

6

Ethiopia



1 INTRODUCTION¹

The Federal Democratic Republic of Ethiopia has a population of just over 100 million people. The official languages include Oromo, Amharic, Tigrinya, Somali, and there many other local languages and dialects, with English being the major foreign language. Literacy rates are approximately 41% for women and 57% for men. Less than 20% of the population is urbanised.

Ethiopia is a landlocked country which borders Djibouti, Eritrea, Kenya, Somalia, Sudan and South Sudan. It is an ancient country, one of the oldest in the world with a history dating back 2000 years. It is unique in Africa in that it barely had a colonial history, being only briefly occupied by Italy for less than five years from 1936–1941. The Ethiopian monarchy has traditionally ruled Ethiopia; Emperor Haile Selassie ruled from 1930 until he was deposed by a military junta – the Derg – in 1974. The take-over by the Derg (headed by Mengistu Haile Mariam) ushered in a period of great instability characterised by coups and uprisings. In 1991, the Derg was toppled by the Ethiopian People’s Revolutionary Democratic Front, and a constitution was adopted in 1994 which provides for a multi-ethnic federation of states. Ethiopia’s first ever multi-party elections were held in 1995. The Ethiopian People’s Revolutionary Democratic Front has been in power since then, although under different leaders.

Its neighbour, Eritrea, finally gained independence from Ethiopia in 1993 after a long independence struggle. However, Ethiopia has never accepted the border demar-

cations and border skirmishes between the two countries erupt from time to time. As recently as June 2016 one such border-related armed conflict between the countries was underway.

It is also fair to say that the political situation within Ethiopia is far from stable. In 2015 an uprising began in the Oromia state, which quickly divided along ethnic lines between the Oromo and Amhara people over governmental suggestions that towns in Oromia be incorporated into the capital Addis Ababa.² Hundreds of protesters have been killed and thousands arrested.

While Ethiopia has undergone a 33% reduction in the proportion share of the population living in poverty, the country remains underdeveloped.³ Its communications infrastructure is particularly undeveloped. Only 34% of the population has access to mobile phone services, while only 1% of the population has access to fixed line services and only 2.3% has access to the internet.⁴

Further, the media environment is also weak. The print media sector is a recent phenomenon since the democratisation period of the 1990s. There are over 100 newspapers (most of them weekly) in the country. As the country has over 80 languages, broadcasting is challenging. Radio and television programmes are generally produced in Amharic, although some are produced in other languages such as Tigrinya and Oromiffa. Radio penetration is at less than 20% and television penetration is at less than 1%.⁵

Sadly, the media law environment is far from democratic and there are a number of laws which are used to enforce censorship and act against media practitioners. The situation has worsened since 2009 with the introduction of anti-terrorism laws and laws regulating non-governmental organisations (NGOs). These have been used against media advocacy groups and individuals. An example is the notorious case of the Zone 9 bloggers, where six bloggers were arrested and faced various charges under the terrorism laws. Although they were all eventually freed, they spent more than 18 months in detention.⁶ Currently, 'most of Ethiopia's print, television and radio outlets are state-controlled and the few private print media often self-censor their coverage of politically sensitive issues for fear of being shut down'.⁷

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in Ethiopia. The chapter is divided into five sections:

- Media and the constitution
- Media-related legislation

- Media-related regulations
- Media self-regulation
- Media-related common law based on decided cases

The aim of this chapter is to equip the reader with an understanding of the main laws governing the media in Ethiopia. Key weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Ethiopia, to better enable the media to fulfil its role of providing the public with relevant news and information, and to serve as a vehicle for government–citizen debate and discussion.

2 THE MEDIA AND THE CONSTITUTION

In this section you will learn:

- The definition of a constitution
- What is meant by constitutional supremacy
- How a limitations clause operates
- Which constitutional provisions protect the media
- Which constitutional provisions might require caution from the media or might conflict with media interests
- What key institutions relevant to the media are established under the Constitution of Ethiopia
- How rights are enforced under the Constitution
- What is meant by the ‘three branches of government’ and ‘separation of powers’
- Whether there are any clear weaknesses in the Constitution of Ethiopia that ought to be amended to protect the media

2.1 Definition of a constitution

A constitution is a set of rules that are foundational to the country, institution or organisation to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council. Such constitutions set out the rules by which members of the organisation agree to operate. However, constitutions can also govern much larger entities, indeed, entire nations.

