



**ASSESSMENT OF THE MEDIA PROCLAMATION
NO.1238/2021: ITS COMPATIBILITY WITH INTERNATIONAL
LAWS AND THE FDRE CONSTITUTION**

BY:

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JIMMA; ETHIOPIA

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A thesis

Submitted to the College of Law and Governance of Jimma University in Partial
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in Human Rights and Criminal Law

Declaration

I, Moges Bogale, hereby declare that this senior thesis is an original one and has never been presented at any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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Abbreviations and Acronyms

ACHPR.....	African Charter on Human and Peoples' Rights
ACHR.....	American Convention on Human Rights
ACRWC.....	African Charter on Rights and Welfare of Child
ART.....	Article
CEDAW.....	Convention on Elimination of Discrimination against Women
CERD.....	Convention on Elimination of all Racial Discrimination
CRC.....	Convention on Rights of the Child
ECHR.....	European Convention of Human Rights
FDRE.....	Federal Democratic Republic of Ethiopia
GC.....	General Comment
HPR.....	House of People's Representative
ICCPR.....	International Covenant on Civil and Political Rights
ICMW.....	International Convention on the Rights of all Migrant Workers
UDHR.....	Universal Declaration of Human Rights
UN.....	United Nations
UNGA.....	United Nations General Assembly

Abstract

The right to freedom of expression and the media are firmly established in international instruments, regional instruments, and the FDRE Constitution. It is subject to restrictions provided by law, for legitimate purposes, and as proved necessary. Accordingly, national legislation should be framed in line with higher laws. The former media laws of Ethiopia have provisions with the effect of curtailing freedom of expression and media. To minimize such flaws, the parliament adopted media proclamation No.1238/2021. The objective of this paper is to assess the compatibility of this proclamation with international laws, and the FDRE Constitution. Moreover, it assesses the implications of the proclamation on the right to freedom of expression and the promotion and protection of other human rights. It also discusses the legal framework for freedom of expression and the media. To this end, the study employed a qualitative approach using both primary and secondary sources of data. In its scope, this study limits itself to an inquiry into the laws without dealing with the practical aspect of the media proclamation. Internationally, freedom of expression is recognized under the UDHR, ICCPR, CRC, CRPD and ICMW. Regionally, it is provided under ACHPR, ECHR, ACHR and other soft laws. In addition, there are decisions by different tribunals on the issue. Art.29 of the FDRE also recognizes freedom of expression. Proclamation No.1238/2021 has 92 articles divided into seven parts. The study revealed that the proclamation made improvements in the establishment of independent authority, the decriminalization of defamation, private ownership, scope of application, and types of administrative measures. On the other hand, some provisions regarding the prohibition of broadcast licenses for individuals, political parties, and religious institutions need further modification. As well, inadequate coverage is provided to vulnerable groups. The study found the prohibitions contrary to international laws and the FDRE Constitution. Furthermore, double administrative measures are provided for a single fault. The study recommends that the provisions of the proclamation prohibiting broadcast license be amended, leaving the determination for the authorities to see on the basis of the need for diversity. Moreover, provisions providing double punishment for violation of a single provision should be amended with a single measure. As well, provisions should be added to give adequate coverage to vulnerable groups and government should take necessary measures for practical implementation of the proclamation extra-territorially.

KEY WORDS: Ethiopia, Media, freedom of expression, proclamation, article

CHAPTER ONE

1. INTRODUCTION

This chapter provides an introductory part and will serve as a gateway to the subsequent chapters. Accordingly, it begins with the background of the study and covers issues like the statement of the problem, literature review, general and specific objectives of the study, research questions, limitations of the study, significance of the study, scope of the study, research methodology and structure of the study.

1.1. Background of the study

In today's world, the right to freedom of expression is one of the fundamental human rights. It is guaranteed under different international instruments, regional instruments and national laws. Internationally, it is guaranteed under UDHR (Art.19),¹ ICCPR (Art.19 &20),² CERD (Art.5), and CRC (Art.13).³ For instance, Art.19 of the UDHR stipulates that 'everyone has the right to freedom of opinion and expression without interference through any media and without frontiers.' Similarly, Art.19 of the ICCPR provides that every person has the right to freedom of expression.⁴ This right includes freedom to seek, receive, and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media.⁵ According to Art.5 (d) (viii) of the CERD, everyone has the right to freedom of opinion and expression without any racial discrimination.⁶ The CRC has a provision guaranteeing the rights of the child to freedom of opinion and expression, and its content is almost similar to the provisions of the ICCPR. The ICMW also provided a similar provision to the ICCPR.

¹ The universal declaration of human rights (adopted 10 December 1948) UNGA Res. 217A(III) (here in after UDHR), Art.19&20

² International covenant on civil and political rights (adopted in Dec. 1966, enter into force in 1976), UNGA Res. No.171 (here in after ICCPR) Art.19 &20

³ Convention on the rights of the child (adopted in Nov.1989, entered into force 2 sept.1990), 1577 (here in after CRC) Art.13

⁴ Supra note No.2

⁵ Ibid

⁶ International convention on elimination of all forms of racial discrimination(adopted in Dec.1965 entered into force in 1969) UNGA Res. No.2106, Art.5

Furthermore, there is a general comment by the human rights committee on Art.19 of the International Covenant on Civil and Political Rights.⁷ Accordingly, it includes commentary on political discourse, discussions of human rights, journalism, and religious discourse through different modes of communication.⁸ A free, uncensored, and unhindered press or other media is essential in any society to ensure freedom of expression and the enjoyment of other human rights.⁹ This shows that freedom of expression and freedom of the media are essential for the overall protection of human rights guaranteed under different international and regional instruments.

Moreover, the UN General Assembly adopted a resolution on Freedom of Information, which includes the right to gather, transmit, and publish news anywhere and everywhere.¹⁰ Freedom of information was then recognized as a fundamental human right and as the touchstone of all the freedoms for which the United Nations is working.¹¹

Regionally, it is recognized under the ACHPR (Art.9),¹² ACRWC (Art.7),¹³ ECHR (Art.10),¹⁴ and ACHR (Art.13).¹⁵ The ACHPR explicitly mentioned freedom of expression and the media, stating that every individual has the right to receive information as well as the right to express and disseminate his or her opinion within the limits set by a clear legal provision. From this provision, it is possible to conceive that the right to receive information and disseminate information is limited only on the basis of provisions of laws for a legitimate purpose.

Additionally, this right is recognized in favor of specific groups of the community. Accordingly, Art.7 of the ACRWC stipulated that “every child who is capable of communicating his or her own views should be allowed to express his or her opinions freely.” Furthermore, Art.10 of the ECHR clearly provides the right to freedom of expression without intervention by the public

⁷ Human rights committee GC No.34, Geneva, 2011

⁸ Ibid

⁹ Ibid

¹⁰ Ana Cristina Carvalho: freedom of information and the right to environmental protection, European scientific journal, p.65

¹¹ Ibid

¹² African charter on human and people’s rights (adopted on June 1981 and entered into force in 1986), art.9

¹³ African charter on the right and welfare of child, Art.7

¹⁴ The European convention for the protection of human rights and fundamental freedoms, as amended by protocols No.11 and 14, 4 November 1950, ETS, art.10

¹⁵ American convention on human rights (adopted as of 22 November 1969), art.13

authorities and regardless of frontiers with its scope of limitation.¹⁶ This provision also stated that exercising this right does not preclude states from exercising their authority to require licensing of various media.¹⁷

According to sub Art.2 of the same provision, exercising freedom is subject to formalities, conditions, restrictions, or penalties that are prescribed by law and are necessary for the prevention of disorder or crime, for the protection of health or morals, and for the protection of others reputations or rights.¹⁸ From this, it is possible to understand that the limitation of freedom of expression for reasons not provided by the law amounts to a violation of the right.

Ethiopia is party to most of these international and regional human rights instruments and is duty bound to comply with their provisions by virtue of Art.9 (4) and 13(2) of the FDRE Constitution.¹⁹ Moreover, the right to freedom of expression is clearly provided under Art.29 of the FDRE Constitution, including the grounds for limitation to the right.²⁰ It has been proclaimed as one of the fundamental rights and freedoms under the FDRE Constitution.²¹ Art.29 provides that everyone has the right to hold opinions without interference and to freedom of expression without any interference. As per sub Art.2 of the same, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, orally, in writing, or in print, in the form of art, or in any other medium of his/her choice. This provision also prohibited any form of censorship and guaranteed access to information of public interest.²² In addition to the clear provision in the constitution enshrining the right in question, Chapter Three of the Constitution should be interpreted in accordance with the Universal Declaration of Human Rights and other international human rights instruments ratified by Ethiopia.²³ Furthermore, the FDRE constitution declared all international treaties ratified by the country to be part of the law of the land.²⁴ Accordingly, even in the absence of clear provisions, the judiciary, executive, and

¹⁶ European convention of human rights, Art.10

¹⁷ Ibid

¹⁸ Ibid, Art.10(2)

¹⁹ Constitution of the federal democratic republic of Ethiopia, Federal Negarit Gazeta, 1st year, No.1, 21st August 1995 (here in after FDRE constitution)

²⁰ FDRE constitution Art.29

²¹ Gedion Timothewos: freedom expression in Ethiopia: the jurisprudential dearth, Mizan law review, Vol.4, No.2, 2010, p. 201

²² FDRE constitution, Art.29(4)

²³ FDRE constitution, Art.13(2)

²⁴ Ibid, Art.9(4)

legislative bodies are under an obligation to give due regard to the provisions of international treaties ratified by Ethiopia.

The right to freedom of expression under international human rights instruments and the FDRE Constitution indicates that the right to freedom of expression requires not only the guarantee of everyone's right to freely express them-selves. Rather, they are free to do so using different types of media.²⁵ This indicates that the Ethiopian government is duty bound to ensure the respect of the right to freedom of expression by virtue of these constitutional provisions.

However, the right to freedom of expression is not an absolute right. Rather, it is subject to limitation on grounds provided by the law. Accordingly, it is subject to certain restrictions provided by law and is necessary for respect of the rights or reputations of others, protection of national security or public order, and public health or morals. Media is any means of communication through which we can convey a message or information from the communicator to the recipient, regardless of the fact that the communicators or recipients are individuals or groups.²⁶ The media plays a great role in the promotion and protection of the right to freedom of expression and other fundamental human rights guaranteed under different international human rights instruments.²⁷ The mass media have a significant influence in providing assistance to the government as well as society in the promotion and protection of human rights.²⁸

The law on media represents a young legal discipline which is closely associated with the development of the media, such as the electronic media and the profession of journalism.²⁹ According to Art.6 of the United Nations Declaration on Human Rights, Education and Training for the Purpose of Promoting Human Rights, National Human Rights Institutions have a responsibility to make use of new information and communication as well as media to raise

²⁵ Abu Bakar Siddique (2019), Role of media in promotion of education and protection of human rights: an overview, journal of ELT and education, Vol.2, issue 2, 2019, p.65-72

²⁶ Nevenka Ronkova, International legal framework for media, journal of process management, Vol.4, No.2, 2016, p.57

²⁷ Umesh Kumari, Role of mass media in promoting human rights, International educational journal, revised on 15th May 2016, p.91

²⁸ Supra note, No.25

²⁹ Nevenka Ronkova: international legal framework for media, journal of process management, Vol.4, No. 2, 2016, p.58

public awareness of the human rights concerns facing their communities.³⁰ In doing so, the media as an institution is subject to the provisions of media laws. Accordingly, the government enacts laws governing the conduct of different media by stipulating the rights, obligations, and responsibilities of the media. Legally speaking, the media laws should be enacted taking into account the provisions of core international human rights treaties and should be limited only to legitimate purposes by clear provisions.

The Ethiopian legislative organ proclaimed different laws, such as freedom of the mass media and access to information, Proclamation No.590/2008, broadcasting service proclamation No.533/2007, and press proclamation. Although these laws have an aspiration for the enforcement of human rights and consolidation of democracy, their substantive formulation is contrary to this purpose. The media laws of the country was restricted the activities of journalists, activists, and political parties.³¹

Thus, those media laws have long been crippled freedom of expression and being restrictive.³² The parliament recently enacted the new media proclamation No.1238/2021 for better protection of the right to freedom of expression. The preamble of the new proclamation provides an aspiration to fully enforcing the rights to freedom of expression and to the media. Therefore, this study has assessed this new media proclamation from the perspective of international law and the provisions of the FDRE Constitution.

1.2. Statement of the problem

Currently, the media plays a key role in the societal development and promotion of human rights.³³ It is considered the fourth branch of the government.³⁴ This role of the media is played in different ways, such as making people aware of their rights, exposing the violation of human rights by focusing on areas in need of the protection of human rights.³⁵ Ensuring a conducive environment for the operation of the media plays a vital role in the better protection of the right

³⁰ Alemseged Kiflu: social media to promote human rights: the case of Ethiopian human rights commission, Addis Ababa university, 2020, p.1

³¹ Ibid

³² Ibid

³³ Supra note No.25

³⁴ Rachel Luberd: the fourth branch of the government: evaluating the role of media in overseeing the independent judiciary, Notre Dame journal of law, ethics and public policy, Vol.22, p.517

³⁵ G. N. Ray: the role of media in protection of human rights, p.6

to freedom of expression and the respect of the fundamental rights and freedoms guaranteed under international laws and the FDRE Constitution. The right to freedom of expression and freedom of the media is clearly guaranteed under different international and regional human rights instruments as well as the FDRE Constitution.

The existence of a strong legal framework is a basis for the actual existence and functioning of media freedom. Despite the existence of legal frameworks, these rights are meaningless in the absence of real treatment and commitment by the state towards media freedom. Expressing in other words, a system of regulation conducive to freedom of expression, pluralism and diversity of media is essential to enforce the media right of the citizens.

Although the right to freedom of expression and the media is guaranteed under the international treaties ratified by Ethiopia and the FDRE Constitution, there are subsidiary laws enacted at different times by the Ethiopian parliament directly or indirectly restricting the right to freedom of expression. The owners and editors of publications with content critical of government policy or journalists participating in writing critical articles face regular and intense pressure from security officials.³⁶ This has the effect of compromising constitutional rights to freedom of expression, and the press as well as the right to seek, receive, and impart information.³⁷ In principle according to Art.19(3) of ICCPR one of the requirements for the legality principle is, limitations when provided by the law must be precisely worded, unambiguous and must be compatible with international human rights law. So, it is possible to observe that the media and media workers should be free from pressure in undertaking their functions in Ethiopia.

The major media laws are freedom of the mass media and access to information, Proclamation No.590/2008, broadcasting service proclamation No.533/2007, and press proclamation. Among others, proclamation No.590/2008 provided vague provisions excluding certain official activities from the scrutiny of the media.³⁸ Those exceptions include protection of public peace and security, security of individuals, property, and witnesses, protection of national security, defense,

³⁶ Ibid

³⁷ Seble Teweldebirhan: the role of media in the promotion of human right in Ethiopia, Master's thesis, Addis Ababa University, p.3 (2011)

³⁸ Solomon Goshu Shiferaw, freedom of expression in the context of developmental state: The case of Ethiopia, Addis Ababa University, 2015, p.24

cabinet security, and protection of international relations, as well as protection of the law enforcement operations without obstruction.³⁹

Accordingly, it is difficult to justify these exceptions under the three-part test limitations provided by relevant international laws, such as the ICCPR. The possible grounds of limitation on the right to freedom of expression and freedom of information under the ICCPR are respect for the rights of others and national security. However, some exceptions, such as cabinet security and discussions between ministers, are difficult to justify under international law grounds of limitation. Furthermore, the exceptions under proclamation No. 590/2008 are contrary to the right guaranteed under Art.29 (3(b)) of the FDRE Constitution, which guarantees freedom to access information of public interest. This means some exceptions, like discussion between ministers, is in one way or another, information of public interest since the activities of the ministers are concerns of the public. It is possible to infer that the law is intended to serve the purpose of the government by curbing criticism of government leaders and policies, and aims to fortify government bodies under the guise of secrecy.⁴⁰

Moreover, Art.10 of the press proclamation provides vague lists of prohibitions that are subject to abuse and manipulation by authorities.⁴¹ Furthermore, the broadcasting service proclamation also contains provisions that are directly or indirectly contradictory to international laws and the FDRE Constitution. The main problem with this proclamation is its failure to guarantee the independence of the regulatory body since the members of the Ethiopian broadcasting authority are government officials or appointees from different institutions and are accountable to the ministry, not to the people.⁴² However, the independence of the media regulatory bodies is crucial for the free flow of information and ideas. Moreover, the broadcasting proclamation prohibited the right to media ownership by individuals, political organizations, and religious institutions.⁴³ In this regard, the proclamation is contrary to international law since, under Art.19 of the ICCPR, there are no such prohibitions. Such a restriction is in no way justifiable to serve other purposes. As well, it also contradicts the principle of non-discrimination guaranteed under

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Proclamation No. 34/1992; A proclamation to provide for the freedom of the press, Addis Ababa, 21st October 1992, article 10

⁴² Broadcasting service proclamation No.533/2007, Federal Negarit Gazeta, 13th year 39, art.4

⁴³ Ibid, art.23

international laws. Accordingly, a prohibition on ownership based on status amounts to a restriction of the right to freedom of expression and media freedom.

