UPDATED BRIEFING NOTE

on

The Draft Ethiopian Proclamation Concerning Press Freedom

by

ARTICLE 19
Global Campaign for Free Expression

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1. Introduction

In April 2003, ARTICLE 19, Global Campaign for Free Expression issued a Briefing Note commenting on a draft Ethiopian Proclamation Concerning Press Freedom. This draft has since been revised. On 30 May, we received a version entitled 'Unofficial, 1st Draft Press Law', issued by the Ministry of Information and dated 23 May 2003. This Briefing Note updates our previous comments in light of amendments that have been made.

In our April 2003 Briefing Note, we welcomed certain positive measures in the draft Proclamation, including that it seeks to guarantee in practice the right to access information held by public bodies. At the same time, we expressed serious concerns about a number of provisions that are contrary to international and constitutional guarantees of freedom of expression. The key problems we identified were:

- its excessively broad scope;
- restrictions on who may practise journalism;
- an onerous, government-controlled licensing system for media outlets;
- overly broad exceptions to the right to access information held by public authorities;
- excessive restrictions on the content of what may be published or broadcast;

- the establishment of a government-controlled Press Council with powers to prepare and enforce a Code of Ethics;
- powers vested in the prosecutor to suspend media outlets; and
- an excessively harsh regime of sanctions.

This Briefing Note will examine the updated draft Press Law against international standards on freedom of expression, paying particular regard to these concerns. It is not in any way a comprehensive analysis of the provisions of the draft Proclamation.

2. Analysis of the draft Proclamation

2.1 Scope of the draft Proclamation

Our April 2003 Briefing Note criticised the excessive scope of the draft Proclamation, which included any form of mass communication, regardless of the means of transmission. The current draft, in Article 2, includes the same, broad definitions. Thus, the draft Press Law will apply to all print publications, large or small, and including plays, films, cartoons, books, leaflets and even posters and pictures, as well as to all broadcasters as well as Internet publications.[1] This broad scope is particularly problematic since different media operate in different ways. A leaflet with a print-run of only fifty cannot be compared to a large national newspaper, yet the draft Proclamation applies the same licensing and registration scheme to both. For this reason, similar legislation emanating from Belarus has recently been struck down by the UN Human Rights Committee as incompatible with the right to freedom of expression.[2]

Recommendation:
- The scope of the draft Proclamation should be restricted to large-scale, periodical, print media outlets.

2.2 Restrictions on Who May Practise Journalism

Article 5 of the new draft Press Law imposes significant restrictions on who may be engaged in press work. Individuals who are not Ethiopian citizens and residents, who have not attained 18 years of age, who have been deprived of their legal rights, who have been deprived of rights pertaining to the exercise of parental authority, who have been suspended from teaching or who have been convicted of a serious crime or who were part of the management of a newspaper which had its license suspended may not work as journalists.

It is well established that conditions on who may practise journalism are inconsistent with the guarantee of freedom of expression which grants everyone, regardless of their situation, the right to engage in expressive activities.

Article 7 of the law imposes a licensing requirement on individual journalists. Like restrictions on who may practise journalism, registration requirements for individual journalists are not legitimate. It may be noted that very few countries around the

[1] Curiously, the only publications that fall outside the scope of the draft Press Law are those that have "any type of pornographic content" – see Article 32(4).
[2] *Laptsevich v. Belarus*, 20 March 2000, Communication No. 780/1997.

world, including in Africa, require such registration,[3] and that the Declaration of Principles on Freedom of Expression recently adopted by the African Commission on Human and Peoples' Rights disapproves of licensing regimes for individual journalists.[4]

Recommendations:
- The draft Press Law should not impose restrictions on who may practise journalism.
- The law should not require individual journalists to register.

2.3 Licensing of Media Outlets

The main provision in the draft Press Law dealing with licensing of the media is Article 8, which requires all media outlets to obtain a licence from the Ministry of Information. Applicants must provide extremely detailed information, including the names, addresses, date of birth and employment contract of all journalists working for the media outlet, as well as the exact hour the publication is submitted for printing and the exact hour of distribution. The authorities must be notified of all changes in this information. Pursuant to Article 10, a licence may be refused for a variety of reasons, including where the applicant fails to fulfil the obligations stipulated in the draft Press Law, which include a number of vague content restrictions.