The Constitution of Ethiopia sets out the foundational rules for the Federal Democratic Republic of Ethiopia. These are the rules upon which the entire country operates. The Constitution contains the underlying principles, values and laws of Ethiopia. A key constitutional provision in this regard is the first paragraph of the Preamble to the Ethiopian Constitution which states, among other reasons for

adopting the Constitution, the strong commitment of the peoples of Ethiopia ‘in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development’.

2.2 Definition of constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is important to ensure that a constitution has legal supremacy: if a government passed a law that violated the constitution – was not in accordance with or conflicted with a constitutional provision – such law could be challenged in a court of law and could be overturned on the ground that it is ‘unconstitutional’.

The Constitution of Ethiopia makes provision for constitutional supremacy. Article 9(1) specifically states that ‘[t]he Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or public official which contravenes this Constitution shall be of no effect’.

Interestingly, article 9(2) also provides that ‘[a]ll citizens, organs of state, political organisations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it’. The effect of this provision is that the Constitution does not only bind the state but also citizens and private entities.

2.3 Definition of a limitations clause

It is clear that rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false defamatory statements made with reckless disregard for the truth. Clearly, governments require the ability to limit rights in order to serve important societal interests; however, owing to the supremacy of the constitution this can only be done in accordance with the constitution. The Ethiopian Constitution makes provision for two types of legal limitations on the exercise and protection of rights contained in Chapter Three, ‘Fundamental Rights and Freedoms’.

2.3.1 Internal limitations

The Constitution of Ethiopia does not have a general limitations clause that applies to all rights contained in Chapter Three, ‘Fundamental Rights and Freedoms’. In-

stead, many of the rights themselves contain specific limitations provisions within the text of the right. In our view, where rights have no such limitations provisions, the courts will have to determine whether or not a limitation is constitutional by having regard to interpreting the right itself and by balancing it against other rights.

The limitations in respect of each relevant right, if such limitations in fact exist, are dealt with in the discussion on rights below.

2.3.2 Constitutional limitations

Article 93 of the Ethiopian Constitution deals with a declaration of a state of emergency. Article 93(1)(a) entitles the Council of Ministers of the Federal Government to decree a state of emergency should any of the following occur: external invasion; a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law-enforcement agencies and personnel; and natural disaster or an epidemic.

Article 93(4)(b) specifically entitles the Council of Ministers to ‘suspend such political and democratic rights contained in this Constitution to the extent necessary to avert the conditions that required the declaration of a state of emergency’.

Article 93(4)(c) sets out those constitutional provisions that cannot be suspended or limited during a state of emergency. These are:

- Article 1, which provides for the establishment of a federal and democratic state structure
- Article 18, which prohibits inhuman treatment or punishment, slavery and servitude and human trafficking, and forced labour
- Article 25, which guarantees the right to equality
- Article 39(1), which guarantees the peoples in Ethiopia the right to self-determination
- Article 39(2), which guarantees the peoples in Ethiopia the rights to language, culture and history.

The effect of the state of emergency provisions is that all of the rights that are critical to the media, particularly the right of freedom of expression, are derogable during a state of emergency.

2.4 Constitutional provisions that protect the media

The Constitution of Ethiopia contains a number of important provisions in Chapter Three, ‘Fundamental Rights and Freedoms’, which directly protect the media, including publishers, broadcasters, journalists, editors and producers.

2.4.1 Rights that protect the media

FREEDOM OF EXPRESSION

The most important provision that protects the media is article 29 headed ‘Right of thought, opinion and expression’.

Article 29(2) states:

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

This provision needs some detailed explanation.

- This freedom applies to all persons and not just to certain people, such as citizens. Hence everyone (both natural persons and juristic persons, such as companies) enjoy this fundamental right.
- The freedom is not limited to speech (oral or written) but extends to non-verbal or non-written expression. There are many different examples of this, including physical expression, such as mime or dance, photography or art.
- Article 29(2) specifies that everyone has the right to freedom of expression ‘without any interference’, thereby signalling a constitutional disapproval of interference as a general rule.
- Article 29(2) specifies that the right to freedom of expression includes the ‘freedom to seek, receive and impart information and ideas of all kinds’. This freedom of everyone to receive and impart ideas and information is a fundamental aspect of freedom of expression, and this article effectively enshrines the right to the free flow of information. Thus, the information rights of audiences, for example, as well as the expression rights of the media, are protected. This right is important because it also protects organisations that foster media development. These

organisations facilitate public access to different sources and types of information, particularly in rural areas that traditionally have little access to the media.

