedom of expression are stated on sub-article 6. On that provision we can get both the conditional restriction and totally prohibited grounds of restriction. Let us see both grounds of restriction one by one.

### **3.2.1.1 The Three Part Test under FDRE Constitution**

So far we have seen the principle of the three part test restriction of freedom of expression: provided by law, pursue one of the legitimate grounds for restriction and the condition of necessary and/or proportionality. Now let us see distinctively each of the elements within the context of the limitation of freedom of expression as recognized under FDRE Constitution.

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3. *Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:
    - (a) Prohibition of any form of censorship;
    - (b) Access to information of public interest.*
  4. *In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.*
  5. *Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.*
  6. *These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honor and reputation of individuals.*
  7. *Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.*

See FDRE Constitution(1995), supra n 24

### **A. Provided by Law**

Regarding this element, the first sentence of sub-article 6 of Article 29 of FDRE constitution requires the limitation of freedom of expression only if it is prescribed by the laws. This means the restriction of freedom of expression should be outlined by Ethiopian laws. Additionally, sub article 7 of the same provision can be interpreted as it requires the limitation of freedom of expression as it should be prescribed by law to entail liability.<sup>206</sup> This means the limitation of freedom of expression requires legal bases. So, to find the limitation of freedom of expression, one should consult Ethiopian legislations relevant to the issue. Here, the question is what is the law? Under Ethiopian legal system, laws may include proclamation, regulation or directives as enacted by different law making organs in different levels. Proclamations are enacted by the house of people representatives (HPR) at federal level<sup>207</sup> and by state council at regional level while regulations and directives are enacted by the executive organs,<sup>208</sup> and should be published on Negarit Gazzeta.<sup>209</sup>

Therefore, as per this condition any limitation of freedom of expression including hate speech should be clearly worded on the law of the country.

### **B. Pursue a Legitimate Ground for Restriction**

This element is also provided on the second sentence of the same provision. Accordingly, protecting the well-being of the youth, and the honor and reputation of individuals are the only legitimate aims provided. Here the law stated narrow legitimate grounds of restriction as compared to international as well as regional human right instruments that bind the country. For example, ICCPR provided that the respect of the rights or reputations of others, the protection of national security or of public order, or of public health or morals as the legitimate aims required for the restriction of freedom of expression. But under the FDRE Constitution the issue of

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<sup>206</sup> Regarding sub-Article 7, Gedion Timothewos rightly argued that it should be seen as complementing sub-Article 6. See Timothewos(2010), supra n 6,p.214. This means that the required legal limitation of the provision should also meet the other requirements prescribed under sub article 6.

<sup>207</sup> The House of Peoples' Representatives shall have the power of legislation in all matters assigned by this Constitution to Federal jurisdiction such as penal code, civil code and others. See Ibid, Art 55(1, 3-6).

<sup>208</sup> The Council of Ministers has the power to enact regulations pursuant to powers vested in it by the House of Peoples' Representatives. See FDRE Constitution (1995), supra n 24, Art 77(13).

<sup>209</sup> Federal Negarit Gazeta Establishment Proclamation No.3 of 1995, Art 2(2).

national security, public order, public health or morals are not legitimate aims listed for limitation of freedom of expression. Additionally, the aim of respecting the rights and reputation is only protected for individuals unlike that of ICCPR which protect in general terms for ‘others’ which may also includes groups or public.

Therefore, FDRE Constitution listed a narrow legitimate aims of the ground of restriction of hate speech comparable to ICCPR.

### **C. Proportionality and/or Necessity**

This element is not recognized under the above provision. This makes the requirements for the restriction of freedom of expression under FDRE constitution lax because according to this provision the law can impose a limitation on the right to freedom of expression for the aim of protecting the well-being of the youth, and the honor and reputation of individuals even though it is not proportionate or necessary in a democratic society.

#### **3.2.1.2 Prohibited Speeches under FDRE Constitution**

In addition to the above ground of limitation, the same provision also totally prohibited the restrictions of freedom of expression which is based on the account of the content or effect of the point of view expressed. This kind of limitation is very dangerous unless properly regulated because since content based limitation is prohibited, one could ask if it is allowed to disseminate an expression the content of which is hate speech. When the content of the speech clearly violates well-being of the youth, and the honor and reputation of individuals as well as when it disseminates any propaganda for war, the constitution clearly allowed the restriction of it if it is provided by law. For example, obscene and defamatory content of speech may be prohibited to preserve the honor and reputation of individuals.<sup>210</sup> But still the question is about the content of other hate speech which cannot be restricted under the above conditional limitation. For example what if hate speech the content of which jeopardizes the reputation of the public or public moral is disseminated? Regarding this issue, the author will discuss latter under the title of hate speech under FDRE constitution of Chapter three.

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<sup>210</sup> Timotheos(2010), supra n 6,p.215.



Additionally, the provision also requires impermissible restriction of freedom of expression which is based on the effect of view point. What is the effect of view point? Is it violence, discrimination, hatred, ethnic or religious conflict? Can we restrict hate speech which has the effect of creating discrimination, violence and hatred? Regarding this and other similar questions, the author will have a further discussion in the same title indicated above.

Furthermore, the last clause of sub-article 6 of Article 29 also provides prohibited grounds of expression. Accordingly, any propaganda for war as well as the public expression of opinion intended to injure human dignity is prohibited by law. Here the prohibition of any propaganda for war is similarly prohibited by Article 20(1) of the ICCPR while the prohibition of public expression of opinion intended to injure human dignity is somewhat different from it because according to Article 19(3) of ICCPR it is stated as a conditional restriction. It requires the prescription of the law and the requirement of necessity. So, we can say that by the direct prohibition of opinions that injure human dignity, the FDRE constitution balanced the exercise of the right to freedom of expression with the right to human dignity which is harmed by hate speech.

### **3.2.2 Freedom of Expression under Ethiopian Media Laws**

In addition to FDRE constitution there are also laws that recognized the right to freedom of expression in Ethiopia. For instance, the Broadcasting Proclamation No.533/2007<sup>211</sup> and the Freedom of the Mass Media and Access to Information Proclamation 590/2008<sup>212</sup> are the major one which incorporated freedom of expression on their perspective.

Likewise, those laws also incorporated prohibited grounds of the limitation of freedom of expression. For example, art 39(4) of Ethiopian Broadcasting Service Proclamation No.533/2007 prohibited any program intended for transmission which violate the dignity and personal liberty of mankind or the rules of good behavior or undermine the belief of others. The transmission which commit a criminal offense against the security of the State, the constitutionally established government administration or the defense force of the country, which maliciously accuse or

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<sup>211</sup> Broadcasting Service Proclamation No.533 of 2007.

<sup>212</sup> The right to freedom of expression is recognized in detail in many parts of this proclamation. For instance, Article 12 states that '*all persons have the right to seek, obtain and communicate any information held by public bodies, except as expressly provided for by this Proclamation.*' See the Freedom of the Mass Media and Access to Information Proclamation 590 of 2008, Art 12.

defame individuals, nation/nationalities, peoples or organizations and which cause dissension among nationalities or instigate dissension among peoples or incite war are also prohibited.<sup>213</sup>

Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 also provided that all persons have the right to seek, obtain and communicate any information held by public bodies except those information listed by the law.<sup>214</sup>

### **3.3 Regulating Hate Speech in Ethiopia**

Regulating hate speech by drawing the line that separates protected from unprotected speech or allowable free speech from prohibited hate speech in one country is not an easy task. It has its own challenges. Under the Ethiopian legal system this problem is exacerbated with the absence of clear and comprehensive legal framework and jurisprudence on the issue. Therefore, for the regulation of hate speech in such conditions, a thorough assessment of the human rights instruments relevant to the issue and jurisprudences of human rights organs is relevant. But before that the author will show some of the main challenges of the regulation of hate speech in Ethiopia. Next, after showing the vulnerability of the country to hate speech, the current Ethiopian legal frameworks on the regulation of hate speech will be analyzed.

### **3.4 Challenges of the Regulation of Hate Speech in Ethiopia**

#### **3.4.1 The Absence of Freedom of Expression in Practice**

From the beginning one can argue that it is irrelevant to regulate hate speech when there is no freedom of expression in one country because one can only regulate what exists. One cannot claim the limitation of the right the existence of which is in question. In Ethiopia, there are many concerns from different groups on the practice of freedom of expression.<sup>215</sup>

Even though the factual existence of freedom of expression in Ethiopia needs further research which is out of the scope of this thesis, but the author believe that the regulation of hate speech

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<sup>213</sup> Broadcasting Service Proclamation (2007), supra n 211, Art 30(4).

<sup>214</sup> This law has provided a long list of those prohibited information. See Freedom of the Mass Media and Access to Information Proclamation (2008), supra n 212, Art 15-27.

<sup>215</sup> CIVICUS: World Alliance for Citizen Participation, East and Horn of Africa Human Rights Defenders Project (EHAHRDP) and Human Rights Council (HRCO) *Federal Democratic Republic of Ethiopia Joint NGO Submission to the UN Universal Periodic Review 19th Session of the UPR Working Group*(2013),pp.7-9. See also African Commission on Human & Peoples' Rights *Concluding Observations and Recommendations on the 5th and 6th Periodic Report of the Federal Democratic Republic of Ethiopia*(2015), p.13,para.37.

may not depend on the existence of freedom of expression because the regulation of hate speech by itself has its own human rights justification. This means, the need to regulate hate speech can be derived from the need to protect human rights of the victim. The inherent right to equality, non discrimination, dignity, life and other rights of each person which is endangered by hate speech is the basis of the regulation. Additionally, the obligation of Ethiopia to outlaw public speeches directed to advocating hatred which constitutes incitement to discrimination, hostility or violence by different human rights instruments is the other ground for the regulation of hate speech under Ethiopian Legal system. Therefore, the need of the regulation of hate speech under Ethiopian legal system does not depend on the existence of freedom of expression.

### 3.4.2 The Fear of Abuse by the Government

Many scholars have the view of that allowing governments to restrict expression does, however, have serious potential for abuse.<sup>216</sup> For example, Waldorf expressed that the Rwanda's hate speech legislation provided a tool for the government to suppress the opposition, media representatives, civil society actors, and the general public for legitimate speech and dissent.<sup>217</sup> Similarly, Kenya's hate speech legislation has also misused to legitimize state surveillance activities.<sup>218</sup> Therefore, one can concluded that the regulation of hate speech through domestic legislations leave the impression that states adopt hate speech legislation with the intent to extensively restrict Freedom of expression.<sup>219</sup>

Ethiopia is not free from this critique because the country is often identified as a country where the government interferes within the exercise of freedom of expression even without clearly

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<sup>216</sup> Farrior(1996),supra n 163, pp.7,27-31;See also Mchangama(2015), supra n 114.

<sup>217</sup> Waldorf, L Censorship and propaganda in post-genocide Rwanda in Thompson, A (ed.) *The Media and the Rwandan genocide* (2007), pp.404-416.; Scheffler(2015), supra n 17,p.67.

<sup>218</sup> *ibid*, p.73.