Similarly, it is contrary to Art.29 of the FDRE Constitution since being a political organization is not provided as a ground of ownership restriction. In principle, the grounds for limitation on the right to freedom of expression and freedom of the media are provided both under international instruments ratified by Ethiopia and in the FDRE Constitution. These possible grounds of limitation are necessity for the general welfare or the rights and freedoms of others, public morals, public health, safety, or national security.⁴⁴ By virtue of Art.9 (4) and 13(2) of the FDRE Constitution, subsidiary laws should put a limit on the exercise of the right only on the grounds provided by international law and Art.29 of the FDRE Constitution.

Thus, the regulatory, administrative, and political measures seriously affected the ability of the media to function as an independent institution.⁴⁵ Further, these laws make the work of journalists, activists, and political parties cumbersome since individual rights to freedom of expression, opinion, and association are restricted by the media laws.⁴⁶

Recently, a new media proclamation was adopted by the Ethiopian parliament. Ideally, this new proclamation is expected to rectify the existing criticisms and problems with the previous media laws by providing a better legal guarantee for the media to properly undertake its functions. The preamble of the proclamation provided that there is a need to enact a law in order to fully enforce the right to freedom of expression and citizens freedom of the media, which are guaranteed under the FDRE Constitution, as well as international human rights instruments which are binding on Ethiopia.⁴⁷

Accordingly, the new media proclamation brought some essential improvements. Among those improvements it established media authority with broad powers.⁴⁸ This is crucial for the administration of media by an organ free from different unnecessary interference. This a milestone step as compared to the broadcasting authority established by the old broadcasting

⁴⁴ Ibid, p.25

⁴⁵ Supra note No.35, p.29

⁴⁶ Supra note No.35, p.28

⁴⁷ Media proclamation No.1238/2021, Federal Negarit Gazeta, 27th year, No.22, April 2021

⁴⁸ Ibid, art.4

service proclamation which provided that the members of the authority is from different government institutions.⁴⁹ Moreover, the new media proclamation decriminalized defamation committed by the media which entail both civil and criminal punishment under the old laws.⁵⁰ This enables free media to flourish without self-censorship for fear of criminal punishment. In addition, the new proclamation extended the scope of its application to include online media and to apply extra-territorially.⁵¹

Furthermore, the new proclamation allowed individuals to own periodicals and online media which ensure the right of media owner to disseminate and user's right to access information from diversified sources. As well, it adopted more liberal provisions regarding the right to broadcast media ownership of religious institutions as compared to the previous media laws which totally prohibited this kind of ownership license.⁵² It also provided a graduated range of administrative measures to be taken by the authorities.⁵³ This helps to minimize disparity in decision making and unnecessary discretionary power of a decision making authority.

Although these improvements are made it is necessary to assess whether the new proclamation brings the necessary change or rectified the problem within the previous laws. However, the only possible way to know whether or not the problems in the previous laws have been addressed is through the conduct of scientific research. Moreover, there is no research conducted on this issue or specifically on this new media proclamation, so it needs an inquiry into it. Accordingly, the researcher found it necessary to conduct scientific research on this new proclamation by making an assessment regarding the improvements made and its compatibility with the provisions of international treaties ratified by Ethiopia and the provisions of the FDRE constitution. Therefore, this research has assessed the new media proclamation in light of international laws and the FDRE constitution.

⁴⁹ Broadcasting service proclamation No.533/2007, Federal Negarit Gazeta, 13th year 39, Art.9

⁵⁰ Media proclamation No.1238/2021, Federal Negarit Gazeta, 27th year, No.22, April 2021, Art.84(1)

⁵¹ Ibid, Art.3

⁵² Ibid Art.40(3)

⁵³ Ibid, art. 84

1.3. Literature review

The rights to freedom of expression and freedom of the media are guaranteed under core international human rights treaties. At the international level, it is recognized under UDHR,⁵⁴ ICCPR,⁵⁵ CRC,⁵⁶ ICMW and CERD.⁵⁷ Furthermore, some provisions of the international treaties were expanded by the general comments of the UN human rights committee. As well, it is recognized by major regional human rights instruments such as ACHPR,⁵⁸ ACRWC,⁵⁹ ECHR⁶⁰ and ACHR. At national level, the rights to freedom of expression and the media are provided under Art.29 of the FDRE constitution.⁶¹ Apart from this clear constitutional provision, Art.9 (4) and 13(2) of the FDRE constitution are essential to give effect to the provisions of international and regional human rights instruments ratified by Ethiopia. Additionally, the Ethiopian parliament enacted media proclamation No.1238/2021 which repealed pre-existing media laws.

Moreover, there is an article written by “Article 19” entitled the legal framework for freedom of expression in Ethiopia. However, the discussion by this article is limited to discussion of compatibility of the old Ethiopian legal framework on freedom of expression. Accordingly, this article does not deal with the new media proclamation. So, this paper is different from this article as it mainly deals with the compatibility of this new proclamation with upper laws.

Additionally, there is an article by Mesenbet Assefa, Abel Gisila and Edom Getachew. However, their work discussed only the changes made by the new proclamation and no comparison is made with other laws. As such, this work differs from their works as it assesses the proclamation in light of other laws. As far as the knowledge of the researcher is concerned, there has been no research conducted on the media proclamation No.1238/2021, specifically on its compatibility with relevant international laws and provisions of the FDRE constitution. Therefore, the compatibility of the provisions of the media proclamation No.1238/2021 with international laws and the FDRE constitution has not been studied.

⁵⁴ Universal declaration of human rights, Art.19

⁵⁵ International covenant on civil and political rights, Art.19

⁵⁶ Convention on the right of the child, A rt.13

⁵⁷ Convention on elimination of all forms of racial discrimination, Art.5

⁵⁸ African charter on human and peoples’ right, Art.9

⁵⁹ African charter on the rights and welfare of the child, Art.7

⁶⁰ European convention on human rights, Art.10

⁶¹ FDRE constitution, Art.29

1.4. Objectives of the research

This research has both general and specific objectives;

1.4.1. General objective

The general objective of this study is to assess the compatibility of the new media proclamation No. 1238/2021 with international laws and the FDRE constitution.

1.4.2. Specific objectives

The specific objectives of the study are:

1. To discuss the international, regional, and Ethiopian legal framework dealing with the media and freedom of expression.
2. To examine whether or not the media proclamation is normatively compatible with relevant international instruments, regional instruments, and the provisions of the FDRE constitution.
3. To examine the implications of the media proclamation and its improvements in the protection and promotion of the right to freedom of expression and other human rights.

1.5. Research questions

The study has answered the following basic questions:

1. What are the international, regional and Ethiopian legal frameworks dealing with the media and freedom of expression?
2. Is the new media proclamation No.1238/2021 normatively compatible with relevant international instruments, regional instruments and the provisions of the FDRE constitution?
3. What are the implications of the media proclamation and its improvements in the protection and promotion of the right to freedom of expression and other human rights?

1.6. Methodology

This research is of the doctrinal research type. In order to achieve the objectives of the study and answer the research questions, the researcher has employed a qualitative approach. Accordingly, both primary and secondary sources of data are used in this research. International and regional

human rights instruments, general comments and national laws are consulted as primary sources. Books, journals, articles and other written sources are considered secondary sources. Moreover, reliable websites are consulted. Additionally, international cases from different international tribunals are analyzed to assess the existing jurisprudence on media issues. The assessment of the compatibility of the proclamation with international laws and the FDRE constitution is made from the perspective of the independence of the regulatory body, ownership prohibition of broadcast media for individuals and other institutions, administrative measures and legal liabilities. Moreover, it is analyzed from the perspective of the protection provided for vulnerable groups, operational freedom and pluralism of media. As the study involves an assessment of the law, it is appropriate to conduct doctrinal research and to qualitatively analyze the data from different sources.

1.7. Scope of the study

The research focuses on the assessment of new media proclamation in light of international human rights laws, particularly human rights instruments ratified by Ethiopia. Accordingly, major human rights instruments, general comments, resolutions, and existing jurisprudence are part of the study. Nationally, the relevant provisions of FDRE and the new media proclamation are considered. Moreover, this study limits itself to an inquiry into the laws without dealing with the practical aspect of the media proclamation. Therefore, this study deals with the assessment of the provisions of the new media proclamation regarding its compatibility and consistency with the relevant international standards and the relevant provisions of the FDRE Constitution.

1.8. Limitation of the study

In the course of this research, besides time constraints, the researcher expects the following limitations: Firstly, as the study is purely doctrinal legal research, it places emphasis on analyzing the legal provisions and principles rather than looking at practical aspects of the laws. As a result, the study, other than making policy insights and recommendations may not produce immediate results in amending or revising a given provision or sub-provisions of the legislation. Secondly, the researcher experiences the constraints of internet access.

1.9. Significance of the study

The study is important for different organs, such as lawmakers, law enforcement organs, and judiciaries, to gain a better understanding of the new media proclamation since it provides a clear picture of the new media proclamation regarding its compatibility with relevant international law and the FDRE Constitution.

Furthermore, it helps as an input for other researchers and academicians to conduct further research on the subject matter.

1.10. Structure of the study

The research report is organized into five chapters. The first chapter is an introductory part and will serve as a gateway to the subsequent chapters. The second chapter discusses the conceptual and legal frameworks on freedom of media and freedom of expression. The third chapter provides an overview of the new media proclamation No.1238/2021. The fourth chapter analyses the compatibility of the Ethiopian media proclamation No.1238/2021 with international laws and FDRE Constitution. Lastly, the fifth chapter presents conclusion and recommendation.

CHAPTER TWO

2. CONCEPTUAL AND LEGAL FRAMEWORK ON FREEDOM OF MEDIA AND EXPRESSION

2.1. Introduction

This chapter discusses the concept of freedom of the media and expression as well as the legal framework governing freedom of the media and expression. To this end, this chapter provides the provisions of different international instruments and regional instruments relevant to freedom of the media and expression. Furthermore, this chapter provides decisions of different human rights tribunals dealing with freedom of expression and the media. Accordingly, the main objective of this chapter is to highlight the essence of freedom of the media and expression through an assessment of relevant legal framework. Moreover, this chapter intends to assess the way cases involving freedom of the media and expression were entertained by different tribunals.

2.2. The concept of freedom of media and expression

Media is a communication channel used to disseminate different types of information, such as news, music, education and promotional message.⁶² It represents the voice of citizens and provides enabling conditions for citizens to assert their opinions.⁶³ The state should guarantee a diverse and independent media in order to protect the rights of media users to acquire a wide range of information and ideas.⁶⁴ Unhindered and uncensored media is a cornerstone in a democratic society to ensure the right to freedom of opinion and expression and other fundamental rights.⁶⁵

⁶² Nevenka Ronkova, International legal framework for media, journal of process management, Vol.4, No.2, 2016, p.57

⁶³ Lu Seng Lamung, freedom of the press, the right of access to mass media: a case study off Rohingya, North eastern hill University, p.17

⁶⁴ General comment No.34, United nations human rights committee, CCPR/C/GC/34, para.14

⁶⁵ Ibid, para.13

The right to freedom of expression is a basic condition for a democratic society and for the development of every man.⁶⁶ It is a human right of the greatest importance and is a key to the protection of other human rights and fundamental human dignity.⁶⁷ Although it is universally recognized, freedom of expression is not an absolute right since some system of limitation has been adopted.⁶⁸

The proper realization of the other human rights is difficult without the effective exercise of the right to freedom of expression.⁶⁹ Freedom of expression is a necessary condition for effective realization of transparency and accountability, which are considered essential in the protection and promotion of human rights.⁷⁰ This stipulation implies that, freedom of expression has both intrinsic and instrumental values.

The right to access official information is an indicator of a representative democracy in which the governor should respond to the people they represent.⁷¹ The right to access information provides that, individuals have a basic human right to demand information held by government bodies.⁷² It stems from the right to seek and receive information under the umbrella of freedom of expression. Access to information in particular plays a vital role in reducing corruption and improving accountability by providing the right to access official information.⁷³ Under the model laws on access to information in Africa, every individual has a right to access information from public and private bodies provided that the information assists in the exercise or protection of any right in the latter case.⁷⁴

⁶⁶ Amaya Ubeda De Torres, Freedom of expression under the European convention on human rights: A comparison with the inter-American system of protection of human rights, p.6

⁶⁷ Toby Mendel, restricting freedom of expression, center for law and democracy, p.1

⁶⁸ Ibid

⁶⁹ Thorgeirsdottir, “article13; The right to freedom of expression”, in A. Alen, J.Vande Lanotte, E Verhellen, Fang, E. Berghmans and M. Verheyde (eds.), A commentary on the United nations convention on the rights of the child (Martinus Nijhoff publishers, Leiden, 2006), p.3

⁷⁰ General comment No34, United nations human right committee, CCPR/C/ GC/34, par.3

⁷¹ Ololade Shyllon, the model law on access to information for Africa and other regional instruments: Soft law and human rights in Africa, Pretoria University law press 2018, p.50

⁷² Vratika Phogat, right to information in consonance with right to privacy, p.2

⁷³ Marie Chene, Good practice in access to information laws, p.2 (available at CORRUPTION AND ANTI-CORRUPTION IN SUDAN (transparency.org) accessed on November 25, 2021)

⁷⁴ Model law on access to information for Africa prepared by African commission on human and peoples’ rights, section 12(1)

International human rights treaty organizations frequently regard the right of access to information as falling under the umbrella of the right to freedom of expression.⁷⁵ The declaration on freedom of expression in Africa guarantees that everyone has a right to access this information subject only to the clearly defined rules established by the law.⁷⁶ Furthermore, the declaration stated that the state should be expected to encourage an independent and diversified private broadcasting sector and that a monopoly over broadcasting by the state is incompatible with the right to freedom of expression.⁷⁷ Although the declaration has no binding legal effect, it provides media-friendly and broader guarantees of freedom of expression.

Under Ethiopian law media is defined as ‘a means excluding books, social media, blogs and photos, images and cartoons that are not part of a periodical, news agencies, and all organizations established to offer magazines, broadcasting services, and online media with news or programs or news and programs for the general public.’⁷⁸ Accordingly, the proclamation provides a comprehensive definition of the term “media”.

2.3. International, regional and national standards on freedom of expression, media and access to information

2.3.1. International frameworks

The right to freedom of expression and media is clearly provided for under different international instruments. Moreover, the provisions of international instruments guaranteed the rights, including the right to use any medium. Similarly, the right to information is regarded as a component element of the right to freedom of expression. The major international instruments providing the right are discussed one by one as follows.