Article 29(3) states:

Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:

- (a) Prohibition of any form of censorship.
- (b) Access to information of public interest.

This provision needs some detailed explanation.

- Article 29(3) specifically mentions and guarantees the freedom of the press and other mass media. This is an important protection for journalists, editors and publishers and producers of the media.
- Further, this freedom prohibits ‘any form of censorship’. This sounds like a significant right but the limitations on this right provide a lot of room for restricting media freedom (as is clear from other provisions in this chapter).

Article 29(4) states:

In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.

This provision needs some detailed explanation.

- Article 29(4) specifically mentions the ‘free flow of information’, which is one of the few references to freedom of information in the Ethiopian Constitution.
- Article 29(4) also specifically makes mention of the need to ensure that the press has ‘operational independence’, which is presumably a reference to it being independent from the state.
- Lastly, article 29(4) talks about the need to ensure the capacity of the press to entertain ‘diverse opinions’. The issue of diversity is critically important when considering the press as a whole, and therefore the ‘legal protection’ of the press, which is ostensibly guaranteed under article 29(4), is significant.

Article 29(5) states:

Any media financed by or under the control of the State shall be operated in the manner ensuring its capacity to entertain diversity in the expression of opinion.

This provision needs some detailed explanation.

- Article 29(5) is specifically focused on public or state media, which is determined by state funding or control.
- It requires, in line with international best practice, that such state or public media be operated so as to entertain diversity in the expression of opinion. The effect of this is that even if entirely state funded or controlled, a state media outlet may not present only a single viewpoint and is required to ensure that a diversity of opinions is expressed. This is a significant requirement for public broadcasting.

As discussed, constitutional rights are never absolute and the rights contained in article 29(1)–(5) can be limited in terms of article 29(6) of the Ethiopian Constitution, which states that: ‘[t]hese rights can be limited only to laws which are guided by the principle that freedom of expression ... cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honour and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law’. Further, article 29(7) provides that any citizen who violates any legal limitations in the exercising of these rights may be held liable under law.

These provisions need detailed explanation.

- Frankly, the limitation provisions are vague and contradictory. For example, the first part of article 29(6) prohibits the limitation of a particular point of view or ‘effect’ of such point of view, but then goes on to state a number of grounds of limitation that would clearly include ‘effects’ of expressing a point of view, namely, youth protection and individual reputation protection.
- It is important to note that article 29(6) requires the legal prohibition of propaganda for war as well as opinion intended to injure human dignity. Very often legal systems characterise the injury to human dignity as defamation, which constitutes an injury to a person’s reputation. Article 29(6) appears to require the blanket prohibition of injury to human dignity, which is far broader and more draconian than international good practice requires in respect of defamation laws,

which are best dealt with as a matter for the civil courts and not as a matter of criminal law.

- Article 29(7), although it is not specific, appears to intimate that criminal sanction may be appropriate for citizens who violate the limitations set out in article 29(6).

It is extremely odd that article 29(7) refers to ‘citizens’, as the right to freedom of expression set out in article 29(2) applies to everyone and not only to citizens. This may be a translation error as the effect appears to be that only citizens may be held liable under the law for violating the legal limitations set out in article 29(6), which makes little sense.

RIGHT TO PRIVACY

A second protection is contained in article 26 of the Constitution of Ethiopia, ‘Right to privacy’. It is made up of two specific kinds of privacy rights.

Article 26(1) specifies that ‘[e]veryone has the right to privacy. This right shall include the right not to be subjected to searches of his home, personal property, or the seizure of any property under his personal possession’.

Article 26(1) essentially relates to the right not to be subject to search and seizure operations – a basic privacy right.

Article 26(2) specifies that ‘[e]veryone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunications and electronic devices’.

Article 26(2) is a particularly important right for journalists and others working in the media because, essentially, it protects a person’s notes, correspondence and communications including by electronic means. The effect of this is that the right prohibits the interception and monitoring of communications, which also aids in enabling a journalist to protect his or her sources.

As is the case with the right to freedom of expression, the right to privacy in article 26 is subject to an internal limitation in article 26(3). Article 26(3) provides that ‘[p]ublic officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purpose shall be safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others’.

The effect of the limitations clause is to set out grounds for interfering with privacy rights. Most of these are in line with international requirements, namely: national security, public peace, crime prevention, public health protection and public morality. The reference to ‘rights and freedoms of others’ is more problematic as this is extremely broad.