As noted above, different regimes are appropriate for different types of media. It is accepted that *licensing* is not legitimate for the print media. For these media, *technical registration* requirements do not, *per se*, breach the guarantee of freedom of expression as long as they meet the following conditions:

- there is no discretion to refuse registration, once the requisite information has been provided;
- the system does not impose substantive conditions on media outlets;
- the system is not excessively onerous; and
- the system is administered by a body which is independent of government.

The system in the draft Press Law fails to meet all of these conditions. The grounds upon which a licence may be refused are broad and allow for wide discretion. A condition for obtaining a licence is that the outlet does not breach any of the obligations in the draft Press Law, many of which are substantive in nature. The system is extremely onerous; the breadth of information required to be provided is quite excessive. Finally, the system is overseen by the Ministry of Information, which is hardly an independent body.

Finally, a new provision has been inserted requiring anyone engaged in the wholesale distribution of printed matters to be licensed by the Ministry of Information or by the Regional Information Bureau. We do not see that there could be any legitimate purpose in requiring all press wholesalers to be licensed by government authorities; the measure appears purely control-oriented. As such, it is incompatible with the right

[3] A recent survey by ARTICLE 19 from Southern Africa indicates that only Zimbabwe currently requires individual journalists to register. Botswana, Malawi, Namibia, South Africa, Swaziland, Tanzania and Zambia all do not impose such requirements. Indeed, an attempt to impose a registration system was struck down as unconstitutional in Zambia and the Zimbabwean system is currently subject to a constitutional challenge.

[4] Adopted 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia; Principle X.

to freedom of expression – which protects the dissemination of information as well as its production – and should be removed from the draft Press Law.

Recommendation:
- The licensing system for the media should either be abolished altogether or be transformed into a purely technical registration scheme, in line with the standards noted above.
- The licensing system for wholesalers of printed matter should be abolished.

2.4 Exceptions to the Right to Access Information Held by Public Authorities

ARTICLE 19 very much welcomes the inclusion in Part III of the draft Press Law of a system for ensuring access by all citizens, not just journalists, to information held by public authorities. Access to information held by public authorities is a fundamental underpinning of democracy, the importance of which is now being recognised around the world.

At the same time, we are concerned that the system of exceptions to the right of access, as provided for in Articles 14 and 15, is insufficiently to allow the proper operation of an access to information regime. There is no clear statement of the categories of information to which access may be denied and there is no harm test nor is there an overarching public interest override, necessary to allow for the release of information where the overall public interest is served by disclosure, even if it formally falls within a category access to which may be denied.[5]

Recommendation:
- The exceptions to the right to access information held by public authorities should be clearly set out in the draft Press Law, and should include a harm test as well as a public interest override.

2.5 Content Restrictions

The draft Press Law contains various provisions that are prescriptive with regard the content of what may be published and what the objectives of press organisations should be. Article 4 states that the goal of all Ethiopian press should be, "ensuring the basic freedoms and rights enshrined in the constitutions, the prevalence of peace, democracy, justice and equality, as well as accelerating social and economic development." Paragraph 2 continues to prescribe the working methods of the press. Article 19 states that all press have an obligation to "investigate the correctness of news that it publishes".

The Press Law also imposes various conditions on the dissemination of foreign press, including a prohibition on the dissemination of any foreign publication that might "harm and weaken efforts to strengthen patriotism" (Article 6(3)(f)). Generally, Article 6 allows only those foreign publications to be imported "which would directly or indirectly have benefits to the welfare and development of the nation".

[5] A harm test ensures that it is only where actual harm is threatened that the right of access may be denied.

ARTICLE 19 is opposed in principle to legal measures that prescribe the working methods of the media, or legal provisions requiring all news to be truthful. The media should be free to organise their internal working methods any way it chooses, and should be free to publish for any purpose – so long as they do not breach legitimate laws of general application (for example, on defamation). Similarly, legal requirements requiring media to check the truthfulness of what they seek to publish are inappropriate. These matters are properly addressed in professional guidelines. In any event, it is well-established that the cut and thrust of news does not always allow for full and thorough fact-checking. As the European Court of Human Rights has stated:

> [N]ews is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.[6] (para. 60)

For this reason, the Zimbabwean Supreme Court has repeatedly struck down legislation seeking to restrict the publication of 'false news'.[7]

This does not imply that the media should not be subject to appropriate laws that restrict content, such as civil defamation laws. The point is that legitimate content restrictions – for example protecting the identity of child defendants in criminal trials – should be provided for in laws of general application. Specific, usually repetitive, restrictions on the media such as provided in Article 19 of the draft Press Law effectively give the media a double warning of what is prohibited, and exert a chilling effect on freedom of expression.