<sup>219</sup> Amnesty International *Safer to Stay Silent. The Chilling Effect of Rwanda's Laws on 'Genocide Ideology' and 'Sectarianism'* (2010) available at <https://www.amnesty.org/en/documents/AFR47/005/2010/en/> visited on 11 March 2017; Amnesty International *Unsafe to Speak out. Restrictions on Freedom of Expression in Rwanda* (2011) available at <https://www.amnesty.org/en/documents/AFR47/002/2011/en/> visited on 11 March 2017; HRW *Law and Reality. Progress in Judicial Reform in Rwanda*(2008a) available at <https://www.hrw.org/report/2008/07/25/law-and-reality/progress-judicial-reform-rwanda> visited on 11 March 2017; Article 19, *Comment on the Law Relating to the Punishment of the Crime of Genocide Ideology of Rwanda*(2009) available at <http://www.refworld.org/docid/4ac5abd90.html> visited on 11 May 2017; Article 19 *Commentary on the Regulation of "hate speech" in Kenya*(2010a) available at <http://www.article19.org/pdfs/analysis/kenya-commentary-on-the-regulation-of-hate-speech-.pdf> visited on 11 March 2017.

recognizing hate speech as a limitation of freedom of expression.<sup>220</sup> Various human rights activists and advocates of the right to freedom of expression accuses the Ethiopian government relating to deliberate acts of stifling freedom of expression through unconstitutional and illegal means.<sup>221</sup> Especially after the contested elections of 2005, the government's handling of the media has become the target of widespread criticism from NGOs and human rights groups. This critique was exacerbated as the government launched a crackdown on journalists and bloggers ahead of the May 2015 elections. According to the Committee to Protect Journalists (CPJ), Ethiopia was the second-worst jailer of journalists in Africa, after Eritrea.<sup>222</sup>

Additionally, the government of Ethiopia is also accused for the practice of censorship and for the firing of journalists without any explanation. For example, according to the report of freedom house, in June 2014, 20 journalists from the state-owned Oromia Radio and Television Organization were fired with no formal explanation.<sup>223</sup> It is also expressed that the occasional jamming of international broadcasters such as Deutsche Welle(DW)<sup>224</sup> and Voice of America (VOA)<sup>225</sup> were also indicated abuse of the government freedom of expression by the government in Ethiopia.<sup>226</sup> Additionally, since November 2015 as a protest against the government starts in Oromia, Amhara and other parts of the country, the Government of Ethiopia frequently shut-

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<sup>220</sup> Meshesha, N 'Media and Politics in Ethiopia: A Critical Analysis' 1 *Ethiop.j.soc.lang.stud.*(2014),p.88; United States Department of State, *Ethiopia 2012 Human Rights Report*(2012),pp.12-16.;See also United States Department of State, *Ethiopia 2012 Human Rights Report*(2015),pp.12-16.;See also CIVICUS(2013),supra n 214;See also African Commission on Human & Peoples' Rights(2015), supra n 214.

<sup>221</sup> See also Freedom House *Freedom of the Press 2008 – Ethiopia* (2008) available at <http://www.refworld.org/docid/4871f602c.html> visited on 11 March 2017.

<sup>222</sup> Freedom House *Freedom of the Press 2016 – Ethiopia* (2016) available at <https://freedomhouse.org/report/freedom-press/2015/ethiopia> visited on 11 March 2017.

<sup>223</sup> *ibid.*

<sup>224</sup> Deutsche Welle(DW) is Germany's public international broadcaster, the service of which is available in 30 languages including Amharic language which has one hour air time. See DW profile available at <http://www.dw.com/en/about-dw/profile/s-30688> visited on 10 April 2017.

<sup>225</sup> Voice of America (VOA) is a United states government funded radio broadcast in 47 languages including Afan Oromo,Ahmaric,Tigirigna and Somaligna. See the profile of VOA at [https://en.wikipedia.org/wiki/Voice\\_of\\_America](https://en.wikipedia.org/wiki/Voice_of_America) visited on 10 April 2017.

<sup>226</sup> Freedom House (2016), supra n 221. The UNHRC also concluded the jamming of foreign websites and radios. See also UNHRC, Concluding observations of the Human Rights Committee Ethiopia, (25 July 2011), CCPR/C/ETH/CO/1, para.24; See also U.S Department of State, Bureau of Democracy, *Human Rights, and Labour 2015 Human Rights Reports: Ethiopia*(2015),p.13 available at <https://www.state.gov/documents/organization/252893.pdf> visited on 10 April 2017..

down the internet and mobile phone networks.<sup>227</sup> Similarly, social media platforms and communications apps such as Face book, Twitter, Skype, and IMO were also temporarily blocked at different times. On top of that, in October 2016, the government imposed a six-month state of emergency, which resulted in another internet shutdown.<sup>228</sup> Under the state of emergency, accessing or posting content related to the protests on social media and efforts to communicate with “outside forces” are criminal offenses.<sup>229</sup> News websites and blogs reporting on the protests were permanently blocked in 2015 and 2016.<sup>230</sup>

Based on the above facts one can argue that permitting for the limitation of freedom of expression based on hate speech even increases the problem of abuse of the power of the government to limit freedom of expression. However, the author argues the other side. Because even if we accept the assertion of that the limitation of freedom of expression based on hate speech can be abused by the government, it does not justify the non regulation of hate speech rather it requires other means of controlling mechanism. For this having a clear law which is not susceptible to abuse is one of the mechanisms to control it. Additionally, so long as the legislation in place is genuinely designed and applied in a reasonable fashion and out of good faith, this problem can be rectified. So, regulating hate speech with clear legal frame work necessary.

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<sup>227</sup> Since Ethiopia's internet service is entirely in the hands of Ethio Telecom, the state-owned telecom provider, it is easy for the government to shutdown. For example, while I am writing this thesis the mobile internet service is blocked saying that it is done to prevent exam leaks. This action was repeatedly taken by the government. See Jane Nyingi, J ‘Ethiopia Shuts down Mobile Internet’ (2017), Deutsche Welle (DW) news available at <http://www.dw.com/en/ethiopia-shuts-down-mobile-internet/a-39082948> visited on 10 June 2017. See also Dahir, A ‘Ethiopia Shuts down the Country's Internet to Beat Exam cheats’ (2017), Quartz Media LLC [US] available at <https://qz.com/994990/ethiopia-shut-down-the-internet-ahead-of-a-scheduled-countrywide-national-exams/> visited on 10 June 2017.

<sup>228</sup> Busari, S ‘Ethiopia declares state of emergency after months of protests’ CNN, October 11, 2016 > <http://www.cnn.com/2016/10/09/africa/ethiopia-oromo-state-emergency/> < accessed 11 March 2017; Endalk Chala, ‘Ethiopian authorities shut down mobile internet and major social media sites’ Global Voices (blog), October 11 2016 available at <https://globalvoices.org/2016/10/11/ethiopian-authoritiesshut-down-mobile-internet-and-major-social-media-sites/> visited on 11 March 2017.

<sup>229</sup> Directive for the Execution of the State of Emergency of Ethiopia of 2016, Art 1 available at <http://hornaffairs.com/2016/10/19/ethiopia-directive-execution-state-emergencyfull-text/> visited on 13 March 2017.

<sup>230</sup> Freedom House *Freedom on the Net 2016: Ethiopia (2016)* available at [www.freedomthenet.org](http://www.freedomthenet.org) visited on 20 August 2016.

### 3.5 The Vulnerability of Ethiopia to Hate Speech

The 2015 report of Rita Izsák, the Special Rapporteur on minority issues, observed that there is no country in this world, which is free from hatred and most often those belonging to national, ethnic, religious and linguistic diversities are the targets of hate.<sup>231</sup> Hatred is often directed by certain individuals or groups against other individuals and communities who are different, in ethnicity, language, religion, for political reasons or due to long-standing and entrenched discrimination and social problems such as lack of or unequal access to resources, partisan politics, corruption, deficits in good and inclusive governance, and the reality or perception of bias and favouritism.<sup>232</sup> According to Izsák, the existences of wider social, economic or political problems or divisions in one society are fertile grounds for hate speech.

Ethiopia is also not free from hate speech. Historically, Ethiopia is a deeply divided society where many nation, nationalities and peoples of different ethnic<sup>233</sup>, race, religion<sup>234</sup>, culture, language<sup>235</sup> and other status live together. But for a long period of time, the interpretation of history of those nations, nationalities and peoples were contested and the spaces for dialogue were limited. There were contested national identities of different ethnic groups such as Oromo's and Peoples of the Southern Nations and Nationalities by successive Ethiopian Kings which have used offensive terms which had a debasing effect and which undermining their ethnic and national identity.<sup>236</sup> This undermined the political and social structures of the societies and created limited space to accommodate and honor difference by politicizing ethnic differences and created angers and suspicions between others and those who think as 'marginalized societies' in Ethiopia.

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<sup>231</sup> Izsák, R *Report of the Special Rapporteur on minority issues (2015)*, A/HRC/28/64, para.29.

<sup>232</sup> *ibid*, para.31.

<sup>233</sup> More than eighty ethnic groups were listed in the 2007 census. See Ethiopian Population and Housing Census of 2007.

<sup>234</sup> According to the 2007 Census there many religions practiced in Ethiopia but the major one is demographically Orthodox (43.5%), Muslim (33.9%), Protestant(18.6%), traditional (2.6%), catholic(0.7%) and others (0.7%). See *ibid*.

<sup>235</sup> Ninety independent languages are spoken in Ethiopia. See *ibid*.

<sup>236</sup> Tadeg, M 'Freedom of Expression and The Media Landscape in Ethiopia: Contemporary Challenges' (2015) p.17 Electronic copy available at: <http://ssrn.com/abstract=2763600> visited on 10 August 2016.

Additionally, during the current times political parties in the State party are largely structured on ethnic lines<sup>237</sup> which have the potential to contribute to an increase in ethnic tension based on hate speech.<sup>238</sup> For example, there are groups who hate other ethnic group alleging that they are 100% the supporter of the ruling party and are especially advantageous from the rest of nations, nationalities and ethnic groups.<sup>239</sup>

The 2005 election was also one of the fundamental points in time when some manifestations of hate speech were become evident. During this time the ruling party and the opposition groups accused one another of resorting to ethnically charged language and read contemporary political agendas as an expression of the aspiration of competing ethnic groups to dominate over the other.<sup>240</sup> The language of hate speech was also **invoked** as a part of the 2005 electoral rhetoric, focusing on recent examples in Rwanda.<sup>241</sup> For example, a few days before the elections, the late prime minster Meles Zenawi stated the policy of opposition parties as it is directed towards creating hatred and rifts between ethnic groups similar to the policies of the Interahamwe when Hutu militia massacred Tustis in Rwanda,<sup>242</sup> and called the people of Ethiopia to punish opposition parties who are promoting an ideology of hatred and divisiveness by denying them their votes on election of May 15.

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<sup>237</sup> Although there are recently some multiethnic parties and multiethnic coalitions from ruling and opposition parties, there are many political parties organized on ethnic lines. For example, the ruling party has created political parties based on ethnic lines such as Oromo Peoples' Democratic Organization, Guraghe Peoples' Democratic Organization, Tigrayan People's Democratic Front, Amhara National Democratic Movement and soon.

<sup>238</sup> Concerning this, Committee on the Elimination of Racial Discrimination gave concluding observations on Ethiopia that the arrangements of political parties on ethnic lines have the potential to contribute to an increase in ethnic tension. Therefore, it recommended the State party to encourage the development of integrationist multi-racial organizations, including political parties, in line with the provisions of Art 2, paragraph 1 (e) of the Convention. See concluding observation of ICERD on Ethiopia, Seventy-fifth session 3-28 August 2009, par.13.

<sup>239</sup> For example, though its reality is challenging and favors empirical research, there are groups who perceives Tigrayans' as 100% support for TPLF (Tigrayan People's Liberation Front), one of the four constitutive party of Ethiopian People's Revolutionary Democratic Front (EPRDF) which currently ruling the country). See from Ethiopia's Growing Challenge of Hate speech available at <http://hornaffairs.com/en/2016/07/22/hate-speech-violence-ethiopia/> visited on 10 August 2016.

<sup>240</sup> For example, the ruling party expressed the Coalition for Unity and Democracy (CUD), one of the major opposition parties during that time, as the party work for regaining the long held dominance of the political land scape of Amharas. See from Mengistu(2012), supra n 19, p.361;Iginio et al.,(2014),supra n 26.

<sup>241</sup> *ibid*, Iginio et al., (2014), supra n 26.

<sup>242</sup> Woldemariam, Y 'A Critical Look into the Ethiopian Elections' *Sudan Tribune*, 3 June 2005, Available at <http://www.sudantribune.com/spip.php?article9931> visited on 15 April 2017; see also *Ibid*, 34.

The recent experience of the country has also demonstrated the manifestation of hate messages originating from the internet especially through social Medias. To indicate this problem, PM Hailemariam Dessalegn, an Ethiopian leader at 71<sup>th</sup> UN General Assembly conference said that, *‘Social media has certainly empowered populists and other extremists to exploit people's genuine concerns and spread their message of hate and bigotry without any inhibition.’*<sup>243</sup> Here, bear in mind that even though this statement is a claim that goes beyond Ethiopia, the context and period<sup>244</sup> in which that speech made indicates the challenge of social media Ethiopia is facing particularly with regard the spread of hate speech. Even though the author does not come across a comprehensive empirical research on the magnitude of the spread of hate speech on the internet in Ethiopia, one cannot deny the existence of it. Therefore, we can conclude that the existence of hate speech which needs regulation in Ethiopia is unquestionable.