RIGHTS TO FREEDOM OF ASSOCIATION AND OCCUPATION

Article 31 of the Ethiopian Constitution is headed ‘Freedom of association’ and provides that ‘[e]very person has the right to freedom of association for any cause or purpose...’.

This is important because it protects the right of media to establish media houses and other press enterprises, and also protects the right of journalists, for example, to establish trade unions and for editors to establish editors’ forums and the like.

Article 31 contains its own internal limitation, which provides that ‘[o]rganizations formed, in violation of appropriate laws, or to legally subvert the constitutional order, or which promote such activities are prohibited’.

The first effect of this internal limitation is that organisations can be regulated by ‘appropriate laws’. This is obviously extremely vague, which is problematic as no guidance is given as to what is meant by ‘appropriate’.

A second effect is the outright prohibition of organisations formed to legally subvert the constitutional order or to promote such activities.

Article 41 is headed ‘Economic, social and cultural rights’. Article 41(2) provides that ‘[e]very Ethiopian has the right to choose his or her means of livelihood, occupation and profession’.

This provision needs further explanation.

- The right is not available to everyone; it is available only to Ethiopians, hence there appears to be a citizenship requirement to exercise this right.
- The right is important because it protects the rights of Ethiopians to choose to practise the profession of being a journalist.

It is important to note that article 41 contains no internal limitations that apply to article 41(2).

FREEDOM OF MOVEMENT

Article 32 is headed ‘Freedom of movement’ and article 32(1) states:

Any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence as well as the freedom to leave the country at any time he wishes to.

This provision needs some detailed explanation.

- The right to freedom of movement is not available to everyone. It is available to Ethiopians and to foreign nationals provided they are ‘lawfully in Ethiopia’. Consequently, foreign nationals who are not lawfully in Ethiopia do not enjoy the right to freedom of movement.
- The right pertains not only to the choice of residence and the right to leave the country but also the right guarantees freedom of movement ‘within the national territory’. This is an important right for journalists as laws, particularly security laws, often contain restrictions on journalists accessing particular places or areas. Consequently, this right provides a level of protection in ensuring access to all areas of Ethiopia by the media.

2.4.2 Other constitutional provisions that assist the media

It is important to note that there are provisions in the Ethiopian Constitution, apart from the fundamental rights and freedoms provisions contained in Chapter Three, that are important and that assist the media in performing its functions.

PROVISIONS REGARDING IMMUNITY OF MEMBERS OF THE FEDERAL HOUSES

A number of provisions in the Constitution regarding the functioning of the Federal Houses (effectively, the Parliament of Ethiopia) are important for the media:

- Article 54 is headed ‘Members of the House of Peoples’ Representatives’. Article 54(5) states that ‘[no] member of the House may be prosecuted on account of any vote he casts or opinion he expresses in the House, nor shall any administrative action be taken against any member on such grounds’. The effect of this is to protect freedom of expression for members of the House of Peoples’ Representatives, which ought to assist in ensuring robust debate.
- Similarly, article 63 is headed ‘Immunity of Members of the House of the

Federation’. Article 63(1) states that ‘[n]o member of the House of Federation may be prosecuted on account of any vote he casts or opinion he expresses in the House, nor shall any administrative action be taken against any member on such grounds’. Again, the effect of this is to protect freedom of expression for members of the House of the Federation, which ought to assist in ensuring robust debate.

PROVISIONS REGARDING CONDUCT AND ACCOUNTABILITY OF GOVERNMENT

Article 12 of the Ethiopian Constitution is part of Chapter Two, ‘Fundamental Principles of the Constitution’. Article 12 is headed ‘Conduct and accountability of government’ and article 12(1) provides that ‘[t]he conduct of affairs of government shall be transparent’. The principle of transparency is an important one because it is, effectively, a promise that government business will be conducted in a visible and open manner.

As the media plays a crucial role in educating the population about the workings of government, enabling citizens to participate meaningfully in a democracy, a commitment to transparency could therefore be interpreted as requiring media-friendly policies on the part of the state, which allow the press and other media to do their work unhindered.