2.3.1.1. Universal Declaration of Human Rights (UDHR)

Art.19 of the declaration recognizes freedom of expression and opinion without interference.⁷⁹ Under this provision, freedom of opinion and expression is guaranteed from interference. As far as the beneficiaries of the right are concerned, freedom of expression belongs to everyone and no

⁷⁵ Maeve McDonagh, the right to information in international human rights law, human rights law review 13:1, 2013, Oxford university press, p.26

⁷⁶ Declaration of principles on freedom of expression and access to information in Africa, African commission on human and people’ rights, 2019, principle 26 (1)

⁷⁷ Ibid

⁷⁸ Media proclamation No.1238/2021, federal Negarit Gazeta, 27th year No.22 Addis Ababa, art.2(1)

⁷⁹ Universal declaration of human rights (adopted 10 December 1948) UNGA Res. 217A(III) (here in after UDHR), Art.19

distinctions are permitted on different grounds such as, nationality, sex, and language. Moreover, it includes the right to use any media of one's own choice free of frontiers. Consequently, the provision of the UDHR seems to suggest that there is no clear limitation on freedom of opinion and expression. Furthermore, as per this provision, the right to freedom of expression applies regardless of frontiers, which implies that it protects the right to access information from abroad in different forms, such as newspapers and broadcast.⁸⁰ Although the UDHR has no binding legal effect, its provision on freedom of expression is regarded as having the status of customary international law.

2.3.1.2. International Covenant on Civil and Political Rights (ICCPR)

The covenant under Art.19 clearly stipulated the right to freedom of opinion and expression including the grounds of its limitation.⁸¹ Unlike the provision of the UDHR, the covenant adopted a detailed provision. Under this provision, the right to hold an opinion is absolute and may not be legitimately restricted by states.⁸² This provision compose three tenets which are the right to hold opinion without interference or freedom of opinion,⁸³ right to seek and receive information or access to information and the right to impart information or freedom of expression.⁸⁴ Unlike the UDHR the provision of the ICCPR provided the possible grounds of limitation on the right to freedom of expression. Accordingly, the right to freedom of expression is restricted on the grounds of the rights and reputations of others, national security and public health, or morals. Furthermore, to restrict the right to freedom of expression, the limitation must be provided by the law and be necessary to achieve a positive object.⁸⁵ Thus, Art.19 of the ICCPR included elements of stating the right and a list of grounds for restriction of the right to freedom of expression.⁸⁶

⁸⁰ Ibid

⁸¹ International covenant on civil and political rights (adopted in Dec. 1966, enter into force in 1976), UNGA Res. No.171 (here in after ICCPR) Art.19

⁸² Ibid, article 19(1)

⁸³ Ibid, Article 19(1)

⁸⁴ Ibid, Article 19(2)

⁸⁵ Ibid, Article (19(3)

⁸⁶ Michael O Flaherty, freedom of expression: Article 19 of the international covenant on civil and political rights and human rights committee's general comment No.34, human rights law review 12:4(2012), p.636

Among others, this provision incorporated that freedom of expression includes the right to “impart information and ideas of all kinds”.⁸⁷ Thus, it encompasses not only favorable speech, which is generally accepted by the majority but also controversial and offensive speech.⁸⁸ Under this provision, unlike the right to hold an opinion the right to freedom of expression is not absolute since it is subject to restriction for certain key public and private interests.⁸⁹

Art.19 (3) of the ICCPR clearly stipulates three criteria for the validity of the restrictions on freedom of expression. Those criteria’s are firstly, restriction must be provided by the law and the laws may include primary legislation and other binding documents adopted pursuant to primary legislation.⁹⁰ The mere existence of the law is not sufficient; rather, the laws must meet the standards of clarity and accessibility to enable an individual to regulate his or her conduct accordingly. Secondly, the restriction must serve a legitimate purpose exclusively listed under this provision since no restriction is valid if it fails to serve one of the aims listed.⁹¹ Thirdly, the restriction must be proportionate and necessary for the protection and promotion of legitimate aims. The proportionality test compares the expected impact of a restriction on freedom of expression to the benefits sought by the restrictions.

Moreover, Art.20 of the ICCPR states that “any propaganda for war shall be prohibited by law”.⁹² It also outlawed ‘any act that constitutes incitement to discrimination’.⁹³ The relationship between articles 20 and 19 of the ICCPR is that these two articles are compatible with each other and complement each other.⁹⁴ Moreover, the restriction justified under Art.20 should also comply with the limitation provided under Art. 19.⁹⁵

The General Comment (GC) on Art.19 of the convention details the scope of the provision. The GC is an authoritative legal analysis of the provisions of the treaty. Accordingly, it stipulated that the right to freedom of expression includes commentary on public affairs, discussion on human

⁸⁷ The international covenant on civil and political rights (adopted in Dec. 1966, enter into force in 1976), UNGA Res. No.171 (here in after ICCPR) Art.19(2)

⁸⁸ Ibid, article 19(2)

⁸⁹ Ibid, article 19(3)

⁹⁰ Ibid

⁹¹ Ibid

⁹² International covenant on civil and political rights (adopted in Dec. 1966, enter into force in 1976), UNGA Res. No.171 (here in after ICCPR) Art.20(1)

⁹³ Ibid, article 20(1)

⁹⁴ General comment No.34, United nations human rights committee, CCPR/C/GC/34, Para.50

⁹⁵ Ibid

rights, political discourse, journalism, cultural and artistic expression and commercial advertising.⁹⁶ Moreover, the GC provided that Art.19 in its scope includes expressions that are deeply regarded as offensive.⁹⁷

2.3.1.2.1. Cases of Human Rights Committee

On different occasions Committees of different international instruments entertained cases involving the right to freedom of expression. As such, decisions of the committees play a role in clarifying the meaning and scope of the human rights instruments and the obligations of states for freedom of expression.

For instance, the human rights committee in a case of *Vladimir Malei vs. Belarus* found a violation of freedom of expression under Art.19 of the ICCPR. The facts of the case show that the author claimed a violation of his right to freedom of expression and assembly because of the denial of authorization to organize a peaceful assembly to attract public attention to the absence of free and democratic elections in Belarus.⁹⁸ Moreover, the author argues that the state failed to justify why the denial of picket is necessary for reasons provided under Art.19 of the ICCPR.⁹⁹ On the other hand, the state claimed that the prohibition was based on the domestic public event act, which prohibits holding of mass event at a distance of less than 50 meters from public office.¹⁰⁰ Recalling the General comment No.34 and Art.19 (3) of the ICCPR the committee reasoned out that the states and national courts did not explain how restriction on picket is necessary and proportionate. Accordingly, the committee found that the author's right under Art.19 (2) have been violated.¹⁰¹

In the case of *Adimayo M. Aduayom vs. Togo*, the human rights committee found a violation of Art.19 of the ICCPR. The facts of the case show that the author was prosecuted and removed from the posts for having read and disseminated information and materials critical of the prevailing system of governance in Togo.¹⁰² On the other hand, the state party argued that the act of the author amounts to a political offence and comes within the grounds of limitation provided

⁹⁶ General comment No.34, United nations human rights committee, CCPR/C/GC/34, Para.11

⁹⁷ Ibid

⁹⁸ *Vladimir Malei Vs Belarus (CCPR/C/129/D/2404/2014)*, judgment of 23 July 2020, para.9.2

⁹⁹ Ibid

¹⁰⁰ Ibid, para.9.4

¹⁰¹ Ibid

¹⁰² *Adimayo and others vs. Togo, communication Nos.422/1990, 423/1990 and 424/1990, judgments of 1996*, para.3.1

under Art.19 (3) of the ICCPR. The committee observes that, freedom of information and expression are cornerstones in any free and democratic society, and citizens must be allowed to get information about alternative political systems and criticize the existing one within the limits provided by law. Accordingly, the committee concluded that there is no indication showing that the acts of the authors are a threat to the rights and reputations of others or national security and public order. Finally, the committee found a violation of Art.19 of the ICCPR.

In the case of *Keum-Tae Kim vs. Republic of Korea*, the committee rendered a decision regarding the grounds of limitation on freedom of expression. The facts of the case show that, the author was convicted for having read out and distributed printed material that was seen as coinciding with the policy statements of North Korea, with which the state party was in a state of war.¹⁰³ The committee specifically considered whether or not the author's speech and his distribution of political documents created a threat to the national security within Art.19 (3) of the ICCPR. Accordingly, the committee observed that the state failed to precisely specify and justify the alleged threat posed by the author's exercise of freedom of expression.¹⁰⁴ Therefore, the committee concluded that the restriction on the author's right to freedom of expression was not compatible with Art.19 (3) of the ICCPR.¹⁰⁵

Similarly, in the case of *Alexandre Dergachev vs. Belarus*, the human rights committee forwarded its view in relation to freedom of expression. In this case, the author claimed that his rights under Art.19 of the ICCPR had been violated because of his conviction for expressing a political opinion and disseminating factual information.¹⁰⁶ In response to this, the state party argued that there is no ground for considering the communication since the case is closed by the domestic court.¹⁰⁷ After considering all the facts submitted to it, the committee observed that the conduct by the author fell within the scope of the guarantees under Art.19 of the covenant.

¹⁰³*Keum-Tae vs. Republic of Korea*, CCPR/C/64/D/574/1994, UN human rights committee(HRC), 4 January 1999, available at <https://www.refworld.org/cases,HRC,3f588eff7.html> [accessed 17 December 2021]

¹⁰⁴ Ibid, para.12.5

¹⁰⁵ Ibid

¹⁰⁶*Alexandre Dergachev vs. Belarus*, CCPR/C/74/D/921/2000, UN human rights committee(HRC), 19 July 2002, available at <https://www.refworld.org/cases,HRC,3f588ef20.html>[accessed on 11 December 2021], para.3.1

¹⁰⁷ Ibid para.4

Accordingly, the committee concluded that conviction of the author for the expression of his view amounts to a violation of Art.19 of the covenant.¹⁰⁸

2.3.1.3. Convention on the Right of the Child (CRC)

Similar to other international human rights instruments, there are provisions guaranteeing freedom of expression under the Convention on the rights of the child. The Convention on the rights of the Child is the first legally binding international instrument to incorporate the full range of civil and political rights as well as socio-economic and cultural rights of the child.¹⁰⁹ The provision of the CRC shares common elements with the provision of other human rights instruments on freedom of expression.¹¹⁰ However, the right to hold an opinion is missing under the convention on the rights of the child. Although the right to hold an opinion is in fact missing under the CRC, the *travaux preparatoires* of the CRC do not explain the reason for the omission.¹¹¹

Additionally, Art.17 of the same convention stipulated protection for freedom of expression and a state obligation in relation to freedom of expression.¹¹² Interestingly, Art.17 of the convention recognized the special role of the mass media and the positive obligation of the state to ensure accessibility of information from national and international sources.¹¹³ Most importantly, it provides that state parties shall encourage mass media to disseminate information of cultural, social and linguistic importance.¹¹⁴ According to this provision, there is a positive obligation on the part of the state.

2.3.1.4. Convention on the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons with Disabilities provided a detailed stipulation on freedom of expression and access to information.¹¹⁵ Moreover, it clearly provided state obligations as far as the rights of persons with disabilities are concerned.¹¹⁶ Art.21 of the

¹⁰⁸ Ibid, para.7,2

¹⁰⁹ Supra note No.63, p.18

¹¹⁰ Convention on the right of the child, (adopted in Nov.1989, entered into force 2 sept.1990), 1577 (here in after CRC) art.13(1&2)

¹¹¹ Supra note No.63, p.22

¹¹² Supra note No.106, art.17

¹¹³ Ibid

¹¹⁴ Ibid

¹¹⁵ UN general assembly, Convention on the rights of persons with disabilities (adopted in January 24 2007, A/RES/61/106), art.21

¹¹⁶ Ibid

convention requires state parties to ensure freedom of expression, opinion, and information through all forms of communication. Moreover, it states that information should be provided the same way to the general public in all accessible formats and technologies adaptable to the particular forms of their disability.¹¹⁷

Furthermore, member states are required to encourage the mass media to make their services accessible to people with disabilities.¹¹⁸ Accordingly, as a thematic treaty, this convention guaranteed the right to freedom of expression, opinion, and access to information within the list of positive obligations of the state.

2.3.1.5. The international Convention on the Protection of the Rights of all Migrant Workers and member of their Families (ICMW)

This convention also recognized freedom of expression.¹¹⁹ As clearly indicated under Art.13 of the convention, it adopted the verbatim copy of articles 19 and 20 of the ICCPR except for the particular reference to migrant workers and members of their families. Thus, it adopted broader protection, including the right to hold an opinion.

Under international law, freedom of expression can be restricted only in specific circumstances, often articulated as a three-part test.¹²⁰ In the first-place, restrictions must be prescribed by the law, formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. Thus, ambiguous, vague, or overly broad restrictions on freedom of expression are therefore impermissible under international law. Secondly, restrictions should pursue a legitimate aim, such as protecting the rights or reputations of others or protecting national security, public order, or public health or morals.¹²¹ Accordingly, it is impermissible to prohibit expression solely on the basis that it casts a critical light on the government or the political system. Thirdly, it should be necessary and proportionate. For the restriction to be necessary there must be a

¹¹⁷ Ibid, article 21(a)

¹¹⁸ Ibid, article 21(d)

¹¹⁹ UN general assembly, international convention on the protection of migrant workers and members of their families, (adopted in 18 December 1990, A/RES/45/158), article 13

¹²⁰ *Keum-Tae Kim vs. republic of Korea, communication No.574/1994, (human rights committee) judgment of 5 November 1998, para.12.2*

¹²¹ Ibid

pressing social need for it.¹²² Proportionality dictates that a restriction on expression is not unduly broad and is proportional to the protection function it serves.

2.4. The regional framework

The regional convention stipulated the right to freedom of expression. Among others, it is recognized under the African Charter on Human and People's Rights, European Convention of Human Rights and the American Convention on Human Rights. Furthermore, it is provided by the African commission's model law on access to information and the African commission's declaration of principles on freedom of expression in Africa.

2.4.1. African Charter on Human and Peoples' Right (ACHPR)

The African Charter guaranteed the right to freedom of expression under Art.9, which states that "Every individual shall have the right to receive information".¹²³ Similarly, sub-article 2 of the same provision provided that "Every individual shall have the right to express and disseminate his opinions within the law".¹²⁴

What is unique within this provision is that the charter does not contain the specific grounds for limitation as contained in other regional and international human rights instruments, as it does simply stipulate that the right to express and disseminate opinions is to be within the law. Accordingly, the phrase "within the law" under sub-article 2 is subject to interpretation. On the other hand, African tribunals, have defined "within the law" as relating to international human rights norms rather than domestic law proclaimed by the state's political power. For instance, in the case of *Malawi African Association v Mauritania*, the African Commission on human and peoples' rights held that "expression "within the law" must be interpreted as a reference to the international norms".¹²⁵ The facts of the case show that the accused were charged because of distributing a manifesto containing statistics on racial discrimination and a call for a dialogue with the government.¹²⁶ Finally, the commission found the violation of freedom of expression

¹²² Ibid

¹²³ African charter on human and peoples right (adopted on June 1981 and entered into force in 1986), art.9(1)

¹²⁴ Ibid, article 9(2)

¹²⁵ *Malawi African association and others Mauritania, comm. Nos. 54/91, 61/91, 98/93, 164/97, 196/97 and 210/98*, African commission on human and people's rights, 11 may 2000, available at, <https://www.refworld.org/cases,ACHPR,52ea5b794.html> [accessed on 7 December 2021], Para.102

¹²⁶ Ibid

and dissemination of opinions so long as the manifesto did not contain any incitement to violence.¹²⁷

2.4.2. The African Commission's Declaration of Principles on Freedom of Expression in Africa

Although the right to freedom of expression under Art.9 of the charter failed to elaborate on the components of freedom of expression, this declaration stated that “The right to seek, receive, and transmit information and ideas, whether verbally, in writing or in print, in the form of art or by any other form of communication, including across borders, is a fundamental and inalienable human right and a vital component of democracy”.¹²⁸ Furthermore, it states that restrictions should be based on grounds provided by law, serve a legitimate purpose, and be necessary in a democratic society since arbitrary interference is prohibited.¹²⁹ In this regard, unlike the provisions of the charter, the declaration provided specific grounds to restrict freedom of expression.