### **3.6 The Current Ethiopian Legal Framework on the Regulation of Hate Speech**

In order to know the current status of the regulation of hate speech under Ethiopian legal system, the author will examine different legal frameworks which are pertinent to regulate the issue of hate speech. Then, the shortcomings of the regulation of hate speech under Ethiopia legal framework will be examined. Here bear in mind that the shortcomings of the regulation of hate speech at the Ethiopia level can only be examined sufficiently as per human rights approach. This means the obligation of Ethiopia to protect human rights of the victim from the harms of hate speech and the human rights obligation of Ethiopia to regulate hate speech as per the standards provided in relevant human rights instruments such as ICCPR and ICERD. The issue of hate speech regulation is found scattered in different pieces of legislation. Now let us see relevant legislations which are pertinent to regulate hate speech.

#### **3.6.1 The FDRE Constitution**

The FDRE Constitution is the supreme law of the state and takes precedence to any legislative enactment and any law contrary to it is null and void.<sup>245</sup> As we have discussed above, the FDRE

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<sup>243</sup> The Ethiopian leader speech at 71<sup>st</sup> UN Assembly (2016), supra n 36.

<sup>244</sup> Bear in mind that Ethiopian government claims that protests in Oromia region which started in November 2015 over the controversy of ‘Addis Ababa and Oromia integrated master plan’ and other protests happened in other regions like Amhara and South Nations Nationalities and Peoples were intensified by opposition Diaspora through social media. See All Africa, [Ethiopia Shuts Internet Amid Growing Protests](http://allafrica.com/stories/201610050954.html),Allafrica.com,5 October 2016 available at <http://allafrica.com/stories/201610050954.html> accessed on 15 May 2017.

<sup>245</sup> FDRE Constitution(1995), supra n 24, Art 9(4).



constitution recognized freedom of expression under Article 29 of the FDRE constitution with its limitations.

However, when we see limitations, it provides no express guarantee for freedom of expression based on hate speech as required by ICCPR and the ICERD. But we can interpret the limitations provided under Article 29(6) as it regulates only some issues of hate speech. Article 29(6) provides the limitation of the right as:

*These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honor and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.*<sup>246</sup>

This sub article is the main one to find the place of hate speech within freedom of expression. Let us see the main contents of each sentence and analyze it within the context of hate speech.

#### **A. The Prohibition of Limitation Based on Content and Point of View Expressed**

As stated in this provision the limitation of the right to freedom of expression should only be provided through laws which should be guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. At the first place, the limitation of freedom of expression should only be provided by law. But one thing which is underlined is that the law should not provide a limitation on the account of the content or effect of the view point expressed.

##### ***i. Content Based Restriction***

Content based restriction of freedom of expression is about the limitations of communication because of the message conveyed.<sup>247</sup> For example, laws that prohibit seditious libel, ban the publication of confidential information, forbid the hiring of employees who advocate the violent overthrow of government, or outlaw the display of hate speech such as the swastika in certain

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<sup>246</sup> *ibid*, Art 29(6).

<sup>247</sup> Stone, G 'Content Regulation and the First Amendment 25 Wm. & Mary L. Rev.189 (1983), p.190.

neighborhoods illustrate this type of restriction.<sup>248</sup>This kind of prohibition is based on US jurisprudence.<sup>249</sup> The FDRE constitution also followed this line. Accordingly, unless certain kinds of conditions are fulfilled this sentence may not prohibit hate content of speech. But the question here is whether this is an absolute prohibition that would prohibit even limitations that are aimed at limiting the dissemination of materials with hate speech. This question should be answered by reading the next sentences. Accordingly, since protecting the well-being of the youth and honor and reputation of individuals are permissible grounds of limitation; it should be limited based on that. Additionally, the third clause of sub-Article 6 imposes an obligation on the legislature to enact laws that prohibit speech that is intended to injure human dignity. So, since hate speech directly injures human dignity, such content of expression can be limited. Generally, the prohibition of content based limitation is not absolute and protecting the well-being of the youth and honor and reputation of individuals are an exception which help us to justify limitation based on hate speech content. However, this does not mean that the law is clear enough to regulate each and every point of hate speech. There are many issues of hate speech which is unregulated. For example, hate speech directed against other section of societies other than ‘individual’ and ‘youth’ are not regulated. When one person expressed its hates against group of women, disability, elders, nations, nationalities and peoples, it is clear that this provision does not prohibit it. So, still the constitution needs the inclusion of clear and all inclusive law that prohibits hate speech.

## ***ii. Limitation Based on the Effect of the View Point***

The constitution also requires impermissible restriction of freedom of expression based on the effect of view point. Here a jurisdiction like USA prohibits ‘*Viewpoint discrimination*’ which prevents the government from intervening into an ongoing political controversy by silencing one side to the dispute based on the message advocated.<sup>250</sup> But the FDRE Constitution prohibits not ‘view point’ but the effect thereof. The question that needs answer here is what is the effect of view point? Is it violence, discrimination, hatred, ethnic or religious conflict? It is obvious that violence, discrimination and hatred can be considered as the effect of view point because the view of hate speech has the effect of creating discrimination, violence, conflict and even

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<sup>248</sup> *ibid.*

<sup>249</sup> Timothewos(2010), *supra* n 6,p.214.

<sup>250</sup> Robert, P ‘Viewpoint Discrimination and Commercial Speech’41 *Loyola of los.Angeles L.Rev.* (2007),p.170.

genocide and summary execution. This can be referred from many historic examples such as holocaust case, Rwanda case, Kenya case and others. Again, the reading of only this sentence indicates that hate speech cannot be a ground for the restriction of freedom of expression based on hate speech unless it qualifies other requirement stated in the same provision as an exception for an exception. This means as discussed above, the same paragraph of the constitution stated that legal limitations can be laid down in order to protect the well-being of the youth, and the honor and reputation of individuals. When the effect of the point of view clearly violates the well-being of the youth, and the honor and reputation of individuals, the legal limitation of hate speech can be allowed. Again for the same reasoning indicated above, we can argue that only hate speech which violates the well-being of the youth, and the honor and reputation of individuals can be received as a limitation of freedom of expression. Otherwise, any limitation based on the effect of view point expressed cannot be a ground of limitation of freedom of expression.

### **B. Limitation of Freedom of Expression to Protect Well-being of the Youth and the Honor and Reputation of Individuals**

So far we have seen that hate speech are used as weapons to harm the targeted group or individual's physiological and emotional state as well as personal freedom, dignity, and personhood and society at large.<sup>251</sup> Hate speech diminishes the honor and reputation of the victim because by manifestation of hate the speaker views the inferiority people.<sup>252</sup> Hate speech also jeopardizes the wellbeing of the youth as it incites discrimination and violence and violates their right to be treated equally without any discrimination and with dignity. Therefore, we can argue that some content of hate speech is recognized as a limitation of freedom of expression under Article 29(6) of the FDRE constitution.

However, this limitation is not comprehensive and clear to say that all issues of hate speech is regulated in all aspects. As indicated above, it falls short of some points with regard to the regulation of hate speech. One point missed is that since hate speech harms not only honor and reputation of individuals but also the society at large, the issue of protection of the society as a group from the harms of hate speech is not properly regulated. This provision ignored the

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<sup>251</sup>Gloria Cowan et al. (2002), supra n 15; See also Bakircioglu(2008), supra n 15.

<sup>252</sup>Simpson (2012), supra n 150, p.10.

protection of group and only focused on protection of individuals. On top of that the other option, limitation of hate speech under the guise of the protection of national security to protect the society at large is not stated as legitimate ground of limitation of freedom of expression. So, hate speech directed against the nation, nationalities and peoples is not clearly prohibited.

Similarly, limitation is also allowed to protect the wellbeing of the youth. This means if we assume that hate speech harms the wellbeing of the youth, only young persons are protected. Therefore, we can conclude that only the regulation of some parts of hate speech can be justified under this sentence.

### **C. The Prohibition of any Propaganda for War as well as the Public Expression of Opinion Intended to Injure Human Dignity**

The last sentence of Article 29(6) states that any propaganda for war, as well as the public expression of opinion intended to injure human dignity shall be prohibited by law. This sentence again prohibited public expressions which injures human dignity. As the author try to discuss under chapter two concerning the harms of hate speech, human dignity is harmed by hate speech but we are not concluded that all hate speech harms human dignity.

Dignity is a concept that is specially associated with considerations of rank, status, and hierarchy.<sup>253</sup> It is about the matter of the treatment of one person in light of the attitudes that prevail in her community, including her own attitudes, about her worth, standing, or esteem, relative to others, and relative to the community as a whole.<sup>254</sup> Hate speech is something that contributes to social hierarchies by discrimination of one person from the other and by treating one group as superior or inferior. Therefore, we can conclude that by the sake of the interpretation of the last sentence of Article 29(6) of FDRE constitution, some part of hate speech is regulated as a limitation of the right to freedom of expression. This means only hate speech the intention of which is directed against injuring human dignity is recognized as a limitation of freedom of expression. This means any hate speech the intention of which is not directed against injuring human dignity is not limited under this provision. Here we have to know that hate speech cannot only harm human dignity but also it may causes the violation of

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<sup>253</sup> *ibid* 8.

<sup>254</sup> *ibid*.

other rights such as the right to equality, liberty and even a cause of immediate damages of life and property. On top of that the limitation is only allowed only when an expression which is intended to injure human dignity is publically made. Here, it is obvious that expressions of hate message which are not publically made such as face to face hate expression, expression of hate message through SMS, e-mail, or other technologies which are directly delivered to the victim is not limited under this provision. From this the author concludes that the concept of hate speech as a limitation of freedom of expression is not clearly and comprehensively recognized.

There is also no jurisprudence developed by the court or House of federation on this issue and the Minutes of the Council of Representatives of the Transitional Government during the deliberations on the draft constitution also show us nothing on this concept. Therefore, the author concludes that the concept of hate speech is not clearly and comprehensively regulated under FDRE Constitution.

### **3.6.2 Media Laws**

In addition to the FDRE constitution, media laws such as the Broadcasting Service Proclamation No. 533/2007, Freedom of the Mass Media and Access to Information Proclamation 590/2008 and Advertisement Proclamation No. 759/2012 are the relevant laws which help us to find whether the issues of hate speech were regulated on their perspectives. Let us see them one by one.

#### **3.6.2.1 The Broadcasting Service Proclamation No. 533/2007**

The Broadcasting Service Proclamation No. 533/2007 is one of the media laws which are pertinent to regulate hate speech because broadcasting service which includes radio and television<sup>255</sup> plays a major role in exercising the basic constitutional rights such as freedom of expression.<sup>256</sup> Additionally, the law has the obligation to define the rights and obligations of persons who undertake broadcasting service.<sup>257</sup> For this reason, Article 30(4) of this proclamation stated prohibitions as the general guidelines for the transmissions of programs. Accordingly:

*Any program intended for transmission may not:*

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<sup>255</sup> Broadcasting Service Proclamation(2007), supra n 211, Art 2(2)

<sup>256</sup> ibid, preamble, par 2.

<sup>257</sup> ibid, preamble, par 4.

- a) *violate the dignity and personal liberty of mankind or the rules of good behavior or undermine the belief of others;*
- b) *commit a criminal offense against the security of the State, the constitutionally established government administration or the defense force of the country;*
- c) *maliciously accuse or defame individuals, nation/nationalities, peoples or organizations;*
- d) *cause dissension among nationalities or instigate dissension among peoples; or*
- e) *Incite war.*<sup>258</sup>

This proclamation without stating the term ‘hate speech’, it prohibited some of the constitutive elements of hate speech. Because so far the author discussed that hate speech can violate the dignity and personal liberty of mankind. It is also a cause for the dissension among nationalities and peoples and incites war. On the issue of dignity stated under sub article (a), so far the author discussed that all hate speech may not direct against violating human dignity. Again sub article (d), the other relevant provision with regard to hate speech is also limited its target only to nationalities and peoples.

It is not clear why this law fail to use clear terms for the regulation of hate speech as provided by ICCPR and ICERD. For instance, any program disseminating ideas of racial or ethnic superiority or hatred, inciting hatred, discrimination or violence against members of a group on grounds of their race, color, national or ethnic origin are not clearly prohibited despite the fact that this law is the special one to regulate each and every elements of hate speech. As we have learned from history of Rwanda genocide, hate speech transmitted through radio has caused much harm since it covers many places and easily accessibility. Similarly, television can also easily divert the attention of the societies. But under this law the issue of hate speech is not clearly and comprehensively regulated.

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<sup>258</sup> *ibid*, Art 30(4).