Finally, there is no legitimate reason to restrict the dissemination of foreign publications. As formulated under the International Covenant on Civil and Political Rights,[8] the right to freedom of expression is guaranteed "regardless of frontiers". A case from Switzerland under the European Convention on Human Rights, which employs a similar formulation, involved the refusal of permission to download free television programmes from a Soviet satellite in the absence of direct approval by the Soviet authorities. The European Court of Human Rights held, in accordance with the express language of the guarantee of freedom of expression, that there was no reason why permission should be needed to download the programmes.[9]

Recommendation:

- All content restrictions should be removed from the draft Press Law.
- The draft Press Law should not seek to regulate the working methods of the media.
- There should be no restrictions on the dissemination of foreign publications.

2.6 The Press Council

Article 20 of the draft Press Law provides for the establishment of a Press Council. The Council has a mandate to make recommendations regarding the press, as well as to prepare and entertain complaints regarding a Code of Ethics. The 29 members of

[6] *The Observer and Guardian v. the United Kingdom*, 26 November 1991, Application No. 13585/88, at para. 60.
[7] *Chavunduka and Choto v. Minister of Home Affairs & Attorney General*, 22 May 2000, Judgement No. S.C. 36/2000.
[8] Ratified by Ethiopia on 11 June 1993.
[9] *Autronic AG v. Switzerland*, 22 May 1990, Application No. 12726/87.

the Council will be drawn from the federal government, associations of journalists, journalists, publishers and society at large. The extent of government control over this body is clear from the fact that the powers and responsibilities of the Council, the appointment of members and the working procedure will be determined by the Council of Ministers.

ARTICLE 19 is of the view that the best way to promote professionalism in the media is through self-regulatory mechanisms. Statutory bodies are always at risk of political interference and abuse. However, we recognise that in some contexts, self-regulation is not in practice realistic. Regardless of the system adopted, any bodies with regulatory powers over the media must be fully independent of government, a condition clearly not met as regards the Press Council. We are also concerned that the number of members, namely 29, is so large as to undermine the effectiveness of this body.

Recommendation:

- Consideration should be given to removing the provisions relating to the establishment of the Press Council altogether from the draft Proclamation. If the idea of a statutory Press Council is retained, it should benefit from effective guarantees against political interference, including in relation to the manner in which members are appointed.

2.7 Suspensions

Article 26 of the draft Press Law gives the prosecutor the power, where he or she believes that a media outlet is about to disseminate information that is illegal and will cause serious damage, to suspend that outlet. Article 27 provides for an expedited process before the courts where such a suspension has been imposed, whereby an appeal will be decided within 48 hours.

Suspension is, second only to license revocation, the most serious penalty that can be imposed on a media outlet. Given the timeliness of news, even a brief suspension, and certainly a suspension of 48 hours, seriously affects the operations and credibility of a media outlet. ARTICLE 19 is of the view that the print media should never be subject to suspension.[10] In any case, such measures should only be able to be imposed by a court of law, after repeated and gross abuse of the law. It is not legitimate to grant such powers to prosecutors.

Recommendation:

- Article 26, granting prosecutors the power to suspend media outlets, should be removed from the draft Proclamation.

2.8 Sanctions

The draft Press Law provides for possible imprisonment for several breaches of the law. These include breaches relating to employing journalists who do not meet the conditions specified in the law, already noted as illegitimate, breach of the licensing rules for media outlets, failure to publish a reply or dissemination of banned foreign publications. Imprisonment is a very serious sanction which should be applied for

[10] See the European Court of Human Rights judgement in *The Observer and Guardian v. the United Kingdom* (note 6).

press offences with extreme caution. The grounds for imprisonment under the draft Proclamation are too broad and fail to take into account the seriousness of this penalty.

The draft Press Law also provides for serious financial penalties to be imposed. For example, an editor who is found to operate outside his registered objective can be fined between USD1,250 – 1,850 and s/he will be prohibited from publishing for a period from 1-3 months. Such a penalty is clearly disproportionate.

Recommendation:

- The regime of sanctions under the draft Proclamation should be reconsidered with a view to removing the possibility of imprisonment for all but the most serious, repeated abuses; disproportionate financial penalties and suspension of publication should also be removed and the possibility of warnings should be introduced.