The declaration provided for the independence of the media regulatory body. It affirms that any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.¹³⁰ Furthermore, it provided for an open and transparent procedure for the appointments of members of a regulatory body, involving the participation of civil society and the absence of sole control by a particular political party.¹³¹ As well, according to this declaration, any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multiparty body.¹³²

From this, it is possible to infer that the declaration interestingly provided detailed guarantees for freedom of expression, the media, and access to information. As compared to the provisions of the charter, it takes a further step to enumerate the details of the freedom of expression guarantees.

¹²⁷ Ibid

¹²⁸ Declaration of principles on freedom of expression in Africa, African commission on human and peoples' rights, 65th session, 21 October-10 November, 2019: Banjul, The Gambia, principle 2

¹²⁹ Ibid

¹³⁰ Ibid, principle 17

¹³¹ Ibid

¹³² Ibid

2.4.3. African Commission's Model Law on Access to Information

The model law has no binding legal effect, but it assists African states in the amendment of existing laws and the development of new laws in compliance with regional and international standards.¹³³ The model law *inter alia* recognized the right to access information that may assist in the exercise of any human rights regardless of the fact that the information is available within public bodies or private bodies.¹³⁴ Accordingly, it recognized the principle of disclosure, stating that non-disclosure is allowed only in exceptional circumstances.¹³⁵

As far as the objective of this model law is concerned, it is aimed at giving effect to the rights guaranteed under the African charter by ensuring that information holders create, keep, organize, and maintain information in a manner that facilitates the enjoyment of the right to access information.¹³⁶ Moreover, the model law under its different sections provided specific rights to request information, procedural mechanisms to do so, and procedures as well as grounds of refusal to provide the information requested.

Most importantly, the model law provided that “information is not exempt from access under this act merely on the basis of its classification status”.¹³⁷ Additionally, the model law provided the procedures to appeal and review process for the refusal of access to information.

2.4.3.1. Cases of African Commission

In a similar vein, the African commission dealt with freedom of expression and the media on different occasions. However, the commission has no rich jurisprudence on freedom of expression, unlike that of the European courts.

For instance, in the case of *Gabriel Shumba and others vs. Zimbabwe*, the authors alleged the violation of their right to freedom of expression because of the prohibition on participating in the national vote on the grounds of residency since the authors were residents of South Africa at the time.¹³⁸ The government submitted that there was no violation since the restriction was based on

¹³³ *Supra* note No.71, p.4

¹³⁴ Model law on access to information for Africa, prepared by African Commission on human and peoples right, section 2(a&b)

¹³⁵ *Ibid*, section 2(c)

¹³⁶ *Ibid*, section 3

¹³⁷ *Ibid* section 26

¹³⁸ *Gabriel Shumba and others vs. Zimbabwe, communication 430/12, para.4 and 54*

grounds prescribed by the law and served a legitimate aim.¹³⁹ Finally, the commission decided that there is no violation of Art.9 of the African charter stating that the states limitation through residence requirement is in pursuit of a legitimate aim, necessary and proportional.¹⁴⁰

Moreover, in the case of *Open Society Justice Initiative vs. Republic of Cameroon*, the author alleged a violation of Art.9 of the charter resulting from the respondent states monopoly over broadcasting, a lack of independent licensing authority and fair procedures, and an arbitrary denial of access to radio broadcasting.¹⁴¹ The government responded to the complainant that the request for permission by the author was denied because of an incomplete application.¹⁴² By recalling Art.9 of the Charter, the declaration of principles on freedom of expression, GC No.34 and the jurisprudence of the European Court of Human Rights the commission assessed the facts provided to it. Accordingly, the commission found that the interference with freedom of expression failed to meet the criteria of lawfulness under Art.9 (2) of the charter and Principle II (2) of the Declaration of Freedom of Expression.¹⁴³ Furthermore, the commission concluded that, the respondent state has violated the right to freedom of expression under Art.9 for lacking independent licensing authority and transparent procedures and arbitrary denial of a broadcasting license.¹⁴⁴

Similarly, the commission in the case of *Liesbeth Zegveld and Mussie Ephrem vs. Eritrea*, entertained the case involving freedom of expression. In this case, the authors alleged that 11 people were subjected to detention because of expressing opinions critical of the Eritrean government, which amounted to a violation of Art.9 of the charter.¹⁴⁵ On the basis of the facts provided to it the commission found that Art.9 (2) of the African charter was violated by the Eritrean government.¹⁴⁶

¹³⁹ Ibid, para.58 and 60

¹⁴⁰ Ibid, para.112 &134

¹⁴¹ *Open society justice initiative vs. republic of Cameroon, communication No.290/2004, para.96*

¹⁴² Ibid, para.117

¹⁴³ Ibid, para.149

¹⁴⁴ Ibid, para.171

¹⁴⁵ *Liesbeth Zegveld and Mussie Ephrem vs. Eritrea, communication No.250/02, para.58*

¹⁴⁶ Ibid para.62

2.4.4. European Convention on Human Rights (ECHR)

The European convention also gives recognition to the right of freedom of expression.¹⁴⁷ Under this convention, the right includes the freedom to express oneself, as well as the freedom to receive and transmit information and ideas without interference. Sub-article 2 of the same provision provided the possible grounds of limitation. It entirely designed with regard to the relationship between citizens and public authorities, as it set out with the phrase “without interference by public authority”.¹⁴⁸ In this regard, Art. 19 of the ICCPR seems to provide the broadest guarantee for freedom of expression and opinion, as it guaranteed from horizontal interference as well as from public interference. Accordingly, Art.10 of the ECHR is not clear as far as interference by private persons is concerned.

Furthermore, unlike other instruments, the provision of this convention does not explicitly mention the form of expression protected. In this regard, other instruments such as ICCPR and CRC have been mentioned as the forms such as orally, in writing and in print. Consequently, the means of expression protected by this provision are not clear from the reading of this provision.

Sub-article 2 of the same provision provided the possible grounds of limitation for the rights provided under sub-article 1. However, unlike other instruments it failed to exempt freedom of opinion from the restriction that is recognized as an absolute right under other instruments. Thus, it provided a general limitation clause for both freedom of opinion and freedom of expression.

2.4.4.1. Cases of European Court of Human Rights

The European Court of Human Rights on different occasions rendered a decision concerning the right to freedom of expression and access to information. The increasing number of cases concerning the issues at hand indicates the cruciality of the state obligation in relation to freedom of expression and access to information.

In the case of *PAL vs. United Kingdom*, the European Court entertained the case regarding article 10 of the convention. The facts of the case show that the author was a journalist prosecuted and arrested for the harassment of another journalist by the publication of an article and tweets. Accordingly, the applicant claimed that even though interference is prescribed by the law, her

¹⁴⁷ Council of Europe, European convention for the protection of human rights and fundamental freedoms, as amended by protocols No.11 and 14, 4 November 1950, ETS5, art.10

¹⁴⁸ Ibid, art. 10(1)

prosecution and arrest were unnecessary and disproportionate.¹⁴⁹ On the other hand, the state argued that neither the arrest nor the charge interfered with her rights under article 10 of the convention since an arrest was lawful and the offence for which an individual was arrested did not in itself interfere with Art.10 of the convention.¹⁵⁰ In this regard, the court assessed whether or not a fair balance was struck between freedom of expression under Art.10 and the right to respect for private life under Art.8 of the convention. Finally, the court concluded that no proper balance was struck between the two rights and there was a breach of article 10 of the convention.¹⁵¹ From this decision, it is possible to infer that consideration of the existence of a violation needs a careful strike of a balance between two competing interests.

Similarly, the court dealt with freedom of expression in the case of *Genov and Serbinska vs. Bulgaria*. In this case, the two applicants were popular bloggers and political activists found guilty of hooliganism and fined for spray painting a monument during a nationwide protest, and the court considered whether this was compatible with their rights under Art.10 or not. Accordingly, applicants claimed that their right to freedom of expression is violated as their conduct is protected by the convention.¹⁵² However, the government also argued that the interference was lawful and in conformity with article 10 of the convention.¹⁵³ After assessing the existence of interference, the court considered whether the interference fulfills the criteria of prescription by law, legitimate aim, and necessity in a democratic society and finally found that there is a breach of Art.10 of the convention.¹⁵⁴ This case shows that the three part test was taken into account to identify whether or not a certain act amounts to interference.

In the case of *Milosavljevic vs. Serbia*, the European Court of Human Rights entertained the issue under Art.10 of the convention. The facts of the case show that the applicant was prosecuted and punished for his publication concerning the sexual abuse of a Romani girl by the head of the municipal office. Accordingly, the author claimed that his prosecution and punishment for disclosing violations, which is information of public interest, amounts to a

¹⁴⁹ *PAL vs. United Kingdom*, application No.44261/19, judgment of 30 November 2021, para.46

¹⁵⁰ *Ibid*, para.41

¹⁵¹ *Ibid*, para.62 &63

¹⁵² *Genov and Serbinska vs. Bulgaria*, application 52358/15, judgment of 30 November 2021, para.50

¹⁵³ *Ibid*, para.52

¹⁵⁴ *Ibid*, para.64-84

violation of freedom of expression.¹⁵⁵ The government, on its part, argued that there was no violation of Art.10 since the interference is prescribed by law and necessary in a democratic society for the reputation of others. The court in this case assessed whether a fair balance is struck between two competing interests under articles 10 and 8 of the European Convention on Human Rights. For the purpose of balancing, the criteria set by the court are; the contribution made by the article to a debate of public interest, how well known the person concerned, the conduct of the person concerned prior to the publication of the article, the method of obtaining the information, the content and consequences of the publication, and the severity of the sanction imposed.¹⁵⁶ Finally, after assessment of a given fact with these criteria, the court arrived at the conclusion that there was no violation of Art.10 of the convention.

The cases of the court indicate that there is a jurisprudence developed by the court, especially in setting the criteria for the purpose of balancing the two competing interests which are not specifically provided under the provision of the convention.

2.4.5. American Convention on Human Rights (ACHR)

Similar to other regional instruments, the American convention on human rights has a stipulation on freedom of expression.¹⁵⁷ As provided under this convention, the right to opinion is omitted since it recognizes the right to thought and expression. As well, the right to thought and expression is subject to restriction on the grounds provided by the law for the respect of the rights and reputation of others¹⁵⁸ and for the protection of the national security, public order, public health or morals.¹⁵⁹

Moreover, Art.13 (3) of the convention interestingly prohibited ‘indirect means of restriction on the right through government monopoly over the media as a source of information and means of communication’. This provision has paramount importance in limiting the abuse of the media and other means that restrict freedom of expression.

¹⁵⁵ *Milosavljevic vs. Serbia, application No.57574/14, judgment of 25 may 2021, para.45*

¹⁵⁶ *Ibid*, para.54

¹⁵⁷ American convention on human rights (pact of San Jose, Costa Rica) adopted in 1969 and entered into force in 1978, art.13

¹⁵⁸ *Ibid*, article 13(2)(a)

¹⁵⁹ *Ibid*, article 113(2)(b))

2.4.5.1. *Cases of Inter-American Court of Human Rights*

The Inter-American court of human rights has not yet developed progressive and extensive decisions on freedom of expression, unlike the European court.¹⁶⁰ However, there are some interesting decisions by the inter-American court of human rights.

In the case of *Ivcher Bronstein vs. Peru*, the court found the government in violation of the right to freedom of expression. The facts of the case show that, the author owned a television company that presented criticism against the president of the country and other official members, and that the applicant was deprived of his nationality with the sole intention of restricting the right to freedom of expression so as to avoid government criticism.¹⁶¹ In its assessment, the court held that public authorities are open to criticism by the citizens and freedom of expression is to be encouraged because of its role in the promotion of free debate. Furthermore, the court identified the individual and social dimensions of freedom of expression.¹⁶² Finally, the court concluded that there was a violation of the right to freedom of expression.¹⁶³ From this case, it is possible to infer that restrictions on media ownership amount to an indirect interference with freedom of expression.

Similarly, in the case of *Herrera Ulloa vs. Costa Rica*, the court dealt with freedom of expression. In this case, the applicant was subjected to conviction and civil liability for reproducing reports attributing illegal acts to Costa Rica's officials. Considering the facts provided to it, the court concluded that there was a violation of Art.13 of the American convention on human rights.¹⁶⁴ In its assessment, the court held that any restrictions on freedom of expression must serve some pressing social need.¹⁶⁵

Furthermore, in the case of *Claude Reyes et al vs. Chile*, the court held that states have a positive obligation to provide information they hold to their citizens, and the court interpreted that Art.13 of the convention to include a right of access to state held information.¹⁶⁶ Moreover, the court

¹⁶⁰ Amaya Ubada De Torres, Freedom of expression under the European convention on human rights: A comparison with the inter-American system of protection of human rights, p.9

¹⁶¹ *Ivcher Bronstein vs. Peru*, inter-American court of human right, judgment of February 1 2001, para.156

¹⁶² Ibid, para.146

¹⁶³ Ibid, Para 164

¹⁶⁴ *Herrera Ulloa vs. Costa Rica*, inter A American court of human rights, judgment of July 2,2004, series C No.107, para.135

¹⁶⁵ Ibid, para.101

¹⁶⁶ *Claude Reyes et al vs. Chile*, inter American court of human rights, judgment of 19 September 2006, para,58

held that the right to access information is governed by the principle of maximum disclosure.¹⁶⁷ Finally, the court found that the state violated the right to thought and expression provided under Art.13 of the convention.¹⁶⁸ This case is interesting as it extended the scope of the provision to include the right to access information found within the state.

In general, through the interpretation of the laws on freedom of expression and access to information, human rights committees, courts, and commissions expanded and clarified the right to freedom of expression.

2.5. State obligations for the right to freedom of expression

Similar to other rights, states bear an obligation in relation to freedom of expression. This obligation is provided in general with other rights and separately under specific provisions dealing with freedom of expression and the media. Accordingly, under ICCPR, CRC, CRPD, and ICMW, states bear the obligation to take all necessary legislative, administrative, and other steps to ensure that the rights recognized in the conventions are implemented without any discrimination.¹⁶⁹ As per this provision the state obligation is recognized in a general way, which applies in all provisions including guarantees of freedom of expression. Moreover, the GC to Art.19 of the ICCPR provided that, states parties bear the duty to give effect to the rights contained under Art.19 at domestic level.¹⁷⁰ In addition, state obligations are also provided under specific provisions such as Art.21 of the CRPD.

Furthermore, it is provided under regional instruments. For instance Art.1 of ECHR, ACHPR and ACHR provided that, the states undertake to respect and realize the enjoyment of the rights recognized under the instruments.¹⁷¹ States Parties are required to create an enabling environment for the exercise of freedom of expression and access to information, including by ensuring that these rights are protected against non-State actors' acts or omissions that restrict the

¹⁶⁷ Ibid

¹⁶⁸ Ibid, para.103

¹⁶⁹ International covenant on civil and political rights (adopted in Dec. 1966, enter into force in 1976), UNGA Res. No.171, Art.4, Convention on the right of the child, art.4, Convention on protection of the rights of all migrant workers, art.7, Convention on the rights of persons with disabilities, art.4

¹⁷⁰ Human rights committees General comment No.34, para.8

¹⁷¹ European convention on human rights, art.1, African charter on human and peoples' right, art.1, American convention on human rights, art.1

enjoyment of the right to freedom of expression and information.¹⁷² The FDRE Constitution further stipulates that all wings of the government bear a duty to respect and enforce its provisions at all levels.¹⁷³

The legal framework implies that, the right to freedom of expression imposes both positive and negative obligations on the state. Accordingly, in its positive perspective the right places an obligation to create conducive environment which supports the free flow of information and ideas in the community. As well this positive obligation includes the obligation to put in place a legal framework for accessing public information and to create an environment for free and independent media. In its negative perspective, the right places an obligation on the states not to interfere with the exercise of the right to seek, receive, and impart information on grounds other than those permitted under international law. Thus, under international human rights law, states have a clear and concrete commitment to uphold freedom of expression and to take appropriate measures to protect freedom of expression from third-party attacks.