### 3.6.2.2 Freedom of the Mass Media and Access to Information Proclamation No. 590/2008

Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 is the other important media law which is promulgated among other things to re-affirm the constitutional principles. The preamble of the law states that restrictions on freedom of expression and of the mass media shall only be limited based on laws which secure and preserve the wellbeing of the youth, honor and reputation of persons, national security, public order and other overriding rights.<sup>259</sup> It is also aimed at recalling the role of the mass media in ensuring respect for the fundamental rights and freedoms guaranteed by the Constitution, and in promoting peace, democracy, equality and justice.<sup>260</sup> Though this law has the above objective and promulgated to regulate Mass Media, printed matter<sup>261</sup> that includes periodicals and broadcasters, the issue of hate speech is not regulated. So, the statements stated in the preamble are value less since the issue of hate speech is not properly regulated in the operative part of the law. For example, the periodical that disseminates hate speech means an expression which spread, incites, promote or justify racial hatred that constitutes incitement to discrimination, hostility or violence is not prohibited by this law.

Likewise the direction given by the constitution to provide a legal limitation to protect the well-being of the youth, and the honor and reputation of individuals and the prohibition of public expression of opinion intended to injure human dignity is not fulfilled despite the fact that the law is proper to provide a legal limitation which may include hate speech. For example, as per this law mass media is not prohibited to disseminate an expression which attacks the human dignity of others by inciting people to hate, discrimination and advocating violence.

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<sup>259</sup> Freedom of the Mass Media and Access to Information Proclamation(2008), supra n 212, preamble, para.3.

<sup>260</sup> ibid para.6.

<sup>261</sup> Printed Matter is defined as:

*all material intended for public distribution, including mass media but also other printed material—including musical works, plays, pictures, cartoons, books, pamphlets, posters and commercial advertisings as well as audio, visual and audiovisual recordings, motion pictures and the likes, excluding;*

*a) official printed matters, notices, minutes, reports, and decisions of legislative, judicial or executive organs;* *or*

*b) materials only intended for the purpose of commerce and transport, domestic and social life, such as forms ,price lists, printed advertising matter, family advertisements, post cards, pictorial reproductions, annual business and administrative reports, as well as election documents.*

See from Freedom of the Mass Media and Access to Information Proclamation (2008), supra n 212, Art 2(2).

Therefore the author has the view that the issue of hate speech is not properly regulated by this law.

### 3.6.2.3 Advertisement Proclamation No.759/2012

Advertisement is any public notice, through the means of advertisement dissemination such as the mass media, outdoor advertisement, telecom, postal, internet web site and fax services, cinema, film, video and any other related means of advertisement dissemination, which is designed to sell goods, publicize an events, and etc.<sup>262</sup> Again, advertisement, if not regulated, may harm the rights and interest of the people.<sup>263</sup> For example, there may be hate speech spread under the umbrella of advertisement. For this reason Ethiopian advertisement proclamation No.759/2012 was proclaimed to clearly define the rights and obligations of advertising agents, advertisement disseminators and advertisers.<sup>264</sup>

Accordingly Article 7 of the proclamation stated the following advertisements as unlawful or immoral content:

- 1) *advertisement that contains image, speech or comparisons that violates the dignity, liberty or equality of mankind in relation to language, gender, race, nation, nationality, profession, religion, belief, political or social status;*
- 2) *advertisement that violates the rules of good behavior or human dignity of individuals, nation, nationalities or peoples, and defames the reputation of an organization;*
- 3) *[...]*
- 4) *advertisement that undermine the dignity or emotional feeling of physically disabled person or a person living with HIV/AIDS or suffering from other disease;*
- 5) *advertisement that instigates chaos, violence, terror, conflict or fear among people;*
- 6) *Advertisement that instigate an action that could endanger the physical or mental health and security of the people... .*<sup>265</sup>

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<sup>262</sup> Advertisement Proclamation No. 759 of 2012, Art 2(1).

<sup>263</sup> *ibid*, Preamble, par 3.

<sup>264</sup> *ibid*, Preamble, par 4.

<sup>265</sup> *ibid*, Art 7(1-6).



Any person violating the above obligation shall be punishable with a fine not less than Birr 20,000 and not exceeding Birr 150,000.<sup>266</sup>

In light of other media laws, this proclamation is the most comprehensive one to deal with the issues of hate speech. Though there is no clear statement of the term hate speech under this law, some constitutive elements of the definition of hate speech are recognized because as discussed so far hate speech violates dignity, liberty and equality of mankind by creating discriminations based on specified grounds and can also have the force of instigating chaos, violence, terror, conflict or fear among people. Likewise, it can also endanger the security of the state as we have witnessed from the history of Kenya, Rwanda and Holocaust.

But still it is better if the law clearly prohibit the dissemination of ideas based on racial or ethnic superiority or hatred, incitement to hatred or discrimination against members of a group on specified grounds of their race, color, national, ethnic origin and other grounds of hate speech because if it clearly recognize like that the law is not vulnerable to abuse.

### **3.6.3 Criminal Laws**

#### **3.6.3.1 FDRE Criminal Code of 2004**

In Ethiopia there are plenty of laws which are enacted to regulate criminal matters. Among that the FDRE Criminal Code of 2004 is the major one. This law amended the 1957 Penal Code in order to give recognition to the major changes made by the FDRE Constitution and international agreements ratified by Ethiopia. Among that the equality between religions, nations, nationalities and peoples, the democratic rights and freedoms of citizens and residents, human rights, and the rights of social groups like women and children are the major one expressed as a justification.<sup>267</sup> Though it is promulgated to accommodate the above changes, it failed to regulate the issue of hate speech which endangers the equality between religions, nations, nationalities and peoples and other human rights of the victim. Additionally, there are no separate criminal offenses in existence that implement the obligations of Article 20(2) of the ICCPR or Article 4 of the ICERD under Ethiopian criminal law.

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<sup>266</sup> *ibid*, Art 34(1C).

<sup>267</sup> The FDRE Criminal Code (2004), *supra* n 43, Preface.

As we have seen, the ICCPR imposes an obligation to prohibit the national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence promotion of hate speech. Regarding this point the comment of UNHRC requires the ratifying states to enact laws criminalizing it.<sup>268</sup> The ICERD is also more explicit in mandating state parties to declare as an offense certain types of hate speech. By explaining Article 4 of the ICERD, the CERD Committee also recommended for the criminalization of certain types of hate speech such as:

- a) *All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;*
- b) *Incitement to hatred, contempt or discrimination against members of a group on grounds of their race, color, descent, or national or ethnic origin;*
- c) *Threats or incitement to violence against persons or groups on the grounds of their race, color, descent, or national or ethnic origin;*
- d) *Expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds of their race, color, descent, or national or ethnic origin, when it clearly amounts to incitement to hatred or discrimination;*
- e) *Participation in organizations and activities which promote and incite racial discrimination.*<sup>269</sup>

When we find the above elements of hate speech recognized under ICCPR and ICERD and recommendations or comments given by their respective committees, under the 2004 FDRE criminal code, we can get nothing except some provisions. For instance, as per Article 486(b) of the Criminal Code, ‘*whoever by whatever accusation or any other means foments dissension, arouses hatred, or stirs up acts of violence or political, racial or religious disturbances*’<sup>270</sup> is guilty of a crime. This provision tried to deal with some elements of hate speech but it is not comprehensive and all inclusive. One glaring deficiency in this provision is the lack of the provision to specifically demarcating the point at which an utterance would be said to have

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<sup>268</sup> Human Rights Committee, *General Comment 11, Article 20*(1983), U.N. DOC. HRIGEN1REV.1, par.2; See also OHCHR, *Expert Workshops on the Prohibition on Incitement to National, Racial or Religious Hatred Contribution to OHCHR Initiative on Incitement to National, Racial or Religious Hatred*(9-10 February, 2011),p. 4 ; see also Berman(2015), supra n 69,p.54.

<sup>269</sup> CERD, *General Recommendation No. 35, Combating racist hate speech*(2013), CERD/C/GC/35,par.13.

<sup>270</sup> The FDRE Criminal Code (2004), supra n 43,Art 486(b).

aroused hatred and the absence of listing the grounds of that hate. Again, other elements of this provision such as fomenting dissension, string up acts of violence or political, racial or religious disturbances are ordinary crimes the ground of which is not clearly stated as ‘hate’.

Additionally, the code also criminalized defamation and insult under title III chapter II which is under the title of crime against honor but the prescribed crime does not contain the issue of hate speech. Article 613 of the 2004 new criminal code criminalizes defamation and calumny in the following terms:

- 1) *Whoever, addressing a third party, imputes to another, with the intent to injure his honor or reputation, an act, a fact or a conduct, where the allegation accords with the truth, is punishable, upon complaint, with simple imprisonment not exceeding six months, or fine. Statements made concerning a crime of which a person has been found guilty, has duly served the sentence or has been granted pardon or amnesty, with intent to injure his honor or reputation, shall be considered as defamation and are punishable under the preceding Article.*
- 2) *Where the defamatory imputations or allegations constituting the injury to honor or reputation are false and are uttered or spread with knowledge of their falsity, the criminal is punishable upon complaint, for calumny with simple imprisonment for not less than one month, and fine.*
- 3) *Where the criminal has acted with deliberate intent to ruin the victim's reputation, he shall be punished, upon complaint, with simple imprisonment for not less than three months, and fine.*
- 4) *Where the imputation or allegation is false and made negligently, it is punishable, upon complaint, with simple imprisonment not exceeding one year, or fine.*
- 5) *False accusation or denunciation to the authorities is punishable under the special provision (Art. 447), and is not liable to any concurrent penalty.<sup>271</sup>*

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<sup>271</sup> The FDRE Criminal Code (2004), supra n 43, Art 613.

The crime of defamation established here constitutes an act, a fact or a conduct which imputes to another with the intent to injure his honor or reputation which may or may not be based on specified grounds of hate. Although there is some overlap between the crime of defamation and hate crime, the crime of defamation only protects individuals against individuals. A defamation or hate speech of individuals against groups or groups against groups is not criminalized under the criminal code. So, the protection from hate speech that the crime of defamation offers is only partial.

Likewise ‘*anyone directly addressing the victim, or referring to him, offends him in his honor by insult or injury, or outrages him by gesture or in any other manner is punishable*’ with the crime of insulting behavior and outrage as provided on Article 618.<sup>272</sup> Again this provision does not recognize hatred behavior as a ground of insult and similarly it regulates only insulting behavior committed against individual. The crime of insult stated above does not require hatred behavior as a ground of insult.

Therefore, we can conclude that there are no criminal offenses currently in existence that implement the obligations of Article 20(2) of the ICCPR or Article 4 of the ICERD under FDRE criminal code.

### **3.6.3.2 Computer Crime Proclamation No. 958/2016**

Information and communication technology is vital in the development of human rights of one country. Likewise, it is a means to various crimes and other human rights threats that can endanger individual rights unless appropriate protection is taken. The danger of hate speech is visible in modern technology unless properly regulated. Regarding the dangers of hate speech by technologies, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression warned that, ‘*new and old technologies are increasingly used as more or less sophisticated tools for political propaganda, including racial discrimination and hate speech, thus contributing to the proliferation of polarization of ideas and ethnic tension.*’<sup>273</sup>

One of the safeguards modern technology has to have is to ban hate speech on the Internet. In order to provide appropriate protection and security measures in the utilization of information

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<sup>272</sup> *ibid*, Art 618.

<sup>273</sup> Ligabo, *A Report of the Special Rapporteur on the right to freedom of opinion and expression*(2005), UN Doc. E/CN.4/2006/55, para.3.

communication technology, Ethiopia passed a new Computer Crime Proclamation.<sup>274</sup> The proclamation criminalized illegal access to computer system, computer data or network,<sup>275</sup> illegal interception,<sup>276</sup> interference with computer system,<sup>277</sup> causing damage to computer data,<sup>278</sup> computer related forgery, fraud and theft,<sup>279</sup> dissemination of illegal content of data such as obscene or indecent against minor, defamation, the content of speech that incites fear, violence, chaos or conflict among people<sup>280</sup> and the distribution of unsolicited messages to multiple emails (spam).<sup>281</sup>

Though this proclamation is the pertinent legal instrument to criminalize the emerging cybercrimes that are regulated in many international instruments like ICCPR and ICERD such as the issues of hate speech, the law has missed the opportunity to criminalize racist and xenophobic content<sup>282</sup> and other hate speech related issues such as any expression which advocates, promotes or incites hatred or discrimination against any individual or group of individuals, based on specified grounds such as race, color, national or ethnic origin or others through a computer system. The only point claimed as regulating hate speech is the criminalization of ‘the content of hate speech which incites fear, violence, chaos or conflict among people’. But this crime is ordinary crime as long as it is not committed based on discriminatory grounds. Therefore, though the problem of hate speech is evident in Ethiopia especially through social media, the issue of hate speech is not properly regulated by computer law.