2.6. Summary

The media is a communication channel used to disseminate different types of information. Freedom of expression is essential for the realization of fundamental human rights. The right to freedom of expression and the media is recognized under international instruments, regional instruments, the FDRE constitution and the constitutions of the regional states. Internationally, it is stipulated under UDHR, ICCPR, CRC, CRPD, and ICMW. Regionally, it is provided under ECHR, ACHPR, ACHR, declaration of principles on freedom of expression and access to information in Africa and African Commissions Model Law on Access to Information. It is also recognized under Art.29 of the FDRE constitution and the regional state constitutions. Moreover, the human rights committee's general comment provided the scope of the right to freedom of expression and the media. As well, different courts and human right committees adopted different decisions and views on the issues at different occasions.

The right to freedom of expression and the media is not an absolute right since it is subject to justifiable restrictions for the rights and reputation of others and for national security and public order. The laws and jurisprudence require the limitation to pass a three part test. Accordingly, the

¹⁷² Declaration of principles on freedom of expression in Africa, African commission on human and peoples' rights, 65th session, 21 October-10 November, 2019: Banjul, The Gambia., principle 1(2)

¹⁷³ The constitution of the Federal democratic republic of Ethiopia, art.13(1)

limitation should be prescribed by law, serve a legitimate aim, and be of strict necessity. The states are duty bound to take appropriate measures for the full realization of the right to freedom of expression and the media. Such measures may be legislative for creation of conducive environment and measures to protect from violation by third parties. As this chapter presented legal frameworks in general, the next chapter presents specifically an overview of the new media proclamation.

CHAPTER THREE

3. ETHIOPIAN LEGAL FRAMEWORK ON FREEDOM OF EXPRESSION AND AN OVERVIEW OF MEDIA PROCLAMATION NO.1238/2021

3.1. Introduction

The new media proclamation has ninety-two articles arranged into seven sections. The main purpose of this chapter is to provide an overview of the proclamation under different sections. Accordingly, this chapter discusses the Ethiopian legal framework and overview of the new media proclamation which includes issues like; ownership and licensing system under the proclamation, the independence of the media regulatory body, rights and obligations of the media, improvements made by the proclamation, the place of national security under the proclamation, and administrative measures and legal liabilities. Lastly, it provides a summary of what is discussed in this chapter.

3.2. Ethiopian legal framework

In Ethiopia, the right to freedom of expression is guaranteed under the FDRE Constitution, which is the supreme law of the land.¹⁷⁴ Accordingly, everyone has the right to exercise this right without any interference.¹⁷⁵ Article 29(3) (b) of this constitutional provision guaranteed the right of access to information of public interest. However, the phrase “public interest” is not defined under the constitution and may create a loophole for abuse since the determination as to what constitutes the public interest is left to the officials. Similarly, sub-article 6 of the same provided the grounds for limitation on the right to freedom of expression.

In addition, articles 9(4) and 13(2) of the FDRE Constitution play a great role in the protection of the right to freedom of expression. According to Art.9 (4) of the FDRE constitution, “all international treaties recognized by Ethiopia constitute an intrinsic aspect of the law of the

¹⁷⁴ Constitution of the federal democratic republic of Ethiopia, Federal Negarit Gazeta, 1st year, No.1, 21st August 1995 (here in after FDRE constitution), art.29

¹⁷⁵ Ibid, art.29(1&2)

land”.¹⁷⁶ By virtue of this provision, even if Art.29 is not clear, it is possible to directly apply international treaties ratified by the country. As per Art.13 (2) of the constitution, ‘the rights and freedoms guaranteed under chapter three of the constitution are required to be interpreted giving due regard to the Universal Declaration of Human Rights, International Covenants on Human Rights, and international instruments adopted by Ethiopia.’¹⁷⁷ This provision also affirms that due regard should be given to international treaties.

Furthermore, the Ethiopian parliament adopted a proclamation that governs the media. The preamble provision of this proclamation shows the desire to ensure the full exercise of the right to freedom of expression and information as well as freedom of the media.¹⁷⁸

In addition to the Federal Constitution, the Constitutions of the regional states also have a parallel provision dealing with the right to freedom of expression. For instance, Art.29 of the revised Constitution of the Southern Nation Nationalities and People’s Regional States recognized freedom of thought and expression. Although, it provides similar statements to the FDRE constitution, it has strange elements regarding the ways of exercising the same, which is through petition in unarmed ways.¹⁷⁹ The grounds of limitation under this constitution are the well-being of youth, the reputation and dignity of others, and the prevention of propaganda for war.¹⁸⁰ The constitutions of Amhara, Tigray, Oromia, Somali, Gambella, Benishangul Gumuz, and Afar regional states also stipulated the right by providing the verbatim copy of article 29 of the FDRE constitution.¹⁸¹ These constitutions also adopted the same grounds of limitation as the provision of the FDRE constitution.

¹⁷⁶ FDRE constitution art.9(4)

¹⁷⁷ Ibid, article 13(2)

¹⁷⁸ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, its preamble

¹⁷⁹ The revised Constitution of the southern nation nationalities and peoples regional state, art.29(2)

¹⁸⁰ Ibid, art.29(3)

¹⁸¹ The revised constitution of Amhara regional state, art.29, Constitution of Tigray regional state, art.30, Constitution of Afar regional state, art.29, Revised constitution of Oromia regional states, art.29, Revised constitution of Somali regional states, art.30, revised constitution of Gambella Regional state, art.30, revised constitution of Benishangul Gumuz regional state, art.30

3.3. An overview of the new media proclamation

3.3.1. Ownership and licensing system under the proclamation

As provided under the proclamation, every Ethiopian citizen may own periodicals and online media either privately or through a juridical person.¹⁸² As far as broadcasting and news agency are concerned it may be owned by anybody conferred with legal personality in accordance to the Ethiopian laws.¹⁸³ Foreign citizens and organizations may also own shares to the extent of 25 percent of periodicals, online Medias and broadcasting service.¹⁸⁴ Accordingly, ownership of broadcast media is allowed only for legal persons under this proclamation.

It is necessary that states take effective measures to prevent excessive media ownership concentration, whether horizontal or vertical. Such restrictions must not be so severe that they stifle the growth of the media industry as a whole.¹⁸⁵ The proclamation also dealt with cross-ownership, stating that “anybody conferred with legal personality under Ethiopian law may establish one television, one radio, one newspaper, one magazine, and one online media.”¹⁸⁶ Accordingly, it serves the purpose of minimizing the concentration of media and monopoly over media sectors.

The proclamation also prohibited the provision of broadcasting services without a license from the authorities or using suspended or revoked licenses.¹⁸⁷ The prohibition in this aspect is legitimate and necessary to effectively regulate media institutions. As well, it is also necessary to have a responsible media undertaking its function, fulfilling all necessary licensing requirements. There are four categories of broadcasting license recognized under the proclamation. Those are the public service broadcasting license, the special public service broadcasting license, the commercial broadcasting service license, and the community broadcasting service license.¹⁸⁸

¹⁸² Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 23

¹⁸³ Ibid

¹⁸⁴ Ibid

¹⁸⁵ Declarations of principles on freedom of expression and access to information in Africa, adopted by the African commission on human and peoples right at its 65th ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia, principle 24(3)

¹⁸⁶ Ibid article 24

¹⁸⁷ Ibid article 30

¹⁸⁸ Ibid article 31

3.3.2. Independence of media regulatory body

The new media proclamation came up with the new institutional set up since it established the Ethiopian media authority.¹⁸⁹ In addition, the proclamation made the authorities accountable to the house of people's representatives.¹⁹⁰ Such a scheme of accountability has paramount importance for the proper and transparent administration of the media. The rationale for this is simple: if the government controls regulatory actions, there will unavoidably be a bias, in favor of regulatory judgments that benefit the government rather than the general public interest. Thus, it clearly undermines freedom of expression. So, administrative measures that directly restrict freedom of expression, such as media regulating regimes, should always be implemented by an impartial organization. Moreover, any governmental entity with regulatory powers over broadcast or telecommunications should be effectively safeguarded against outside influences, particularly those of a political or economic kind.¹⁹¹

As far as the objectives of the authority are concerned, it is established to ensure the right to freedom of expression and freedom of the media on the one hand and to regulate media self-regulation and its operation within the law.¹⁹² Additionally, it is empowered to issue broadcasting licenses and to ensure a plurality of broadcasting services.¹⁹³ As well, the authority is empowered to facilitate a healthy working environment between the media and government. Furthermore, the media authority has the power to issue, renew, suspend, and revoke broadcasting licenses.¹⁹⁴ Moreover, the authorities prepare directives; entertain grievances lodged by individuals as well as organizations and issue detailed codes of conduct.

The independence of the media authority is clearly provided under the proclamation. Overall, the objective and mission of the new media proclamation is to ensure the existence of an independent and impartial media regulatory body.¹⁹⁵ Moreover, the proclamation stipulated that

¹⁸⁹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 4

¹⁹⁰ Ibid

¹⁹¹ Declarations of principles on freedom of expression and access to information in Africa, adopted by the African commission on human and peoples right at its 65th ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia, principle 17(1)

¹⁹² Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 5

¹⁹³ Ibid

¹⁹⁴ Ibid article 6(1)

¹⁹⁵ የመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፣ ጥር፣ 2013፣ 7.3

the authority be free from any interference and influence contrary to its objectives.¹⁹⁶ Thus, it shall be free from influence by the government, political parties, media sector, religious institutions and others.¹⁹⁷ In this regard, the proclamation is in line with international laws and regional instruments. For instance, the declaration of principles on freedom of expression in Africa provided that, a public regulatory authority with power over broadcast, telecommunications, or internet infrastructure must be independent and appropriately shielded from political, commercial, or other forms of intrusion.¹⁹⁸ Moreover, the GC provides that States parties who have not done so already should create an independent and public broadcasting licensing authority with the capacity to review broadcasting applications and issue licenses.¹⁹⁹ From this perspective, the proclamation conforms to the declaration and GC.

As far as the organization of the authority is concerned, it has a management board, a director general, a deputy director general, and other necessary staff.²⁰⁰ Members of the board shall be appointed by the HPR upon recommendation by the prime minister, taking into account gender composition.²⁰¹ Diversity of the board members are guaranteed since among its members two are from civil societies, two from media, two from other institutions that has relevance to the media and other three from relevant government organs.²⁰² In this regard, the proclamation is in line with international and regional laws. Furthermore, the proclamation guaranteed fair and transparent selection of the members within open opportunity for the public, thus ensuring fair representation.²⁰³ The board was given broad powers including the power to hear and review all decisions of the authority rendered in the implementation of the proclamation.²⁰⁴ The term of office for the board members should be four years, and five members may be re-elected.²⁰⁵ Thus, independence of the media authority is essential because of the broad power given to it, and this has great importance for the realization of freedom of expression and other human rights.

¹⁹⁶ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.7(1)

¹⁹⁷ Ibid article 7(2)

¹⁹⁸ Declarations of principles on freedom of expression and access to information in Africa, adopted by the African commission on human and peoples right at its 65th ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia, principle 17(1)

¹⁹⁹ Human rights committee General comment No.34, para.39

²⁰⁰ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 8

²⁰¹ Ibid art.9

²⁰² Ibid, art.9(5)

²⁰³ Ibid Art.9(2)

²⁰⁴ Ibid, art.12(5)

²⁰⁵ Ibid article 14

The proclamation also provides for media self-regulation and the same is stated as a voluntary peer review utilized by media institutions by setting up and abiding by guidelines and codes of conduct to improve professional expertise and plan a mechanism to handle complaints that ensure open responsibility.²⁰⁶ Accordingly, the media adopt codes of ethics and behavior through transparent and inclusive processes and properly enforce them to ensure that the highest ethical standards are followed.²⁰⁷

3.3.3. Rights and obligations of the media

The proclamation provides a detailed list of the rights and obligations of the media. As a general principle, it states that media organizations discharge their duties responsibly with high standards and encourage the free flow of ideas and diversified views.²⁰⁸ Moreover, freedom of the media from governmental, political, and economic influence, by those in control of infrastructure and necessary materials is guaranteed.²⁰⁹ Furthermore, Art.47 (3) states that regulation of the content of broadcasts is conducted to ensure that the media operate by abiding by the rules.²¹⁰ Thus, content regulation should be implemented without affecting the right to freedom of expression.

The media has the right to gather, receive, and disseminate information, to use information technology, engage in critical reporting, and to gather and record public opinion.²¹¹ Additionally, if there is an action that interferes with the constitutionally guaranteed freedom of the press or threatens its wellbeing, it has the right to bring charges or complaints to the federal high court.²¹² It also has the right to form a legal association.²¹³ The proclamation also extended all these rights to journalists which show that journalists are the beneficiaries of the protection given to the media institutions.²¹⁴ These guarantees are essential for the media to effectively play their key role in the protection and promotion of freedom of expression and other human rights.

²⁰⁶ Ibid, article 2(34)

²⁰⁷ Declarations of principles on freedom of expression and access to information in Africa, adopted by the African commission on human and peoples right at its 65th ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia, principle 16(2)

²⁰⁸ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article, 47(1)

²⁰⁹ Ibid, 47(2)

²¹⁰ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art 47(3)

²¹¹ Ibid, art. 48(1)

²¹² Ibid

²¹³ Ibid 48(2)

²¹⁴ Ibid art.48(3)

Under the proclamation, journalists are given source protection as they may not be forced to reveal a source that provided them with confidential information.²¹⁵ However, courts may order disclosure of critical information necessary for prosecution of serious crime and prevent imminent danger provided that there is no other means to obtain such information.²¹⁶ In this regard, it should be implemented in a balanced manner without endangering the free exercise of the profession of journalism. As well, the exception to the source protection seems necessary to protect other competing interests, which are the prevention of crime and other imminent dangers. But, in such cases, it should be done cautiously without putting unnecessary restrictions on the right itself.

As far as the obligations are concerned, the media bear an obligation to reply to claims by anyone whose name and reputation have been affected by media outlets.²¹⁷ Thus, such an obligation is crucial for the development of responsible media, properly respecting the rights and reputations of others. The other obligation is the duty to notify the person in charge of programs and news, which involves notification to the authorities and detailed information on each outlet.²¹⁸ Under Art.51 of the proclamation, the editor-in-chief is given the full mandate to supervise and determine the content of periodicals.

Specifically, online media have obligation to avoid language that promote existing or new hostilities on the basis of gender, ethnicity and religion, ensure contents are balanced and include diverse voices and appropriate for minor and refrain from promotion of alcohol and tobacco.²¹⁹ This is in line with the principles of the declaration, which states that speech that promotes national, racial, religious, or other forms of discriminating hatred, as well as incitement to discrimination, hostility, or violence, is prohibited by states.²²⁰ Moreover, the media bear an obligation to incorporate domestic content, transmit government emergency statements, and keep records of program.²²¹

²¹⁵ Ibid, art.49(1)

²¹⁶ Ibid art.49(2)

²¹⁷ Ibid article 50(1,2)

²¹⁸ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.52 &53

²¹⁹ Ibid art.61(1-10)

²²⁰ Declarations of principles on freedom of expression and access to information in Africa, adopted by the African commission on human and peoples right at its 65th ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia, principle 23(1)

²²¹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.64-66

3.3.4. Improvements made by the proclamation

The new media proclamation introduced different improvements as compared to previous media laws. The first change brought by this new proclamation is that, it consolidated the regulation of print and broadcast media by repealing proclamation No.533/2007 and 590/2008.²²² Accordingly, such consolidation may have more importance in having a single comprehensive legal regime than having separate and scattered legal provisions.

The other improvement is the establishment of a new Ethiopian media authority and its accountability structure. The proclamation under Art.4 established media authority as an autonomous federal government agency with its own legal personality.²²³ Furthermore, the media authority is accountable to the HPR.²²⁴ Under the previous broadcasting service proclamation, the broadcasting authority was accountable to the ministry.²²⁵ In this regard, making the accountability of the authority and appointment of its members free from the executive organ has paramount importance for the effectiveness and freedom of the authority. In this aspect, the proclamation is in line with general comment No.34 which seeks the establishment of an independent licensing authority.²²⁶ It also complies with the declaration of principles on freedom of expression and access to information, which provides that any public regulatory entity with responsibility over broadcast, telecommunications, or necessary materials shall be accountable to the public.²²⁷

The proclamation also decriminalized defamation, which entails criminal punishment under the previous proclamation. Under article 41 of proclamation No.590/2009, defamation committed through the media results in criminal and civil liability.²²⁸ However, under the new media proclamation, defamation entails only civil liability.²²⁹ By avoiding criminal liability, the new media proclamation increased the maximum compensation for civil liability to three hundred

²²² Ibid, art.91(1-3)

²²³ Ibid, art.4

²²⁴ Ibid art.4(2)

²²⁵ The broadcasting service proclamation No.533/2007, article 4(2)

²²⁶ Human right committees General comment No.34, para.39

²²⁷ Declarations of principles on freedom of expression and access to information in Africa, adopted by the African commission on human and peoples right at its 65th ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia, principle 17(3)

²²⁸ Proclamation No.590/2008, freedom of the mass media and access to information proclamation, December 2008, article 41(1), available at: <https://www.refworld.org/docid/4ba7a6bf2.html>(accessed on 20 December 2021)

²²⁹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 84(1)

thousand from one hundred thousand.²³⁰ In this regard, the proclamation is in conformity with international standards. For instance, the GC stipulated that state parties should consider decriminalizing defamation and imprisonment as never being an acceptable punishment.²³¹ Under previous laws, defamation committed against constitutionally established legislative, executive, and judicial authorities was punishable without any individual compliant.²³² However, under the new media proclamation, there is no such exception.

Additionally, the proclamation allowed foreigners to invest in and own media to the extent of 25%. On the other hand, the previous broadcasting service proclamation prohibited foreign media ownership by foreigners. This may have a positive contribution to the development of the media sector, which assists the community to get diversified information from different sources.

Furthermore, the new media proclamation extended the regulation to online media, which was not covered by the previous media proclamations. Art.2(4) defines “online media” as ‘an internet-based information dispersal service by an organization whose foremost business activity involves the collection, generation, processing, and dispersal of news and programs through online images, sound, video, and websites or through a combination of the aforementioned means.’²³³ As such, it helps to have responsible online media providing its functions in a responsible manner.

In addition to this, the new proclamation has made changes to the definitions of some words and phrases, such as media, broadcast service, community broadcast service, program, publisher, and printer. For instance, the media is defined under proclamation No.590/2008 as ‘printed matter that includes periodicals and broadcasters.’²³⁴ However, the term “media” is not defined under the broadcasting service proclamation. Under the new proclamation, ‘media includes news agencies and any organs established to give news or programs to the public via periodicals, broadcasting services, and internet media, except photos, images, and books that are not part of a periodical.’²³⁵ Thus, the new proclamation provides a broader definition of the media as

²³⁰ Ibid, 84(2)

²³¹ Human rights committees General Comment No.34, para.47

²³² Proclamation No.590/2008, article 43(7)

²³³ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.2(4)

²³⁴ Proclamation No.590/2008, freedom of the mass media and access to information proclamation, December 2008, article 2(1), available at: <https://www.refworld.org/docid/4ba7a6bf2.html>(accessed on 20 December 2021)

²³⁵ Ibid, article 2(1)

compared to the previous proclamation. The major reason for the change in the definitions was to rectify the unclarity of the words and phrases under the previous proclamations.²³⁶ Accordingly, the new media proclamation seems clearer and more inclusive. On the other hand, the new media proclamation excluded some words from the definitional parts that were defined under the old proclamations. Such words are political organization, inspector, advertisement, importer, and distributor. The main reason for the exclusion seems to be the irrelevance of defining those words.

The proclamation also made a change to the scope of application since it broadens its geographical application to include any foreign periodicals and broadcast service providers that focus on national issues either entered into Ethiopia or disseminated from abroad.²³⁷ In this regard, the broadcasting service proclamation provided that ‘it applies to all government, commercial, and community broadcasting services operating in Ethiopia’.²³⁸ On the other hand, proclamation No.590/2008 states that ‘it applies to mass media from abroad primarily focusing on domestic audiences’.²³⁹ However, the practical application of this new provision may create inconvenience in enforcing it. For this provision, the explanatory notes on its draft provided that because of its importance, it may be applied through the adoption of different minimum standard agreements with other countries and with the purpose of creating awareness about the obligation of the media.²⁴⁰

The other major change made by the new proclamation is the adoption of free private ownership of periodicals and online media.²⁴¹ Under previous laws ownership over media was allowed only for legal persons.²⁴² However, the new proclamation allowed private ownership of media except for broadcast media.²⁴³ This provision is interesting as it enables the individual to exercise his right to work or invest in the media and to contribute to the development of the media sector. Despite these improvements, private ownership over broadcast media is still restricted under the new proclamation. But it is not clear as to the justification for the restriction on broadcast media.

²³⁶ የመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፣ ጥር፣ 2013፣ ገ. 5

²³⁷ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 3(2&3)

²³⁸ Broadcasting service proclamation No.533/2007, art 3

²³⁹ Proclamation No.590/2008, art.7(7)

²⁴⁰ የመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፣ ጥር፣ 2013፣ ገ.7

²⁴¹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.22(1), 23(1)

²⁴² proclamation No.590/2008,art.7(6), broadcasting service proclamation No.533/2007, art.23(1)

²⁴³ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.22(2), 23(2)

In this regard, the explanatory notes on the proclamation provide that it is restricted to avoid private responsibility and to provide broadcast service in an organized way.²⁴⁴ Moreover, it is provided that the restriction is in line with international experience.²⁴⁵

Although, the drafting history shows this, the justifications stated above are not water holding and fail to take into account the individual right. In this regard, the researcher argues that the justification used to allow private ownership over periodicals and online media also works for broadcast media. This is also true from the perspective of the country's development, since accessibility of broadcast media is essential for its easy affordability.

It also improved the ownership prohibition for religious institutions as it partially permits religious institutions to own broadcast media.²⁴⁶ However, the prohibition on political parties remains in existence under the new proclamation. The reason provided in the explanatory notes states that it is to keep a political balance. This creates a question regarding its consistency with higher laws. This will be discussed in detail in the next chapter.

Moreover, the new proclamation clearly illustrated the types of administrative measures to be taken by the authority.²⁴⁷ Overall, the proclamation provided maximum pecuniary punishment for the wrongs done using the media.²⁴⁸ Furthermore, it guides the authorities to consider the financial capacity of the media institution in fixing the amount.

3.3.5. The place of national security under the proclamation

National security has great importance and when it is at risk, other human rights may also be at risk. It is thus acknowledged that freedom of expression may be limited to secure this interest, as provided unequivocally under Art.19 (3) of the ICCPR.²⁴⁹ Under the media proclamation, national security is not clearly defined. Internationally, the global principles on national security and the right to information (Tshwane principles) simply listed out types of information to be

²⁴⁴ የመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፣ ጥር፣ 2013፣ 7.11

²⁴⁵ Ibid

²⁴⁶ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.40(3(b))

²⁴⁷ Ibid, article 73

²⁴⁸ Ibid, art.73(1(b))

²⁴⁹ International covenant on civil and political rights (adopted in Dec. 1966, enter into force in 1976), UNGA Res. No.171, art.19(3)

withheld by the government on the grounds of national security.²⁵⁰ Although there is no definition, national security is used as a ground to limit the right to freedom of expression and the media. For instance, a periodical or broadcasting service will be impounded if its dissemination is about to lead to an imminent grave danger to national security.²⁵¹ Moreover, national security is a ground to be used by the court to order disclosure of sources of confidential information held by journalists.²⁵²

On this issue, the declaration provides that, unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression, freedom of expression shall not be curtailed on public order or national security grounds.²⁵³ Moreover, the concern for national security is also referred to under the Johannesburg principles on national security. It provides that, any restriction on freedom of expression or information that a government tries to justify on the basis of national security must serve a legitimate national security interest and have a verifiable effect.²⁵⁴ Accordingly, in order to limit the right to freedom of expression on the ground of national security there must be real threat and a mere suspicion is not acceptable. As well, it should be prescribed by the law and the governments bear an obligation to demonstrate its existence and the causal link between the restriction and national security threat. To this end, it needs serious assessment on a case-by-case basis and through a balance of the two competing interests.

Moreover, the principle provides that;

‘A restriction sought to be justified on the basis of national security is not legitimate unless it has a genuine purpose and demonstrable effect of protecting a country's existence or territorial integrity, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.’

²⁵⁰ Global principles on national security and the right to information (the Tshwane principles) 12 June 2013

²⁵¹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 85(1)

²⁵² Ibid art.49

²⁵³ Declarations of principles on freedom of expression and access to information in Africa, adopted by the African commission on human and peoples right at its 65th ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia, principle 22(5)

²⁵⁴ Johannesburg principles on national security, freedom of expression and access to information, principle 1.3

This provision implies that any measures to protect the government from exposure of wrongdoing or to conceal any institutional information are contrary to the guarantees of freedom of expression. National security is also recognized as a ground of restriction under Art.29 of the FDRE Constitution. The incorporation of national security into the proclamation is in conformity with higher laws, including the FDRE Constitution. However, it requires serious caution for its practical applications.

3.3.6. Administrative measures and legal liabilities under the proclamation

In the event of non-compliance with the provisions of the proclamation, there are administrative measures and legal liabilities in place. As a principle, administrative measures should be taken fairly without endangering freedom of the media and should take into account the gravity of non-compliance and past record of recidivism.²⁵⁵ The possible administrative measures under the proclamation are a written warning, a fine of up to two hundred thousand birr, termination of the program, and revocation of the license.²⁵⁶ The cases relating to administrative measures fall within the jurisdiction of the board and the authorities since such cases go to the court only in the form of appeal.²⁵⁷

Regarding legal liability, the basic principle under article 83 provides that, the media shall respect the laws in their operation and legal liabilities shall be imposed on the basis of law and shall not constitute an undue infringement on freedom of expression.²⁵⁸ Moreover, when an act of defamation is committed using the media, it results in civil liability of compensation to the extent of three hundred thousand Ethiopian birr.²⁵⁹

In this regard, the proclamation brought changes by adopting different levels of punishment for non-compliance and by decriminalizing defamation committed by the media. This way, the proclamation conforms to international laws and jurisprudence. Consequently, decriminalization of defamation has far reaching effect in avoiding self-censorship for the fear of criminal punishments.

²⁵⁵ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 72

²⁵⁶ Ibid art. 73(1)

²⁵⁷ Ibid, article 81 and 82

²⁵⁸ Ibid, art.83(1&2)

²⁵⁹ Ibid article 84(2)

3.4. Summary

This chapter discussed the contents of the media proclamation. Under the proclamation, every Ethiopian citizen has the right to own periodicals and online media, while broadcast media is owned by a legal person. Foreigners are also allowed to own shares in the media to the extent of twenty-five percent. The proclamation prohibited cross-ownership and the provision of services without a license. The Ethiopian media authority was established as an independent agency accountable to the HPR. The authorities are given broad powers in relation to the media and freedom of expression. Its freedom from any form of interference is guaranteed under the proclamation. In its structure, the authority has a management board, a director general, a deputy director general, and other necessary staff.

The media has the right to gather, receive, and disseminate information; to use information technology; to engage in critical reporting; and to gather and record public opinion. It has the right to bring complaints and form an association. The media bear an obligation to incorporate domestic content, transmission of government emergency statements, keep records of programs, to reply and a duty to notify the person in charge of programs and news. Moreover, online media have obligation to avoid language that promote existing or new hostilities.

The media proclamation made an improvement by establishing independent authority with a new accountability regime, decriminalizing defamation, allowing foreigners to own media, adding a provision for online media and adopting a clearer definition for some words. Furthermore, it allowed private ownership over periodicals and online media. It also improved ownership right of religious institutions and specific administrative measures in case of violation. National security is referred to in the proclamation as a ground for certain limitations. Violation of the provisions of the proclamation results in administrative measures and legal liability. The administrative measures are a written warning, fine, termination of the program and revocation of the license. In the case of defamation, it results in compensation to a maximum of three hundred thousand birr. The next chapter presents the compatibility of the proclamation with international laws and the FDRE Constitution.

CHAPTER FOUR

4. THE COMPATIBILITY OF MEDIA PROCLAMATION WITH INTERNATIONAL LAWS AND THE FDRE CONSTITUTION

4.1. Introduction

There are legal frameworks at international, regional, and domestic levels in which the domestic laws should comply with the higher ones. This chapter presents the assessment of mass media proclamation in light of international and regional instruments as well as the FDRE Constitution. Accordingly, the overall purpose of this chapter is to discuss the compatibility of the proclamation with higher authorities. Although some issues under this chapter are discussed under chapter three, this chapter analyzes the compatibility of the proclamation with higher laws from different perspectives, while chapter three is simply aimed at highlighting the content of the proclamation. To this end, this chapter provides independence of the media regulatory body, prohibition of media ownership under the proclamation, vulnerable groups under the proclamation, administrative measures and legal liabilities, and implications of the proclamation and its improvements on freedom of expression and other human rights. Lastly, it presents a chapter summary.

4.2. Independence of the regulatory body

The independence of an organ vested with the supervisory power over media issues is crucial for the enjoyment of freedom of expression and the media. This is supported by the provisions of different international instruments. The right to freedom of expression, guaranteed under international and regional instruments as well as the FDRE Constitution, is effectively exercised if the media sector is governed by an independent supervisory organ. Accordingly, the existence of an organ free from interference has far reaching importance for the full enjoyment of freedom of expression and the media.

The GC recommended that State parties that have not already done so should establish an independent broadcasting licensing authority, with the power to examine broadcasting

applications and grant licenses.²⁶⁰ Moreover, the African Declaration requires that States establish an independent regulatory body to issue broadcasting licenses and to oversee the observance of license conditions.²⁶¹ Furthermore, public regulatory authorities with power over broadcast, telecommunications, or internet infrastructure must be independent and adequately protected from political, commercial, or other interference.²⁶² Thus, these provisions require not only the establishment of a regulatory body but also its independence from different types of interference.

In addition, the appointment process of its members should be protected against interference, transparent and involve the participation of stakeholders.²⁶³ As well public regulatory bodies should be accountable to the public.²⁶⁴ Accordingly, the accountability scheme of the authority is essential for its independence.

Access to the airwaves principles of freedom of expression and broadcast regulation guarantee the independence of broadcast regulatory bodies from all kinds of interference.²⁶⁵ Furthermore, it states that its institutional autonomy and independence should be explicitly provided for by the law and that there should be accountability to the public through a multi-party body.²⁶⁶ It also provides that ‘members of governing bodies with regulatory powers in broadcast should be appointed in a way that minimizes the risk of political or commercial interference’.²⁶⁷ The access to airwaves principle is prepared by the “article 19 law programme” which advocates for the development of progressive standards on freedom of expression at international level and its implementation at domestic level. As well, it produced different standard setting publications in the areas of defamation law, access to information and broadcast regulation.

²⁶⁰ Human right committees General comment No.34, para.39

²⁶¹ Declarations of principles on freedom of expression and access to information in Africa, adopted by the African commission on human and peoples right at its 65th ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia, principle 14(3)

²⁶² Ibid, principle 17

²⁶³ Ibid

²⁶⁴ Ibid, principle 17(3)

²⁶⁵ Article 19, Access to airwaves: principles on freedom of expression and broadcast regulation (London: March, 2002), principle 10

²⁶⁶ Ibid.

²⁶⁷ Ibid, principle 13

The proclamation established an autonomous media authority that is accountable to HPR.²⁶⁸ The HPR represents the people, so making the authorities accountable to the house is better than accountability to the executive bodies. According to Art.7 (1) of the proclamation, the authority must be independent and free of any interference or influence that would be detrimental to its objectives.²⁶⁹ Moreover, the authority must be independent and free of influence from the government, political parties, media, religious institutions, commercial organizations, and other institutions.²⁷⁰ The participatory appointment procedure has its contribution for having independent authority. To this end, the proclamation states that the public should get an opportunity to nominate and comment on their opinions of candidates.²⁷¹

Furthermore, the members of the board are from different sectors such as CSO, media and relevant sector and government institutions.²⁷² The members should not be a member or employee of a political party.²⁷³ This has the contribution for minimizing conflicts of interest in the administration of the media and the autonomous exercise of power.