### **3.6.3.3 Telecom Fraud Offense Proclamation No.761/2012**

The dissemination of hate speech through telecom service is one of the emerging problems in the area of modern technology. For instance, during the Kenya’s election of 2007, hate messages was spread via SMS and caused many problems. The Telecom Fraud Offense law of Ethiopia is aimed at countering the increasing and wide spreading telecom fraud from time to

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<sup>274</sup> Computer Crime Proclamation No. 958 of 2016.

<sup>275</sup> *ibid*, Art 3.

<sup>276</sup> *ibid*, Art 4.

<sup>277</sup> *ibid*, Art 5.

<sup>278</sup> *ibid*, Art 6.

<sup>279</sup> *ibid*, Art 9-11.

<sup>280</sup> *ibid*, Art 14.

<sup>281</sup> *ibid*, Art 15.

<sup>282</sup> Yilma,K ‘Some Remarks on Ethiopia’s New Cybercrime Legislation ‘ 10(2) *Mizan L.Rev.*(2016), P.455.

time.<sup>283</sup> Telecom provides many services which are prone to hate speech. For instance, internet service, satellite telephone service, data communication service and others<sup>284</sup> which are provided by Ethio-Telecom or any other person authorized to provide telecom service.<sup>285</sup> But, as inferred from Article 4 there is a possibility of providing telecom services without having a valid license.<sup>286</sup> Additionally, telecom network, service or system can be accessed by interception.<sup>287</sup> Therefore, this indicates the possibility of dissemination of hate speech by illegal persons.

However, the proclamation only criminalized the use or causes of the use of any telecom network or apparatus disseminating any terrorizing message connected with a crime punishable under the Anti-terrorism proclamation No.652/2009<sup>288</sup>, or obscene messages punishable under the criminal code.<sup>289</sup> This proclamation has failed short of regulating the issue of hate speech. From the beginning, as specified under its preamble, it only considered security issues as a great problem of telecom fraud in addition to economic loss,<sup>290</sup> leaving human rights issues which may be endangered by the dissemination hate speech through telecom fraud. Likewise, the law also failed to punish the communications of messages exposing persons to hatred, discrimination or violence based on their identified characteristics such as race, national or ethnic origin, color, religion, disability or other grounds of discrimination. Again, the dissemination of ideas based on racial superiority through telecom services is also not prohibited and recognized as an offense with clear law under this law. In general, though the law is pertinent to regulate the issue of hate speech, it is failed to do so.

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<sup>283</sup> Telecom Fraud Offense Proclamation No.761of 2012, preamble par.1.

<sup>284</sup> *ibid*, Art 2(1).

<sup>285</sup> *ibid*, Art 2(5).

<sup>286</sup> Article 4 of the proclamation provides, '*Whosoever provides telecom service without having a valid license issued in accordance with the appropriate laws commits an offence and shall be punishable...*' See *ibid*, Art (4)

<sup>287</sup> This can be inferred from Article 5 of the proclamation which stated offenses related to interception and access. See *ibid*, Art 5.

<sup>288</sup> *ibid*, Art 6.

<sup>289</sup> *ibid*.

<sup>290</sup> *ibid*, preamble par.2.

### **3.6.3.4 A Proclamation to Establish the Procedure for Peaceful Demonstration and Public Political Meeting No. 3/1991**

This Proclamation has been issued to establish the procedure for peaceful demonstration and public political meeting. As such, the proclamation prohibited Peaceful demonstration or public political meeting with the objectives of discrimination based on race, color, religion, sex or similar characteristics and racist promotion and provocation of ethnic mistrust and hatred among nations, nationalities and peoples are also prohibited.<sup>291</sup> So, one cannot discuss an agenda which is discriminatory in public meetings and demonstrators cannot convey an idea of ethnic conflict and hatred.<sup>292</sup> This restrictions and requirements imposed by the Proclamation are very important in the regulation of hate speech which facilitates the enjoyment of other rights though it only regulates hate speech during demonstration and public political meetings the scope of which is very limited by excluding other non political meetings.

### **3.6.4 The 1960 Civil Code**

A civil action (tort action) is the other appropriate legal measures to regulate hate speech because civil remedy such as the payment of compensation, injunction or other measures are important in protecting individuals against the harms of hate speech. Relating to hate speech, again the civil code does not recognize a tort action for hate speech. It only recognizes a civil cause of action for defamation by which the plaintiff can obtain damages and/or an injunction. Although there are some common elements between defamation law and hate speech laws, they have differences. Hate speech laws protect groups qua groups in addition to individuals, whereas defamation laws protect only individual's i.e. only individuals, not groups.<sup>293</sup> So, the protection from hate speech that defamation laws offer is only some part of it.<sup>294</sup> So, the country faces dissemination of hate speeches with absolute impunity because of the lack of regulation of hate speech with civil action, among other things.

In general, under Ethiopian legal systems, hate speech is not properly regulated with clear and comprehensive law despite the fact that the country is vulnerable to hate speech. But, the country

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<sup>291</sup> A proclamation to establish the procedure for peaceful demonstration and public political meeting proclamation No. 3 of 1991, Art 8 (1).

<sup>292</sup> Mengistu(2012),supra n 17,p.369.

<sup>293</sup> ibid 365.

<sup>294</sup> ibid.

has the obligation to regulate it. Let us see the human rights obligation of Ethiopia to regulate hate speech under different human rights instruments that bind Ethiopia.

### **3.7 Human Rights Obligations of Ethiopia to Regulate Hate Speech**

The obligation imposed on the state by human rights instruments is normally considered to have three components: to respect, to protect and to fulfill the rights recognized.<sup>295</sup> The obligation to ‘respect’ refers to the obligation on the state not to interfere with the right itself.<sup>296</sup> This means the state complies with this obligation by not violating them.<sup>297</sup> Most classical civil and political rights such as freedom of expression possess such feature. The obligation to ‘protect’ refers to the duty on the state to ensure that other individuals do not violate one’s rights.<sup>298</sup> This is aimed to avoid human rights violations by private persons. When the state neglects to ensure the rights in the treaty, this can constitute a violation. It also imposes an affirmative duty on the state and calls for specific activities by the state to enable individuals to enjoy the recognized rights. For example, the state is under liability if it fails to protect its citizens from the harms of hate speech. Lastly, the obligation to ‘fulfill’ relates to the obligation of the state to take the necessary steps. This means in accordance with its constitutional processes and with the provisions of international human rights treaties it has ratified, the state has the obligation to adopt such legislative or other measures as may be necessary to give effect to these rights and freedoms.<sup>299</sup> For example, the state have the obligation to ensure that any person whose rights or freedoms are violated shall have an effective remedy by competent judicial, administrative, or legislative authorities or by the legal system and to ensure that the competent authorities shall enforce such remedies when granted.

Hence, from the above discussion, Ethiopia has the obligation to regulate hate speech as stated by many human rights instruments based on two grounds. First, Ethiopia has the obligation to

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<sup>295</sup> See generally UNHRC, *General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant*(May 26, 2004), UN Doc. CCPR/C/21/Rev.1/Add.13, para 6.

<sup>296</sup> Ramcharan, B *The Fundamentals of International Human Rights Treaty Law*(2011),PP. 17,34.

<sup>297</sup> Jayawickrama, N *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (2002), P.46; see also Buergethal, T ‘To Respect and to Ensure: State Obligations and Permissible Derogations’, in Louis Henkin (ed.), *The International Bill of Rights* (1981), P.72.

<sup>298</sup> *ibid.*

<sup>299</sup> Jayawickrama(2002),supra n 297, p.48.



protect her citizen's rights harmed by hate speech. Secondly, Ethiopia also has the obligation to prohibit hate speech itself.

Among human rights instruments that prohibit hate speech, Ethiopia has ratified the 1965 CERD and the 1966 ICCPR without reservation and also bound by the provisions of UDHR since it has customary international law status which regulated hate speech. Moreover, Article 9(1) and 13(2) of the FDRE Constitution states '*All international agreements ratified by Ethiopia are an integral part of the law of the land*'<sup>300</sup> and '*The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.*'<sup>301</sup> Proclamation 251/2001 also obliged the HF; a body empowered to interpret the constitution, to interpret in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.<sup>302</sup>

Therefore, the way of regulation of hate speech in those instruments help Ethiopia to regulate the issue of hate speech accordingly. Now let us discuss the obligation of Ethiopia to regulate hate speech under those human rights instruments.

### **3.7.1 The Obligation of Ethiopia to Regulate Hate Speech under UDHR**

In 1948, the U.N. General Assembly unanimously adopted the Universal Declaration of Human Rights (UDHR) to set a standard for the global promotion of human rights. As we have discussed under chapter one, Article 19 of the UDHR protects freedom of expression and its restriction is qualified by a general limitation clause stated in Article 29(2) as:

*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition*

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<sup>300</sup> FDRE Constitution (1995), supra n 24, Art 9(4).

<sup>301</sup> *ibid*, Art 13(2).

<sup>302</sup> Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities Proclamation 251 of 2001, Art 7(2).

*and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*<sup>303</sup>

Though there is no explicit recognition of the limitation of the right to freedom of expression based on hate speech, respect for the rights and freedoms of others is one of the ground for the limitation of the rights recognized under UDHR in general. So since hate speech has harms on the rights and freedoms of others, it should be limited. Additionally the cumulative reading of Article 29(2) with Article 7 recognizes the right of all with equal protection and against incitement to discrimination. So it is clear that UDHR permit limitations based on some elements of hate speech.<sup>304</sup>By now UDHR is considered to have the force of customary international law.<sup>305</sup>Therefore, it binds Ethiopia to regulate hate speech as stated in the declaration.

### **3.7.2 The Obligation of Ethiopia to Regulate Hate Speech under ICCPR**

Ethiopia has ratified ICCPR on 11 June 1993 without any reservation.<sup>306</sup>So as per Article 9 (4) of the Constitution, ICCPR form an integral part of the law of the land. So Ethiopia has an obligation to implement the rights provided and any prohibitions stated under ICCPR. Moreover, Article 2 of the ICCPR defines the substantive obligations of signatory states.<sup>307</sup> Accordingly, a signatory nation must "respect and ensure" the individual and community rights provided for in the ICCPR, and it must provide effective remedial, adjudicatory and enforcement procedures for violations of those rights.<sup>308</sup> Thus, under the terms of the ICCPR, Ethiopia is obligated to 'respect and ensure' the rights of citizens as defined in the ICCPR which includes not only freedom of speech, but also freedom from hate speech.

Furthermore as inferred from Article 20, Ethiopia has the obligation to prohibit hate speech which may be provided through legal measures. Regarding this issue UNHRC (U.N. Human

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<sup>303</sup> UDHR(1948),supra n 1.

<sup>304</sup> *ibid*; Fariior(1996),supra n 163, pp.12-14.

<sup>305</sup> Hannum(1996),supra n 69, p.319; Boon(2016),supra n 69, p.385; Berman(2015), supra n 69,p.51.

<sup>306</sup> See the status of the ratification of ICCPR available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en) visited on 13 February 2017.

<sup>307</sup> ICCPR(1966),supra n 2, Art 2.

<sup>308</sup> Buergenthal, T 'To Respect and to Ensure: State Obligations and Permissible Derogations' in Louis Henkin(eds), *The International Bill of Rights*(1981),pp.72, 77; Garibaldi, O 'Obligations Arising from the International Covenant on Civil and Political Rights and the Optional Protocol' in Hurst Hannum & Dana D. Fischer(eds), *U.S. Ratification of the International Covenant on Human Rights*(1993), pp.54-57; Catlin(1994), supra n 19, p.801.

Rights Committee) also commented that states ratifying the ICCPR should enact appropriate laws sanctioning any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>309</sup> Article 20(2) of this instrument requires state parties to prohibit hate speech which may be done through the provision of civil remedies or criminal penalties.<sup>310</sup> Therefore, Ethiopia has the obligation to regulate hate speech as stated under Article 20(2) of ICCPR with clear laws.