In establishing and recognizing its independence, accountability to the HPR, and adoption of a clear procedure for the appointment of its members, the proclamation is in conformity with the provisions of the international and regional instruments. As well, it is in conformity with the provision of the FDRE Constitution guaranteeing the right to freedom of expression.²⁷⁴

4.3. Prohibition of media ownership under the proclamation

Restriction of ownership right has its own implication on the exercise of the right to freedom of expression. Despite this, the media proclamation adopted provisions restricting ownership right of certain groups. This section provides prohibition against political parties, religious institutions and private ownership over broadcast media in light of other laws.

²⁶⁸ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.4(1&2)

²⁶⁹ Ibid, art.7(1)

²⁷⁰ Ibid, art.7(2)

²⁷¹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.9(2(a))

²⁷² Ibid, art.9(5(a&b))

²⁷³ Ibid, art.11(6)

²⁷⁴ The FDRE constitution, art.13(2) and 29

4.3.1. Prohibition for political parties and religious institutions

Almost all of the international instruments provide the right to freedom of expression through any medium in favour of everyone. The word “everyone” is used under different provisions of the instruments such as UDHR and ICCPR, ECHR, ACHR.²⁷⁵ Similarly, the ACHPR used the phrase “every individual” to implicate the beneficiaries of freedom of expression and the media.²⁷⁶ The same is true under other soft laws dealing with the rights to freedom of expression and the media. From this, it is possible to infer that freedom of expression and the media are exercised by every individual person, regardless of their status. Additionally, the ICCPR guaranteed that the right to freedom of expression is exercised through the media of one’s own choice.²⁷⁷ Accordingly, it seems that there is no restriction on the right to use and own specific media of one’s interest. This is also supported by the case laws of different human rights tribunals and committees. For instance, in the cases of *Rakhim Mavlonov and Shansiy Saidi Vs Uzbekistan*, the human rights committees arrived at the conclusion that refusal of registration and re-registration of print media for editors and readers amounts to a violation of freedom of expression.²⁷⁸ In this case, the committee stated that the refusal violates the editor’s right to publish and the reader’s right to receive information.²⁷⁹ This case shows that, imposing limitations on the registration or licensing of specific media amounts to an unlawful restriction on freedom of expression.

The media proclamation under Art.40 stipulates that political parties and any organization, movement, or alliance of political nature are not allowed to get a broadcasting license of any type.²⁸⁰ Moreover, it disallows broadcasting licenses to organizations whose shareholders are political organizations or top leaders in political organizations with effective control.²⁸¹ Looking at these provisions in light of the provisions of international and regional instruments, there is no such clear provision prohibiting the ownership rights of political parties. In the absence of clear

²⁷⁵ The UDHR, art.19, ICCPR art.19, ECHR art.10, ACHR, art.13

²⁷⁶ African charter on human and peoples right, art.9

²⁷⁷ International covenant on civil and political rights (adopted in Dec. 1966, enter into force in 1976), UNGA Res. No.171 (here in after ICCPR), art.19(2)

²⁷⁸ *Rakhim Mavlonov and Shansiy Saidi Vs Uzbekistan*, comm. No.1334/2004, U.N.Doc.CCPR/C/95/D/1334/2004(HRC 2009), para.8.3

²⁷⁹ Ibid

²⁸⁰ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 40(1)

²⁸¹ Ibid, Art.40(2)

provision under different instruments, it is necessary to make sure whether such limitation falls within the scope of justifiable restriction on freedom of expression.

There are different grounds for the limitation of the right to freedom of expression provided under different laws. Under Art.19 of the ICCPR, restrictions shall be provided by law, necessary for respect of the rights and reputations of others and protection of national security, public order, public health or public morals.²⁸² The same ground of limitation is provided under the CRC. Moreover, the ECHR provides that, it is subject to restrictions, or penalties as are prescribed by law and are necessary in a democratic society, national security, protection of health or morals, others' reputations or rights, and the prevention of the disclosure of confidential information.²⁸³ The ACHPR simply provides that, the right to express and disseminate information should be exercised within the law. Limitation on the means of exercising freedom of expression has the effect of curtailing the right itself. The airwave principles provide that, 'there should not be blanket prohibitions on awarding broadcasting licenses on the basis of either their form or nature'.²⁸⁴ As well, it prohibits restriction for religious bodies in receiving license and states that, the power to decide on licensing should be given to regulatory bodies to entertain in case by case basis.²⁸⁵ Thus, the proclamation is contrary to this principle.

The identification of the compatibility of the provision of the proclamation with the grounds of restriction needs to be looked at in respect of specific grounds. The first ground is the prescription of limitation by the law. In this regard, Art.40 of the proclamation seems to fulfill this ground. The second one is the necessity for national security, public order, health, and morals. From this perspective, none of these purposes will be served by restricting ownership right of broadcast media by political parties. Thus, there is no interest endangered by the provision of the license to political parties.

Moreover, the prohibition of ownership rights for belonging to a certain group is in contradiction to the principles of non-discrimination under human rights laws. In this regard, the declaration

²⁸² International covenant on civil and political rights (adopted in Dec. 1966, enter into force in 1976), UNGA Res. No.171 (here in after ICCPR), art.19(3)

²⁸³ European convention on human rights, art.10(2)

²⁸⁴ Article 19, Access to airwaves: principles on freedom of expression and broadcast regulation (London: March, 2002), principle 20.1

²⁸⁵ Ibid

provides that, without distinction of any type, such as political opinion, everyone has the right to practice freedom of expression and access to information.²⁸⁶ Thus, membership in a political party should not be used as a ground of distinction in the licensing process. Additionally, states are required under the GC to demonstrate the legal grounds for any restrictions imposed on freedom of expression.²⁸⁷ But, in this case, there are no clear legal grounds provided for the restriction under the proclamation as well as its drafting history.

To ascertain the intent of the parliament, it is necessary to look at the drafting history of the proclamation. The explanatory note on the draft of the proclamation provides that a restriction on licensing for political parties is necessary to keep a political balance.²⁸⁸ Furthermore, the explanatory note explained that, such a restriction is acceptable grounds at the international level.²⁸⁹ However, the justification and its wording are not clear as it failed to clarify the specific grounds acceptable at international level. In doing so, the justification failed to show specific interests served by such a prohibition or those rights at stake as a result of providing ownership to political parties.

Although the drafting history claims that the restriction is acceptable under international law, there are no specific provisions in international instruments allowing such prohibitions. Consequently, it has double effect of restricting the right to own media for members of political parties and the right to access information for users of the media. Therefore, this provision falls short of the justification for the restriction of freedom of expression since membership in political party is not recognized as a ground of limitation under international law. As well, there is no such limitation under the FDRE constitution. Thus, it is contrary to the limitations provided under international and regional laws.

Similarly, religious organizations are given the limited right to get a broadcasting license using limited radio spectrum. This is a change brought by the new media proclamation since it adopts more liberal provisions as compared to previous laws which prohibit this kind of ownership right. The justification for the adoption of this approach is the increment in the dissemination of

²⁸⁶ Declaration of principles on freedom of expression and access to information in Africa, principle 3

²⁸⁷ Human right committees General comment No.34, para.27

²⁸⁸ የመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፣ ጥር፣ 2013፣ 7.12

²⁸⁹ Ibid

spiritual matters through the media which increases the demand for the media.²⁹⁰ But, in the case of a shortage of spectrum, religious institutions are prohibited from getting the license. However, this is contrary to the provisions on freedom of the media since, in case of shortage, there should be a mechanism to distribute fairly for all. Thus, such a prohibition objectively targeted towards religious institutions, has the effect of curtailing freedom of expression and the media. So, the shortage of radio spectrum should be managed through other means than blanket prohibition of licenses to specific groups. Similar to the case of political parties, there is no provision in human rights instruments supporting such a prohibition. Moreover, it is contrary to Art.26 of the ICCPR on the principle of non-discrimination. As well, Art. 2 of each international instrument require the application of the rights recognized for all without any discrimination on unjustifiable grounds. Accordingly, the prohibition of media ownership for political parties and religious institution amounts to discrimination on unjustifiable grounds contrary to the legal guarantees.

4.3.2. Prohibition of Private ownership of broadcast media

The proclamation brings a change in allowing ownership right to individual over periodicals and online media.²⁹¹ This is an interesting step to promote pluralism and diversity in the media. However, it still limits the broadcast ownership to a legal person. It states that ‘anyone who has been granted legal personality under Ethiopian law has the right to apply for and obtain a broadcasting license if they meet the criteria’.²⁹² Such a prohibition has a negative impact on the right to work and own property, as well as the right of users to access information. As provided above, the airwave principle prohibits blanket restrictions on obtaining broadcasting licenses.²⁹³ Accordingly, limiting the ownership rights to a legal person to the exclusion of a physical person is contrary to this principle.

The explanatory note on the proclamation states that liberalization of private ownership of periodicals and online media is necessary to avoid its implications on the right to work and the development of the media sector.²⁹⁴ This ownership flexibility in this regard is a positive step as compared to previous proclamations limiting private ownership. As far as broadcast media

²⁹⁰ የመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፣ ጥር፣ 2013፣ 7.12

²⁹¹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.23(1)

²⁹² Ibid, art.23(2)

²⁹³ Article 19, Access to airwaves: principles on freedom of expression and broadcast regulation (London: March, 2002), principle 20.1

²⁹⁴ የመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፣ ጥር፣ 2013፣ 7.10-11

ownership is concerned, the restriction is to avoid individual responsibility as provided under the explanatory note.²⁹⁵ Moreover, it is provided that it is necessary to undertake the service in an organized way and is in line with international experience.²⁹⁶

For different reasons, the justification does not seem to hold water. Firstly, the justification used to liberalize ownership of periodicals and online media also holds true for broadcast media. Secondly, it is not clear as to the international experience to which the restriction conforms. Thus, there is no internationally recognized clear restriction on broadcast media ownership. As such, the justification failed to take into account the reality on the ground. Thirdly, it is not clear as to how individual responsibility brings negative consequences. Furthermore, the justifications do not conform to the three-part test for the restriction of freedom of expression provided under international law.

As the guarantee of freedom of expression applies to everyone without discrimination, this provision is contrary to the right to freedom of expression and the media. There are also practical cases supporting private ownership of broadcast media. For instance, in the case of *Ivcher Bronstein v. Peru*, the inter-American court of human rights held that indirect restrictions on the means of dissemination of information are one sort of restriction on freedom of expression.²⁹⁷ In this case, the author denied media ownership on the grounds of dismissal of his nationality. In Peru, nationality is a criterion for owning media. Accordingly, the author claimed that his nationality was intentionally dismissed to restrict his media ownership. Finally, the court found that there was a violation of the right to freedom of expression under Art.13 of the ACHR.²⁹⁸ From this perspective, any indirect restriction on the means of its exercise is contrary to acceptable grounds of restriction. In this regard, ownership restrictions under the proclamation are contrary to legitimate restrictions under international law. Accordingly, this proclamation could not bring this kind of change as far as indirect restrictions on freedom of expression are concerned. Similar to the cases of political parties and religious institutions such prohibition is contrary to state obligation to implement the rights under conventions without any discrimination except as allowed by the law.

²⁹⁵ የመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፣ ጥር፣ 2013፣ ገ.11

²⁹⁶ Ibid

²⁹⁷ *Ivcher Bronstein Vs Peru, judgment of February 6 2001, p.56*

²⁹⁸ Ibid, p.65

4.4. Vulnerable groups under the proclamation

The provisions of international and regional instruments on freedom of expression and the media also work for vulnerable groups. In addition to general treaties, thematic treaties also have provisions on freedom of expression. The exercise of the right by vulnerable groups equally with others needs special measures due to the nature of their vulnerability. Overall, people with disabilities need special attention to be the beneficiaries of media output adaptable to the nature of their disability. The same is true with children's and other groups.

The CRPD provides that, state parties must ensure that people with disabilities have access to all forms of communication in order to share their thoughts, beliefs, and feelings.²⁹⁹ As well, the obligation includes making information available in accessible media and formats.³⁰⁰ This indicates that member states bear the duty to create a conducive environment to enable them to fully exercise the right to freedom of expression. Similarly, the CRC recognized children's right to freedom of expression.

Moreover, the protection given to the rights of freedom of expression under regional instruments is applicable to vulnerable groups as well. For instance, the protocol to ACHPR on the rights of persons with disabilities in Africa states that every person with a disability has the right to freedom of expression through all forms of communication of their choice.³⁰¹ The states parties are also required to take all measures to ensure that persons with disabilities can exercise the rights on equal basis with others.³⁰² Furthermore, the protocol guaranteed the right of access to information for persons with disabilities through accessible formats and technologies appropriate to different kinds of disabilities.³⁰³ The declaration also requires the state to take specific measures in relation to marginalized groups for the full enjoyment of freedom of expression and access to information.³⁰⁴ In this regard, it provides details of duties to be done by the state in favour of persons with disabilities.

²⁹⁹ Convention on the rights of persons with disabilities, art.21

³⁰⁰ Ibid

³⁰¹ Protocol to African charter on human and peoples' rights on the rights of persons with disabilities in Africa, article 23(1)

³⁰² Ibid, art.23(2)

³⁰³ Ibid, art.24

³⁰⁴ African declaration of principles on freedom of expression and access to information, principle 7

With regard to the Ethiopian media proclamation, there is no adequate provision providing for special protection to the vulnerable groups. Although the whole provisions of the proclamation also work for vulnerable groups there should be special measures adaptable to the conditions of such groups. As per Art.4 of the proclamation, the objective of the authority is to create an enabling environment for the full enjoyment of freedom of expression and media guaranteed under ratified treaties and the FDRE Constitution.³⁰⁵ Accordingly, the objective of creating a conducive environment may be interpreted to include adoption of specific measures regarding vulnerable groups. Thus, it is possible to argue that the authorities may give effect to the guarantees under ratified treaties such as CRPD. In the absence of adequate and detailed provisions enumerating the measures to be taken, it remains at the mercy of the authorities to do so.

Art.55 (1(n)) provides that broadcast media should include contents adaptable to persons with disabilities.³⁰⁶ This provision plays a great role in the realization of the right to freedom of expression and access to information for persons with disabilities. However, this is limited to broadcast media and it failed to provide a detail measure to be taken by the media. As well, it is stated that public broadcast media should serve vulnerable groups and provide news and programming that helps to bring affirmative action into the spotlight.³⁰⁷ Moreover, it provides a variety of broadcasting services and materials that achieve a balance between general-interest programming and specialist programming that responds to the requirements of various audiences, including people with disabilities, minorities, children, youth, and women.³⁰⁸

As well, Art.57 of the same provides that all obligations of public broadcasting service shall be applicable to special public service broadcasting licensee.³⁰⁹ From this it is possible to infer that the guarantees in relation to vulnerable groups under Art.56 shall owe protection by special public service broadcasting licensee. The use of sign language is the obligation of a television broadcasting service licensee in the case of transmission of current affairs.³¹⁰ The use of sign language is only required for current affairs. This shows the proclamation's failure to adequately

³⁰⁵ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, article 4

³⁰⁶ Ibid, Art.55(1)

³⁰⁷ Ibid, art.56(1(h))

³⁰⁸ Ibid, art,56(1(m))

³⁰⁹ Ibid article 57(1)

³¹⁰ Ibid, art.60(2)

incorporate provisions enabling persons with disabilities to enjoy freedom of expression and access to information. Accordingly, the provisions fall short of the international guarantees for freedom of expression and the media. Thus, it may be contrary to principle of non-discrimination under Art.26 of the ICCPR. As well, it is contrary to state obligation to apply the rights to freedom of expression and the media without discrimination.