### **3.7.3 The Obligation of Ethiopia to Regulate Hate Speech under CERD**

As stated so far, the CERD contains the most extensive and elaborate prohibition of hate speech.<sup>311</sup> It covers a wide range of hate speech and is more explicit in mandating State Parties to declare as an offense certain types of hate speech. Specially, Article 4(a) of the instrument compels state parties to establish an offense for the following acts:

- (1) all dissemination of ideas based on racial superiority;
- (2) all dissemination of ideas based on racial hatred;
- (3) incitement to racial discrimination;
- (4) acts of violence against any race or group or persons of another color or ethnic group;
- (5) incitement to such acts; and
- (6) The provision of any assistance to racist activities, including the financing thereof.

The Committee on the Elimination of Racial Discrimination has elaborated on the obligations of States parties under this article. Accordingly, the Committee reaffirmed that the provisions of Article 4 of ICERD are mandatory and States Parties to the Convention must not only enact appropriate legislation but also ensure that it is effectively enforced.<sup>312</sup> Ethiopia has ratified the ICERD on 23 June 1973 without any reservation. Therefore, Ethiopia has the obligation to regulate hate speech through punitive measures in accordance with this instrument.

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<sup>309</sup> *General Comment 11* (1983), supra n 268.

<sup>310</sup> Berman(2015), supra n 69,p.54.

<sup>311</sup> Timmermann,supra n 149,p.52.

<sup>312</sup> CERD, *General Recommendation No.7, Measures to eradicate incitement to or acts of discrimination* (1985), U.N.DOC. A/40/18, para.2.

### 3.8 Human Rights Obligation of Ethiopia to Protect Victim's of Hate Speech

As we have seen under chapter two hate speeches violates human rights of the victim such as the right to equality, the right to non discrimination, the right to dignity, the right to life and other human rights. Those rights are recognized under Ethiopian legal frame works in addition to their binding effect on Ethiopia by being a signatory state to different international and regional human rights instruments recognizing those rights.

For example, the right to equality and non discrimination is provided under FDRE Constitution in the preamble which requires full respect of individual and people's fundamental freedoms and rights, to live together on the basis of equality and without any sexual, religious or cultural discrimination.<sup>313</sup> Additionally any sort of discrimination on the grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status is also prohibited under Article 25 of the Constitution. In general all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Ethiopia has the obligation to enforce this right by expressly prohibiting any acts which jeopardizes this right. Therefore, since hate speech directly violates the rights of the victim to be treated equally and without any discrimination, Ethiopia has the obligation to regulate hate speech by expressly prohibiting hate speech.

Similarly Article 24 of FDRE Constitution provides that '*everyone has the right to respect for his human dignity, reputation and honor.*'<sup>314</sup> Additionally, the constitution only allows the development of one's personality in a manner compatible with the rights of other citizens.<sup>315</sup> Hence, Ethiopia has the obligation to protect this right by regulating hate speech. Because dignity of human being is one of the core human rights of the victim which is endangered by hate speech.

Additionally, since hate speech causes genocide, crimes against humanity and other core international human rights which endanger the right to life of human beings which is guaranteed by Article 15 of FDRE Constitution, Ethiopia has the obligation to prohibit hate speech.

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<sup>313</sup> FDRE Constitution (1995), supra n 24, preamble, para.2.

<sup>314</sup> Ibid, Art 24(1).

<sup>315</sup> Ibid, Art 24(2).

Therefore, in addition to the obligation of Ethiopia to protect the above human rights of the victim under international human rights instruments, even our domestic legislation also impose the obligation to protect those rights. So in order to protect those rights Ethiopia should regulate hate speech with clear and comprehensive legislations.

### **3.9 Conclusion**

Under Ethiopian legal system freedom of expression is recognized as one of the fundamental rights and freedom. At the same time, certain kind of limitations of the right is also recognized. But with regard to the place of hate speech within freedom of expression and its regulation, there is no clear and comprehensive law. The entire of the Ethiopian legal framework lacked a definite and direct reference of the term ‘hate speech’. Here one can argue the limitation of the right to freedom of expression based on hate speech as per Article 29(6) of FDRE constitution but the provision is vague and does not fully recognize hate speech as a limitation of freedom of expression as required by ICCPR and the ICERD. Only partial element of hate speech can be construed through interpretation as a limitation of freedom of expression based on hate speech.

Additionally, the laws which are pertinent to regulate hate speech on their perspective such as FDRE Criminal Code of 2004, Freedom of the Mass Media and Access to Information Proclamation 590/2008, Telecom Fraud Offense Proclamation No.761/2012, Computer Crime Proclamation No. 958/2016, and the 1960 Civil Code are not properly regulated the issue of hate speech. Save as shortcomings of the laws, Broadcasting Proclamation No. 533/2007, a proclamation to Establish of the Procedure for Peaceful Demonstration and Public Political Meeting Proclamation No.3/1991 and Advertisement Proclamation No. 759/2012 regulated some constitutive elements of hate speech.

On the other hand, though the issue of hate speech is not properly regulated under Ethiopian legal system, the country is vulnerable to hate speech. First of all, Ethiopia is the country of diversified societies in which the interpretation of history of nations, nationalities and peoples were contested. In addition, the existence of wider social, economic or political problems or divisions in the society is a fertile ground for hateful messages. On top of that the existence of political parties based on ethnic lines is also a fuel for hate messages. The transmission of this hate message is also exacerbated by modern technologies such as social Medias. Having these fertile ground of hate speech, Ethiopia does not regulated the issue of hate speech properly.

The regulation of hate speech in one country particularly in Ethiopia cannot be easily made. The absence of freedom of expression and the fear of government interference/abuse can be claimed as the major challenges for the regulation of hate speech. But all this challenges does not justify the non regulation of hate speech under Ethiopian legal system because the protection of human rights of the victim from the harms of hate speech and the obligation of Ethiopia to regulate hate speech as per human rights instruments that binds the country on the issue of hate speech is the major bases for the regulation of it.

Therefore, the regulation of hate speech under Ethiopian legal system should be developed to protect rights of the victim's of hate speech in light of human rights law relevant to the issue.

## **CHAPTER FOUR**

### **CONCLUSION AND RECOMMENDATIONS**

#### **4.1 Conclusion**

The right to freedom of expression is one of the most important human rights recognized under many human rights instruments. However, the scope of this right is not universally agreed upon. Particularly, with regard to the place of hate speech within freedom of expression and its regulation, there is diversity of opinions among states and scholars. On the one hand, states like USA recognized most elements of hate speech as part of freedom of expression while others argue for the limitation of freedom of expression among other things based on hate speech. However, the term hate speech has no universally agreed upon definition. But since definitions given by different scholars had their foundation in Article 4 of ICERD and Article 20(2) of ICCPR, this paper also adopted a definition of hate speech as it includes any kind of expression that disseminates, advocates or incites hatred, discrimination or violence toward an individual or group on the basis of an identified characteristics such as race, color, religion, national, ethnic origin and other identified discriminatory grounds.

Under international and regional human rights instruments the place of hate speech is expressly or impliedly recognized as the limitation of freedom of expression. But under Ethiopian laws the place of hate speech within freedom of expression is not clearly and comprehensively stated.

Hate speech harms rights of the victim such as the right to equality, dignity, non-discrimination, life and liberty. It may also be a cause of international crimes such as genocide and crime against humanity. Hate speech also exists everywhere with different magnitude. Ethiopia is also not free from hate speech. But regarding the regulation of it, there is still no common agreement. On the one hand some scholars oppose the regulation of hate speech arguing that any restrictions on hate speech will open the door to unacceptable restrictions on speech that ought to be protected while others argue for the regulation of hate speech based on the theoretical justifications of the right to freedom of expression and based on its harms. Some core human rights instruments also support the regulation of hate speech by expressly prohibiting it. The obligation of the state to protect human rights of the victim endangered by hate speech is also the other ground for the regulation of hate speech.

However, when we see the status of the regulation of hate speech under Ethiopian legal framework, there is no comprehensive and clear law which regulates hate speech. To start with FDRE Constitution, it provides no express guarantee for the limitation of the right to freedom of expression based on hate speech just like that of ICCPR and the ICERD except some parts of hate speech which are regulated under Article 29(6) of FDRE Constitution. In addition to the FDRE Constitution, media laws such as the Broadcasting Proclamation and Freedom of the Mass Media and Access to Information Proclamation which are pertinent to regulate hate speech failed to regulate hate speech in clear and comprehensive way. Though not comprehensive and all inclusive, the proclamation which Establish Procedure for Peaceful Demonstration and Public Political Meeting and Advertisement Proclamation has gone one step to regulate it. The FDRE criminal code, computer proclamation and telecom fraud offense proclamations are also failed to regulate hate speech on their perspective. In general, under Ethiopian legal system except some statutes tries to prohibit hate speech, the legal stipulations are not comprehensive and do not offer a clear law.

Though the issue of hate speech is not clearly regulated, the paper argues that Ethiopia is vulnerable to hate speech which urges for the regulation of it. The contested historical interpretation of nations, nationalities and peoples, the social, economic or political problems or divisions in the society and the existence of political parties based on ethnic lines are a fertile ground and a fuel for hate speech. This hate speech can also exacerbated by modern technologies such as social Medias.

Considering the urgent need to regulate hate speech, this study articulates the necessity of the statutes to be exhaustively and coherently drafted to eradicate cases of ambiguity or duplicity. Therefore, this paper argues that Ethiopia should regulate hate speech with express and comprehensive law against hate speech because of the following reasons. First, hate speech is not supported by the justifications given for the protection of the right to freedom of expression so that it has no theoretical and philosophical justifications. Second, Ethiopia has a human rights obligation to protect its citizens from the harms of hate speech. Hate speech damages human rights of the victims which are related with personal freedom, dignity, and personhood such as the right to equality and non discrimination, the right to human dignity, the right to life, the right



to liberty and other human rights. Finally, Ethiopia has the obligation to enforce human rights instruments ratified by her such as Article 19 and 20 of ICCPR and Article 4 of the ICERD.

#### **4.2 Recommendations**

Ethiopia has ratified a series of human right treaties as a part of its commitment to the promotion, protection, respect and fulfillment of human rights, including ICCPR and ICERD which help her to regulate hate speech. So, Ethiopia is required of prohibiting hate speech through clear and comprehensive legislations. Because legislation that is clear and comprehensive will enhance the protection of human rights of an individual by making its enforcement easy and effective so that everyone can understand them. On the other hand the government should also care of not violating other important values of human rights while regulating hate speech.

Therefore, having this in mind, the author recommends the following specific measures:

- The government should include regulation of hate speech in issues of democratic system building policy measures of the country in clear and precise manner by indicating the regulation of hate speech through clear and comprehensive legislations because every direction of the law originates from policy measures.
- The Constitution, as the supreme law of the land and as the basic legal framework for the promotion and protection of human rights in Ethiopia, should state hate speech as a limitation of freedom of expression with clear statements to fulfill the commitments of the country to protect human rights. This means Article 29 of the FDRE constitution should clearly list that freedom of expression cannot extend to any kind of expressions that incites or advocates discrimination, violence, or hatred that is based on race, ethnicity, gender, religion and other specified grounds of discrimination as required by Article 20 of the ICCPR and Article 4 of ICERD.
- The Government should provide necessary conditions to draft and adopt clear and comprehensive laws that regulate hate speech because fighting against hate speech is not an option but a duty for the government. To that effect, the government ought to introduce a special anti-hate law that includes preventive and punitive action to effectively combat hate speech.
- The Broadcasting Service Proclamation No. 533/2007, Freedom of the Mass Media and Access to Information Proclamation No. 590/2008, Advertisement Proclamation

No.759/2012 should include in clear terms and comprehensive manner hate speech as a prohibited program for transmissions and should provide penalties for its violation.

- The Proclamation that has been issued to establish the procedure for peaceful demonstration and public political meeting should regulate hate speech by expanding its scope to other meetings of non political matters.
- The other most important laws which need a reform regarding hate speech are criminal laws. Regulating the conduct of hate speech as a hate crime fosters social cohesion by promoting tolerance of diversity in a multicultural society and it also brings Ethiopia into compliance with international human rights law because both the ICERD and the ICCPR prohibit hate speech and requires states to criminalize hate speech. Accordingly, to fully discharge its obligations, the government should extend criminal liability to hate speech. Therefore, the FDRE Criminal Code, Computer proclamation, Telecom fraud proclamation and other criminal legislations relevant to the issue should be amended to clearly criminalize an act of hate speech. Accordingly, any person who knowingly or recklessly does any act of expression that disseminates, advocates or incites hatred, discrimination or violence toward an individual or group on the basis of an identified characteristics such race, color, religion, national, ethnic origin and other identified discriminatory grounds should be guilty of an offense.
- In addition to criminal sanction civil action (tort action) is the other legal measures to regulate hate speech. A civil remedy is also appropriate in protecting individuals against the harms of hate speech particularly its harms on the emotional and psychological well-being of individuals and groups targeted by the speech. Therefore, like that of defamation which is stated as a ground of tort liability on article 2044 of civil code, hate speech should be stated as a source of civil liability.

## References

### I. Books

1. Abel, R *Speaking Respect, Respecting Speech* (1998), University of Chicago Press: Chicago.
2. Altman, A 'Freedom of Expression and Human Rights Law: The Case of Holocaust Denial' in Ishani Maitra and Mary Kathryn McGowan (eds) *Speech and Harm: Controversies over Free Speech* (2012), Oxford University Press: New York.
3. Baez, B *Affirmative Action, Hate Speech and Tenure: Narratives About Race and Law in the Academy* (2013), Psychology Press: New York.
4. Baker, E 'Autonomy and Hate Speech', in Ivan Hare and James Weinstein (eds.), *Extreme Speech and Democracy*, (2009), Oxford University Press: New York.
5. Bollinger, L *The Tolerant Society* (1986), Oxford University Press: New York.
6. Buergenthal, T 'To Respect and to Ensure: State Obligations and Permissible Derogations' in Louis Henkin(eds), *The International Bill of Rights* (1981), Columbia University Press: New York.
7. Cass, R 'Free Speech' in Cass R. Sunstein, *Why Societies Need Dissent* (2003), Harvard University Press: Cambridge, Massachusetts and London.
8. Coliver, S (Ed.), *Striking a Balance: Hate Speech, Freedom of Expression and Non-discrimination* (1992), University of Essex press: London.
9. Delgado, R and Stefancic J, *Must We Defend Nazis? Hate Speech, Pornography, and the New First Amendment* (1997), New York University Press: New York.
10. Gagliardone, I, Danit, D,Thiago, A, Gabriela,M, 'Countering online hate speech' UNESCO Serious on Internet Freedom(2015),UNESCO: Paris.
11. Garner, B *Black's Law Dictionary*, 9th edn.(2009),West Publishing Co.:USA.
12. Jayawickrama, N *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (2002), Cambridge University Press: New York.
13. Joseph, S Schultz, J and Castan, M *The International Covenant on Civil and Political Rights: cases, materials, and commentary*, 2nd edn.(2004), Oxford University Press: New York.
14. Lawrence, Matsuda, Delgado, & Crenshaw,'Introduction' in M. J.Matsuda, C. R. Lawrence III, R. Delgado, & K. W. Crenshaw (Eds), *Words that wound: Critical race*

- theory, assaultive speech, and the First Amendment* (1993), West view Press: Boulder Colorado.
15. Meiklejohn, A *Free speech and its relation to Self-government* (first published in 1948, Reprinted 2012), Harper Brothers Publishers: New York.
  16. Mengistu, Y ‘Shielding Marginalized Groups from Verbal Assaults Without Abusing Hate Speech Laws’ in Michael Herz and Peter Molnar (eds) *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (2012), Cambridge University Press: New York.
  17. Mill, J *On Liberty*, (first published in 1859, reprinted 1863), Ticknor and Friends: Boston
  18. Milton, J *Areopagitica: A Speech for the Liberty of Unlicensed Printing, to the Parliament of England* (first published in 1644, reprinted in 2008), Arc Manor: UK.
  19. Nowak, M *UN Covenant on Civil and Political Rights: CCPR commentary* (1993), N.P. Engel: Kehl.
  20. Oran, D *Oran’s Dictionary of the Law*, 3rd edn, (2000), Thomson learning: Canada.
  21. Parekh, B ‘Is There a Case for Banning Hate Speech?’ in Michael Herz and Peter Molnar (eds) *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (2012), Cambridge University Press: New York.
  22. Partsch, K ‘Freedom of Conscience and Expression, and Political Freedoms’ in Louis Henkin(eds), *The International Bill of Rights: The Covenant on Civil and Political Rights*(1981), Columbia University Press: New York.
  23. Ramcharan, B *The Fundamentals of International Human Rights Treaty Law* (2011), Martinus Nijhoff Publishers: Boston.
  24. Sadurski, W *Freedom of Speech and its Limits* (1999), Kluwer Academic Publishers: London.
  25. Smolla, R *Free Speech in an Open Society* (1993), Vintage Books: USA.
  26. Sunstein, C ‘Free Speech’ in Cass R. Sunstein, *Why Societies Need Dissent* (2003), Harvard University Press: Cambridge, Massachusetts and London.
  27. Waldorf, L Censorship and propaganda in post-genocide Rwanda in Thompson, Allan (ed.) *The Media and the Rwandan genocide* (2007), Pluto Press: London.
  28. Waldron, J *The Harm in Hate Speech* (2012), Harvard University Press: Cambridge Massachusetts.

29. Wolfson, N *Hate Speech, Sex Speech, Free Speech* (1997), Praeger Publishers: Connecticut.

## II. Journal Articles

1. Bakircioglu, O 'Freedom of Expression and Hate Speech' 16 *Tulsa J. Comp. & Int'l L.* (2008), 1-51.
2. Banks, J 'European Regulation of Cross-Border Hate Speech in Cyberspace: The Limits of Legislation' 19 *EJC.CL.CJ* (2011), 1-13.
3. Barendt, E 'The Rise of Hate Speech and Hate Crime Laws in Liberal Democracies' 37 *JEMS* (2011), 917-934.
4. Benesch, S 'Vile Crime or Inalienable Right: Defining Incitement to Genocide' 48(3) *Virg.J.Int'l L.* (2008), 485-523.
5. Berman, A 'International Human Rights Law and New Zealand's Foreign Relations: A Comparative Study of New Zealand's Relations with South Africa and Iran' 12 *U. HAW. L. REV.* (1990), 283.
6. \_\_\_\_\_, 'Human Rights Law and Racial Hate Speech Regulation in Australia: A Reform and Replace?' 44(45) *GA. J. INT'L & COMP. L* (2015), 45-103.
7. Boon, K 'The United Nations As Good Samaritan: Immunity and Responsibility' 16 *CHI.J.INT'L L.* (2016), 341-385.
8. Carmi, G 'Dignity-The Enemy from Within: A Theoretical and Comparative Analysis of Human Dignity as a Free Speech Justification' 9 *J.Const'l L* (2007), 957-1001.
9. Catlin, S 'Proposal for Regulating Hate Speech in the United States: Balancing Rights under the International Covenant on Civil and Political Rights' 69 *Notre Dame L. Rev.* (1994), 771-813.
10. Cohen, R 'Regulating Hate Speech: Nothing Customary About it' 15 *Chic.JIL* (2014), 229-255.
11. Cowan, G et al., 'Hate Speech and Constitutional Protection: Priming Values of Equality and Freedom' 58 *J. OF SOC. ISSUES* (2002), 247-263.
12. Edger, R 'Are Hate Speech Provisions Anti-Democratic?:An International Perspective' 26 *AM.U.INT'L L.REV.* (2010), 119-127.
13. Farrior, F 'Molding the Matrix: The Historical and Theoretical Foundations of International Law Concerning Hate Speech' 14 *BERKELEY J.INT'LL* (1996), 1-98.

14. Faustin, M 'Preventing Genocide by Fighting against Genocide' 4 *IJAR* (2016),117-132
15. Hannum, H 'The Status of the Universal Declaration of Human Rights in National and International Law'25 *GA.J.INT'L & COMP.L.* (1996), 287-319.
16. Heinze, E 'Hate speech and the normative foundations of regulation' 9 *IJL in context* (2013), 590-617.
17. Kretzmer, D 'Freedom of Speech and Racism' 8 *CARDOZO L. REV.* (1987),445-482
18. Leets, L 'Experiencing Hate Speech: Perceptions and Responses to Anti-Semitism and Antigay Speech'58 *J. OF SOC. ISSUES* (2002), 341-361.
19. Mchangama, J 'The Problem with Hate Speech Laws'13 *The Rev.of Faith &Int'l Affairs* (2015),75-82.
20. McGoldrick, D & O'Donnell, T 'Hate-speech Laws: Consistency with National and International Human Rights Law' 18 *LEGAL STUD.* (1998), 453-471.
21. McNamara, L& Solomon, T 'the Commonwealth Racial Hatred Act 1996: Achievement or Disappointment' 18 *ADELL.REV.* (1996), 259-273.
22. Mello, M 'Hagan v. Australia: A Sign of the Emerging Notion of Hate Speech in Customary International Law' 28 *Loy.L.A.Int'l &Comp.L.Rev.* (2006), 365-464.
23. Meshesha, N 'Media and Politics in Ethiopia: A Critical Analysis' 1 *Ethiop.j.soc.lang.stud.* (2014),4-95.
24. Nemes, E 'Regulating Hate Speech in Cyberspace: Issues of Desirability and Efficacy' 11(3) *Inf.Com. Tech L.* (2002), 193-220.
25. O'Flaherty, M 'Freedom of Expression: Article 19 of the ICCPR and the Human Rights Committee's General Comment No 34' 12 *HR L.Rev.* (2012), 627-654.
- 26.Richards, D 'Free Speech and Obscenity Law: Toward a Moral Theory of the First Amendment' 123*Univ.Penn.L.Rev.*(1974),45-91
27. Regassa, T 'Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia'3(2) *Mizan L.Rev.*(2009),288-330.
28. Regel, A 'Hate Propaganda: A Reason to Limit Freedom of Speech' 49 *Sask L.Rev.* (1984-1985), 303-320.
29. Robert, P 'Viewpoint Discrimination and Commercial Speech'41 *Loyola of los.Anges L.Rev.*(2007), 169-180.

30. Rosenfeld, M 'Hate Speech in Constitutional Jurisprudence: A Comparative Analysis'24 *Cardozo L.Rev.* (2003), 1523.
31. Scanlon, T 'A Theory of Freedom of Expression'1(2) *Phil.Pu.Aff.* (1972), 2015-2026.
32. Schabas, W 'Hate Speech in Rwanda: The Road to Genocide'46 *MCGILL L.J.* (2000), 141-172.
33. Schauer, F 'The Phenomenology of Speech and Harm' 103(4)*Ethics*(1993),635-653
34. Simpson, R 'Dignity, Harm and Hate speech' *L.Phil.* (2013), 701-728.
35. Stone, G 'Content Regulation and the First Amendment' 25 *Wm. & Mary L. Rev.*189 (1983), 189-252.
36. Thornberry, P 'Forms of Hate Speech and the Convention on the Elimination of all Forms of Racial Discrimination (ICERD)' 5 *Religion&HR*(2010),97-117.
37. Timothewos, G 'Freedom of Expression in Ethiopia: A jurisprudential Dearth'4 *Mizan L.Rev.*(2010),201-231.
38. Tsesis, A 'Dignity and Speech: The Regulation of Hate Speech in a Democracy' 42 *Wake Forest L.Rev.*(2009),497-534.
39. Yilma, K 'Some Remarks on Ethiopia's New Cybercrime Legislation' 10(2) *Mizan L.Rev.* (2016), 448-458.
40. Yong, C 'Does Freedom of Speech Include Hate Speech?'(2011) 17 *Res Publica*, 385-403.

### **III.Unpublished Thesis and Working papers**

1. Elbahtimy, M 'The Right to be Free from the Harm of Hate Speech in International Human Rights Law' (2014),University of Cambridge Centre of Governance and Human Rights: Cambridge, CGHR Working Paper 7.
2. Gagliardone, I, Patel, A and Pohjonen,M 'Mapping and Analyzing Hate Speech Online: Opportunities and Challenges for Ethiopia' (2014), University of Oxford, The Programme in Comparative Media Law and Policy, Addis Ababa University: Oxford, Helsinki, Addis Ababa.
3. Mackeown, T Hate Speech and Holocaust Denial: The Prohibition of False Historical Discourse in Modern Society (LLM Research Paper at Faculty of Law Victoria University of Wellington 2014).