4.5. Administrative measures and legal liabilities

The principle under the proclamation guaranteed that ‘Procedures, administrative actions, and measures that restrict freedom of the media are prohibited unless expressly authorized by law’.³¹¹ As per this provision, every measure related to media issues should be based on the grounds provided by the laws. The laws in this case include both national legislation and international laws. Accordingly, any decisions of government organs shall be taken in accordance with the limitations provided under international and national laws. Thus, in this perspective, the provision of the proclamation is compatible with international laws and the FDRE Constitution. Moreover, any sanctions should be applied fairly, with respect to the right to be heard and taking into account the gravity of non-compliance and level of recidivism.³¹² This provision has paramount importance in protecting the media from arbitrary interference from different bodies by making the decision-making organs act within the conditions provided.

Although it provides different non-compliance for specific administrative measures, the proclamation contains some overlapping measures. For instance, Art.74 (1) (e) provides that non-compliance with Art.53 of the proclamation results in a measure of written warning. At the same time, the same violation or non-compliance with Art.53 entails a measure of fine to the extent of 15,000 Ethiopian birr. This loophole in the provisions of the proclamation has the impact of subjecting the media to double measures for a single violation. Furthermore, it gives discretionary power to the authorities to adopt either of the measures for similar non-compliance. Thus, it affects the uniformity of decision making as far as violation of Art.53 is concerned. Accordingly, two media may get different punishments for the same act of non-compliance with Art.53 of the proclamation.

³¹¹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art.72(1)

³¹² Ibid, art.72(2&3)

Furthermore, legal liabilities shall be imposed according to the law and shall not constitute an undue infringement on freedom of expression.³¹³ The defamation committed by the media only entails civil liability. Accordingly, the proclamation is in line with international laws and existing jurisprudence in which there is no criminal liability for defamation. This improvement is a milestone step for the enjoyment of the right to freedom of expression and other human rights. The provision providing civil liability for defamation was held up through hot debates during its adoption.³¹⁴ The members argued that civil liability is not sufficient for defamation and claimed inclusion of criminal liability. They claimed that defamation is not properly prevented in Ethiopia despite the existence of clear provisions under criminal laws and since criminal liability is necessary. The justification given to this is that media is mostly operated by legal persons which is practically difficult to put in jail. Accordingly, they argued that whether it is criminal punishment or civil liability, its effect is similar, which is the payment of a fine and revocation of the program and license. However, this justification does not hold water and is not from a legal point of view. Overall, the proclamation is in line with the international laws and the FDRE Constitution in providing a different hierarchy of administrative measures and legal liability, excluding criminal sanction for defamation.

4.6. Operational freedom and pluralism of media

The guarantees for freedom of expression under international law will be protected well if there is freedom of the media in the law and in practice. The laws and practices that have the effect of curtailing the right to freedom of expression go contrary to the three-part test of limitation on freedom of expression and the media. Diversity encompasses the plurality of broadcasting organizations, ownership of those organizations, and the plurality of voices, viewpoints, and languages within broadcast programming as a whole.³¹⁵ As well, it requires the availability of a diversity of independent broadcasters and programming that reflects society as a whole.³¹⁶

Similarly, the GC provided that ‘In order to ensure freedom of opinion and speech, as well as the exercise of other Covenant rights, any society needs a free, uncensored, and unfettered press or

³¹³ Ibid, art.83

³¹⁴ የህግ ፍትህና ዲሞክራሲ ጉዳዮች ቅጣት ኮሚቴ በመገናኛ ብዙሃን ረቂቅ አዋጅ ላይ ከአስረጅዎች ጋር ያካሄደዉ ዉይይት አጭር ቃለ ጉባዔ፣ ጥር 3፣ 2013 ዓ ም፣ ገ. 24

³¹⁵ Access to Airwaves: principles on freedom of expression and regulation of broadcast regulation, principle 3

³¹⁶ Ibid

other media’.³¹⁷ Moreover, it provides that ‘as a means of safeguarding media users States parties should take special effort to promote a free and diversified media’.

Furthermore, the African declaration states that, ‘states should adopt necessary measures to promote a diverse and pluralistic media’.³¹⁸ It also provided that, ‘any media owned or controlled by a public authority shall be adequately protected against undue interference’.³¹⁹ As well, it requires that the right to establish various forms of independent media be clearly incorporated into the legislation.³²⁰

The proclamation recognized the freedom and pluralism of the media under different provisions. For instance, Art.5 (3) of the proclamation provides that one of the objectives of the authority is to ‘ensure diversity and plurality in the utilization, ownership, production, or distribution of broadcasting service’.³²¹ Similarly, Art.22 (3) provides ‘Broadcasting licensing procedures must be fair and transparent, with the goal of promoting diversity in the sector’.³²² Sub-article 4 of the same stipulated that ‘Regulations on media ownership must only be interpreted in order to prevent monopolies and ensure plurality and diversity of viewpoints’.³²³ This provision implies that pluralism of media is guaranteed under the proclamation in conformity with international laws and the FDRE Constitution.

The operational freedom of the media is also mentioned under different provisions of the proclamation. For instance, it states that ‘the media should be free of governmental, political, and economic influence and those who control the material and infrastructure resources needed to produce and distribute its publications and services’.³²⁴ Moreover, it prohibited procedures, administrative actions and measures that adversely affect media freedom.³²⁵ Consequently, the proclamation guaranteed the operational freedom of the media. In this respect, it is in conformity with the provisions of international laws and the FDRE Constitution.

³¹⁷ Human right committees General Comment No.34, para.13

³¹⁸ Declaration of principles on freedom of expression and access to information, principle 17

³¹⁹ Ibid, principle 20

³²⁰ Ibid principle 18

³²¹ Media proclamation No.1238/2021, 27 Year No.22, Addis Ababa, April 2021, art 5(3)

³²² Ibid, art.22(3)

³²³ Ibid, art.22(4)

³²⁴ Ibid, art.47(2)

³²⁵ Ibid art.72(1)

4.7. Implication of the proclamation and its improvements in the promotion and protection of freedom of expression and other human rights

As compared to the previous proclamations, the new media proclamation comes with different changes. Those improvements inter alia have a far reaching implication on the protection and promotion of freedom of expression and access to information as well as other human rights. For instance, the establishment of an independent media authority with its accountability to the HPR plays a key role in the development of the media sector. If the supervisory oversight is properly administered by a body that is free from undue interference, the media can also function independently. As such, the media promote freedom of expression and other human rights through the free communication of information across different sections of society. Moreover, the establishment of an independent authority contributes to minimizing political pressure on the regulatory bodies from the government.

Similarly, improvement in decriminalization of defamation through the media contributes a lot to freedom of expression and protection of other human rights. It allows the media sector to operate without any fear of self-censorship by engaging in the reporting of sensitive human rights issues. This way, it will bring the problem in our society to the attention of the concerned organ. As an example, it plays a key role by reporting human rights violations, seeking solutions from different organs and by reporting certain emergency situations to the community. In such case, it helps in the protection and promotion of human rights.

Furthermore, the inclusion of online media to be regulated under the new proclamation has its own contribution to the protection of freedom of expression and the promotion and protection of human rights. As a result of the technological development online media plays a key role in today's globalization. Accordingly, leaving the online media unregulated may have its own consequences. Firstly, it has the effect of creating irresponsible media working as they want without any obligation or rights. Secondly, it creates discretion for the government to oppress online media in the absence of laws providing the rights and duties of online media. Therefore, governing online media within this media proclamation allows online media to freely operate within the rights and obligations provided by the law.

The ownership related improvements also contribute to the protection and promotion of freedom of expression and other human rights. The proclamation allowed physical persons to own periodicals and online media and religious institutions to own broadcast media with certain limitations. This change is essential for individuals and religious entities to exercise freedom of expression using any media. It also helps the listeners or audiences make an effective exercise of their right to access information from diversified sources.

As far as human rights are concerned, the changes by the proclamation may have a contribution to the protection and promotion of human rights. It inter alia enables free media, which reports on societal problems and brings them to the attention of concerned bodies. Moreover, it facilitates the easy exercise of political rights by enabling candidates to freely communicate their agendas to the community using any media. As well, it enables society to get information from a variety of sources. Free media also serves the purpose of informing society about certain emergency situations and, as such, minimizing the societal crisis. Improvements are directly or indirectly play a role in the promotion and protection of other human rights.

Overall, the improvements brought by the media proclamation have a great contribution to the promotion and protection of the right to freedom of expression and other human rights. However, this does not mean that the proclamation fixed all the issues in relation to the media and freedom of expression. There are some issues still seeking for further improvements such as the case of ownership prohibition, overlapping penalty for same violation and in relation to vulnerable groups.

4.8. Summary

This chapter discussed the compatibility of media proclamation with international laws and the FDRE Constitution. The proclamation established an independent media authority accountable to the HPR. Such an accountability structure is essential for the protection and promotion of the right to freedom of expression. The proclamation prohibited broadcast media ownership by private persons, political parties, and religious institutions (at least partially). Such a prohibition is not incongruity with international laws, regional laws, and the FDRE Constitution. Vulnerable groups are referred to under the proclamation as beneficiaries of the rights under the proclamation. However, the right to freedom of expression of vulnerable groups is not

adequately integrated into the proclamation. The proclamation *inter alia* failed to provide lists of specific measures adaptable to the situation of vulnerable groups. Thus, the guarantees in this regard are inadequate. Non-compliance with the provisions of the proclamation entails both administrative measures and legal liabilities. Defamation committed through the media is also no longer a crime according to new media proclamation. The adoption of clear liability and procedures for its adoption, as well as the decriminalization of defamation, is compatible with international laws and the FDRE Constitution. The improvements in the establishment of independent authorities, the inclusion of online media, the decriminalization of defamation, and the permission of ownership for certain groups play a key role in the protection and promotion of freedom of expression and other human rights. However, the proclamation still has defects regarding ownership prohibition, overlapping punishment, and in relation to vulnerable groups.

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATION

5.1. Conclusion

The realization of the right to freedom of expression needs commitment to enable the media to play their role independently. The right to freedom of expression and the media is recognized under international laws, regional laws, and the FDRE Constitution. At the international level, it is concretely stipulated under the UDHR, ICCPR, CRC, CRPD, and ICMW. Regionally, it is recognized under the ACHPR, ECHR, ACHR, and other soft laws. Moreover, it is provided under the FDRE constitution. As well, the case laws of different human rights tribunals have developed a rich jurisprudence, rendering decisions on freedom of expression and the media on different occasions.

Accordingly, the right to freedom of expression and the media encompasses the right to hold an opinion and to seek, receive, and impart information using any media without interference. However, it is not an absolute right since the exercise of these rights is subject to restriction for the sake of the rights and reputations of others, national security, and public order. To this end, the limitation should be prescribed by law, serve a legitimate aim, and be necessary to achieve that aim. In doing so, the interests served by restricting the right should be balanced with the presumed harm to the right.

The right to freedom of expression has both intrinsic and instrumental values since it is recognized as a human right by itself and helps with the enjoyment of other human rights. Effective implementation of the right requires the existence of enabling legislation and an independent supervisory organ for the media sector. Consequently, national legislation putting restrictions on freedom of expression and the media should be strictly in conformity with justifiable restrictions under international laws.

The new media proclamation has made some improvements. It, inter alia, established an independent media authority with broad power on media issues. Moreover, it changed the accountability of the authorities to the house of people's representatives. In this regard, the former supervisory authority was accountable to the executive branch and its members were dominated by those from government sectors. Furthermore, the proclamation decriminalizes defamation committed by the media, which has its own contribution to exercising the right without any fear. It also extended the scope of media law to include online media and extra territorial applications that were not covered under previous laws.

Additionally, the new proclamation allowed private ownership of periodicals and online media. It also allowed religious institutions and foreigners to own broadcast media restrictively which is under total ban under former laws. As well, it clearly provided the range of administrative measures in the case of non-compliance with the provisions of the proclamation. This plays a key role in maintaining the proportionality of punishment and minimizing discretion in decision making.

The improvements made by the proclamation have far-reaching implications for the better protection of freedom of expression and access to information. Regulation by an independent body and the decriminalization of defamation enable the free expression of ideas. The free flow of information also enables the listeners or users to get the necessary information from diversified sources. Similarly, the expansion of individual ownership over periodicals and online media has double significance. On the one hand, it enables an individual to impart information using different media. As well, it helps other sections of society to get diversified information from multiple sources. Accordingly, each of the improvements brought by the proclamation has key significance for the promotion and protection of freedom of expression.

Furthermore, the changes brought by the proclamation play a key role in the protection and promotion of other human rights. The free exercise of media rights enables society to make well informed decisions in all affairs concerning its human rights. Moreover, it assists different political parties to update their audiences with different information and agendas. The existence of a free media also brings the violation of human rights to the attention of concerned bodies to

find a solution. Accordingly, the proclamation in general has a positive contribution to the protection and promotion of human rights.

However, do the rights to freedom of expression and the media get adequate protection under the proclamation to the extent provided by international instruments? In this regard, some provisions of the proclamation need further improvements. The proclamation included a provision restricting ownership licenses of broadcast media by individuals, political parties, and religious institutions. The right to freedom of expression also includes the right to the media since any restriction on the means of free expression amounts to a restriction on the right itself. In such a case as it restricts free expression, any such restriction should fall within justifiable grounds of restriction. Among others, such a prohibition on the basis of status is contrary to article 26 of the ICCPR which provides the principle of non-discrimination. Moreover, it contradicts with the state obligation to implement the rights recognized in each instrument that requires the application of the rights to all without unjustifiable discrimination. As such, the prohibition on ownership rights is contrary to the guarantees for freedom of expression and the media.

The proclamation also included double administrative measures for violation of a single provision. Accordingly, violation of art.53 of the proclamation entails measures of both written warning and fines. This subjects the media for double punishment and creates disparity in decision making since different decision may be rendered for the same faults.

The concern of vulnerable persons is not adequately incorporated into the proclamation. Although issues of vulnerable persons are referred to under the proclamation, it is not adequate as compared to international laws. Vulnerable persons need special guarantees relevant to their conditions of vulnerability for the enjoyment of freedom of expression equally with others. As such, the provisions of the proclamation for vulnerable persons fall short of the guarantees under international and regional instruments. It also falls short of the provisions of the FDRE Constitution.

5.2. RECOMMENDATION

The full realization of the internationally guaranteed right to freedom of expression and the media needs the existence of an enabling legal framework and institutional setup at a national level. To this end, national legislation should provide protection that conforms to international laws or better protection than international laws. However, the media proclamation has some flaws as compared to international laws and the FDRE Constitution. On the basis of the above analysis, the researcher recommends the following:

- The proclamation should not include a broadcast media ownership restriction on political parties, religious institutions, and physical persons receiving licenses. Accordingly it is better to leave such determination to the media authorities to decide taking into account the need to promote diversity. To this end, Art. 23(2), art.40 (1) (a) and 40(2) (b) of the proclamation No.1238/2021 should be amended to enable the right to ownership license.
- The provision providing double administrative measures for non-compliance with a single provision (art.53) of the proclamation should be deleted and a single punishment should be put in place. To this end, because of the lesser gravity of the non-compliance, only a written warning should be provided for this non-compliance. This is necessary to avoid the imposition of a double penalty for the same violation and to avoid the unnecessary discretionary power of the authorities. It is also important to avoid disparity in decision making for the same non-compliance.
- New provisions should be added to the proclamation to provide better protection to enable vulnerable groups to exercise their right to freedom of expression and the media. This is necessary to avoid the inadequate coverage and underrepresentation given to vulnerable groups under the proclamation. For instance, it should include provisions putting an obligation on all media to give airtime to the issue of vulnerable groups. Moreover, it should add provisions for the establishment of a specific public media working only on the issue of vulnerable groups. This is critical in order to avoid discrimination in the exercise of freedom of expression and the media.
- The provision providing for extra territorial application of the proclamation should be amended to clearly provide the means of its practical application. Unless there is a

practical mechanism for its implementation, no purpose is served by this provision. To this end, the government should take necessary measures for effective implementation of the proclamation extra-territorially.

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