4. Scheffler, A 'The Inherent Danger of Hate Speech Legislation: A Case Study from Rwanda and Kenya on the Failure of a Preventative Measure' (2015) Master's Thesis in Peace and Conflict Studies on the file at Philipps-university, Marburg Germany.
5. Timmermann, W Incitement, Instigation, Hate Speech and War Propaganda in International Law (unpublished Thesis, LL.M. in International Humanitarian Law).

#### **IV. International Instruments and Soft Laws**

1. Additional Protocol to the Convention on Cybercrime (2003).
2. African (Banjul) Charter on Human & Peoples' Rights, 21 ILM 58, (1981).
3. American Convention on Human Rights, 1144 UNTS 123, (1969).
4. Convention on Cybercrime, ETS 185, (2001).
5. Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13, (1988).
6. Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, (1948).
7. Convention on the Rights of the Child, 1577 UNTS 3, (1989).
8. Discrimination (Employment and Occupation) Convention (ILO 11) 362 UNTS 31, (1958).
9. Declaration of Principles on Freedom of Expression in Africa (2002).
10. Grand Bay (Mauritius) Declaration and Plan of Action (1999), adopted by the OAU Ministerial Conference on Human Rights.
11. International Covenant on Civil and Political Rights, 999 UNTS 171, (1966).
12. International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, (1966).
13. International Convention on the Elimination of Racial Discrimination, 660 UNTS 195, (1965).
14. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 2220 UNTS 3, (1990).
15. Kigali Declaration (2003), Adopted by the AU Ministerial Conference on Human Rights.
16. Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence (2012).
17. Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), (1948).



18. United Nations Charter, 1 UNTS XVI, (1945).
19. Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23, (1993).

## **V. National Legislations**

1. Advertisement Proclamation 759 of 2012.
2. A Proclamation to Establish the Procedure for Peaceful Demonstration and Public Political Meeting No. 3 of 1991.
3. Broadcasting Service Proclamation 533 of 2007.
4. Civil Code of the Empire of Ethiopia Proclamation 165 of 1960.
5. Computer Crime Proclamation 958 of 2016.
6. Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities Proclamation 251 of 2001.
7. Danish Criminal Code Act No. 1389 and 1400 of 2005.
8. Execution of the State of Emergency of Ethiopia Directive 1 of 2016.
9. Federal Negarit Gazeta Establishment Proclamation No.3 of 1995.
10. Freedom of the Mass Media and Access to Information Proclamation 590 of 2008.
11. The Constitution of the Federal Democratic Republic of Ethiopia Proclamation 1 of 1995.
12. The Constitution of the Republic of Kenya Act NO.69/1963 as amended 2010.
13. The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation 414 of 2004.
14. Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism of the Republic of Rwanda Law No. 47 of 2001.
15. Prohibition of Hate Speech Act of Kenya of 2007.
16. Relating to the Punishment of the Crime of Genocide Ideology Law of Rwanda No.18/2004 of 2008
17. Telecom Fraud Offense Proclamation 761 of 2012.
18. Revised Constitution of the Empire of Ethiopia of 1955.
19. Constitution of the Peoples' Democratic Republic of Ethiopia of 1987.

## **VI. Cases**

1. *Abrams v United States* U.S. Supreme Court, Judgment, File No. 316, (10 December 1919).

2. *Brandenburg v. Ohio*, U.S. Supreme Court, Judgment, File No. 492,(9 June 1969)
3. *Chaplinsky v. New Hampshire*, U.S. Supreme Court, Appeal Judgments, File No. 255,(5 February 1942).
4. *Malcolm Ross v. Canada*, UN Human Rights Committee, CCPR/C/70/D/736/1997 , (26 October 2000)
5. *National Socialist Party v. Skokie*, U.S. Supreme Court, Judgment, File No. 76-1786, (14 June 1977).
6. *J. R. T. and the W. G. Party v. Canada*, UN Human Rights Committee, Communication No. 104/1981, U.N. Doc. CCPR/C/OP/2, (1984).
7. *Prosecutor v Nahimana, Barayagwiza, & Ngeze*(Media case),ICTR, Case No. ICTR-99–52-T, (3 December 2003).
8. *R.A.V. v. City of St. Paul*, U.S. Supreme Court, Judgment, File No.90-7675, (22 June 1992).
9. *Robert Faurisson v. France*, UN Human Rights Committee, Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993(1996).
10. *Terminiello v. the City of Chicago*, U.S. Supreme Court, Judgment, File No. 272, (16 May 1949).
11. *The Jewish community of Oslo et al. v. Norway*, UN Human Rights Committee, Communication No. 30/2003,U.N.Doc.CERD/C/67/D/30/2003 (2005).
12. *Virginia v. Black et al.*, U.S. Supreme Court ,Certiorari to the Supreme Court of Virginia, File No. 01–1107, (7 April 2003).

## **VII. Other UN documents**

1. Frank, R *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (2010), A/HRC/14/23
2. Izsák, R *Report of the Special Rapporteur on minority issues* (2015), A/HRC/28/64
3. Ligabo, A *Report of the Special Rapporteur on the right to freedom of opinion and expression*(2005), UN Doc. E/CN.4/2006/55
4. UN Human Rights Council, Concluding observations of the Human Rights Committee Ethiopia, CCPR/C/ETH/CO/1, 25 July 2011.

5. Committee on the Elimination of Racial Discrimination, *General Recommendation No.7: Measures to eradicate incitement to or acts of discrimination* (1985), U.N. DOC. A/40/18 AT 120 (1985).
6. Committee on the Elimination of Racial Discrimination, *General Recommendation No.15: Measures to eradicate incitement to or acts of discrimination* (1993), U.N. DOC. A/48/18 AT 114 (1994).
7. Committee on the Elimination of Racial Discrimination, *General Recommendation No. 35, Combating racist hate speech* (2013), CERD/C/GC/35.
8. Council of Europe, *Recommendation (97)20 of the Council of Europe* (1997)
9. UN Human Rights Commission, *General Comment No.10: Freedom of Expression (Art. 19)*, (Jun. 29, 1983), U.N.Doc.HRI/GEN/1/Rev. 1, par.4.
10. UN Human Rights Committee, *General Comment 11, Article 20: Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred* (1983), U.N. DOC. HRIGEN1REV.1.
11. UN Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant* (May 26, 2004), UN Doc. CCPR/C/21/Rev.1/Add.13.
12. UN Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34.

#### VIII. **Other Reports**

1. Amnesty International *Safer to Stay Silent. The chilling effect of Rwanda's Laws on 'genocide ideology' and 'sectarianism'*(2010) available at <https://www.amnesty.org/en/documents/AFR47/005/2010/en/> visited on 11 March 2017.
2. Amnesty International *unsafe to speak out. Restrictions on Freedom of Expression in Rwanda*(2011) available at <https://www.amnesty.org/en/documents/AFR47/002/2011/en/> visited on 11 March 2017.
3. *Article 19 Comment on the Law Relating to the Punishment of the Crime of Genocide Ideology of Rwanda* (2009) available at <http://www.refworld.org/docid/4ac5abd90.html> visited on 11 May 2017.

4. Article 19 *Commentary on the Regulation of “hate speech” in Kenya* (2010a) available at <http://www.article19.org/pdfs/analysis/kenya-commentary-on-the-regulation-of-hate-speech-.pdf> visited on 11 March 2017.
5. CIVICUS: World Alliance for Citizen Participation, East and Horn of Africa Human Rights Defenders Project (EHAHRDP) and Human Rights Council (HRCO) *Federal Democratic Republic of Ethiopia Joint NGO Submission to the UN Universal Periodic Review 19th Session of the UPR Working Group*(2013).
6. Federal Democratic Republic of Ethiopia, *the Fifth and Sixth Periodic Country Report (2009-2013) on the Implementation of the African Charter on Human and people’s rights in Ethiopia* (2014).
7. Freedom House, *Freedom of the Press 2008 – Ethiopia* (29 April 2008) available at <http://www.refworld.org/docid/4871f602c.html> visited 11 March 2017.
8. Freedom House, *Freedom of the Press 2016 – Ethiopia* (2016) available at <https://freedomhouse.org/report/freedom-press/2015/ethiopia> visited 11 March 2017.
9. Freedom House *Freedom on the Net 2016: Ethiopia* (2016) available at [www.freedomonthenet.org](http://www.freedomonthenet.org) visited 20 August 2016.
10. PRISM Report, *Backgrounds, Experiences and Responses to Online Hate Speech: A Comparative Cross Country Analysis* (2015).
11. United States Department of State, Bureau of Democracy, Human Rights and Labor *Country Reports on Human Rights Practices for 2015: Ethiopia* (2015).

#### **IX. Internet Sources**

1. Busari, S ‘Ethiopia declares state of emergency after months of protests’ CNN, 11 October 2016 available at <http://www.cnn.com/2016/10/09/africa/ethiopia-oromo-state-emergency/> visited on 11 March 2017.
2. Bresner, K ‘Understanding the Right to Freedom of Expression’ (2015) available at [http://ihrp.law.utoronto.ca/utfl\\_file/count/media/Understanding%20Freedom%20of%20Expression%20Primer%20ENG%20-%20web.pdf](http://ihrp.law.utoronto.ca/utfl_file/count/media/Understanding%20Freedom%20of%20Expression%20Primer%20ENG%20-%20web.pdf) visited on 02 April 2017.
3. Chala, E ‘Ethiopian authorities shut down mobile internet and major social media sites, Global Voices (blog), 11 October 2016 available at <https://globalvoices.org/2016/10/11/ethiopian-authoritiesshut-down-mobile-internet-and-major-social-media-sites/> visited on 11 March 2017.

4. Dovell, E 'Hate Speech Leads to Genocide' World Policy Blog, 11 November 2010 available at <http://www.worldpolicy.org/blog/2010/11/11/hate-speech-leads-genocide> visited on 11 April 2017.
5. Horn Affairs, Ethiopia's Growing Challenge of Hate speech available at <http://hornaffairs.com/en/2016/07/22/hate-speech-violence-ethiopia/> visited on 10 August 2016.
6. HRW *Law and Reality. Progress in Judicial Reform in Rwanda* (2008a) available at <https://www.hrw.org/report/2008/07/25/law-and-reality/progress-judicial-reform-rwanda> visited on 11 March 2017.
7. Kenya National Commission on Human Rights *on the brink of the precipice: A human rights account of Kenya's post-2007 election violence* (2008) available at [http://www.wikileakskenya.co.ke/wp\\_content/uploads/2012/02/KNChR-on-The-Brink-of-The-Precipice-Final-August-2008.pdf](http://www.wikileakskenya.co.ke/wp_content/uploads/2012/02/KNChR-on-The-Brink-of-The-Precipice-Final-August-2008.pdf) visited on 15 January 2017.
8. Kenya post election crisis (2008) available at <http://www.irinnews.org/in-depth/76116/68/kenya-s-post-election-crisis> visited on 29 February 2017.
9. Mendel, T 'Study on International Standards Relating to Incitement to Genocide or Racial hatred for the UN Special Advisor on the Prevention of Genocide' (2006) available at [http://www.concernedhistorians.org/content\\_files/files/file/To/239.pdf](http://www.concernedhistorians.org/content_files/files/file/To/239.pdf) visited 20 December 2016.
10. Preventing, Redressing and Inhibiting hate speech in new Media (PRISM), Hate Crime and Hate Speech in Europe: Comprehensive Analysis of International Law Principles, EU-wide Study and National Assessments (2015) available at <http://www.prismproject.eu/hate-crime-and-hate-speech-in-europe-comprehensive-analysis-of-international-law-principles-eu-wide-study-and-national-assessments/pdf> visited 12 December 2016.
11. Reuters' news available at <http://www.reuters.com/article/us-germany-fakenews-idUSKBN16L14G> visited on 11 December 2016.
12. Tadeg, M 'Freedom of Expression and The Media Landscape in Ethiopia: Contemporary Challenges' (2015) available at <http://ssrn.com/abstract=2763600> Visited on 11 September 2016.

13. UN News Center, The Ethiopian leader speech at 71<sup>st</sup> UN Assembly, available at <http://www.un.org/apps/news/story.asp?NewsID=55022#.WH6wKdIrLIU> visited on 11 December 2016.
14. Woldemariam, Y 'A critical look into the Ethiopian elections' Sudan Tribune, 3 June 2005, Available at <http://www.sudantribune.com/spip.php?article9931> visited on 15 April 2017