2.5 Constitutional provisions that might require caution from the media or might conflict with media interests

Just as there are certain rights or freedoms that protect the media, other rights or freedoms can protect individuals and institutions from the media. It is important for journalists to understand which provisions in the Constitution can be used against the media. There are a number of these:

2.5.1 Right to honour and reputation

The right to honour and reputation is provided for in article 24 of the Ethiopian Constitution. Article 24(1) states that ‘everyone has the right to respect for his human dignity, reputation and honour’. The right to reputation is raised in defamation cases because defamation, by definition, undermines the reputation of the person being defamed. This right is often set up against the right to freedom of the press, requiring a balancing of constitutional rights.

2.5.2 Right to privacy

Similarly, the right to privacy (discussed in some detail above) is often raised in

litigation involving the media, with the subjects of press attention asserting their rights to privacy, including the right not to be photographed, written about or followed in public, etc. The media has to be careful in this regard. The media should be aware that there are always ‘boundaries’ in respect of privacy that need to be respected and which are dependent on the particular circumstances, including whether or not the person is a public figure or holds public office, and the nature of the issue being dealt with by the media.

2.5.3 Emergency provisions

Article 93 of the Ethiopian Constitution deals with a declaration of a state of emergency. Article 93(1)(a) entitles the Council of Ministers of the Federal Government to decree a state of emergency should any of the following occur: external invasion; a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law-enforcement agencies and personnel; and natural disaster or an epidemic.

Article 93(4)(b) specifically entitles the Council of Ministers to ‘suspend such political and democratic rights contained in this Constitution to the extent necessary to avert the conditions that required the declaration of a state of emergency’.

Article 93(4)(c) sets out those constitutional provisions that cannot be suspended or limited during a state of emergency. These are:

- Article 1, which provides for the establishment of a federal and democratic state structure
- Article 18, which prohibits inhuman treatment or punishment, slavery, servitude and human trafficking, and forced labour
- Article 25, which guarantees the right to equality
- Article 39(1), which guarantees the peoples in Ethiopia the right to self-determination
- Article 39(2), which guarantees the peoples in Ethiopia the rights to language, culture and history.

The effect of the state of emergency provisions is that all of the rights that are critical to the media, particularly the right of freedom of expression, are derogable during a state of emergency.

2.6 Key institutions relevant to the media established under the Constitution of Ethiopia

While there are no media-specific institutions established under the Constitution of Ethiopia, the Constitution does establish a number of institutions that indirectly affect the media, namely, the Human Rights Commission, the ombudsman, the judiciary, the Council of Constitutional Inquiry and the judicial administration councils (at federal and state level).

2.6.1 The Human Rights Commission

The Constitution of Ethiopia in fact says very little about the Human Rights Commission (HRC) other than that the House of Peoples' Representatives shall establish one and determine its powers and functions by law – article 55(14). The House of Peoples' Representatives has passed such a law, namely, the Human Rights Commission Establishment, Proclamation 210 of 2000 (HRC Proclamation). Article 3 of the HRC Proclamation establishes the HRC as 'an autonomous organ of the federal government', which is accountable to the House of Peoples' Representatives. In terms of article 5 of the HRC Proclamation, the objective of the HRC is to educate the public to be aware of human rights, to see to it that human rights are protected, respected and fully enforced as well as to take necessary measures where human rights are found to have been violated.

Article 6 sets out the powers and duties of the HRC and these include: ensuring that human rights are respected by all citizens, organs of state, political organisations and other associations; ensuring that laws, regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the Constitution; educating the public on human rights matters; undertaking investigations (either upon complaints or on its own initiation) of human rights violations; and making recommendations for the reform of existing laws and policies.

Article 10 provides that the HRC is appointed by the House of Peoples' Representatives, recruited by a nominations committee (which includes the speaker of the House of Peoples' Representatives, the speaker of the House of the Federation as well as members of opposition parties) and nominees have to receive the support of a two-thirds vote of the members of the nominations committee.

2.6.2 The ombudsman

The Constitution of Ethiopia in fact says very little about the Office of the

Ombudsman other than that the House of Peoples' Representatives shall establish the institution of the ombudsman and determine its powers and functions by law – article 55(15).

The House of Peoples' Representatives has passed such a law, namely, the Establishment of the Institution of the Ombudsman, Proclamation 211 of 2000 (Ombudsman Proclamation). Article 3 of the Ombudsman Proclamation, establishes the institution of the ombudsman as 'an autonomous organ of the federal government' which is accountable to the House of Peoples' Representatives.

In terms of article 5 of the Ombudsman Proclamation, the objective of the institution is to see to bringing about good governance that is of high quality, efficient and transparent, and based on the rule of law by way of ensuring that citizens' rights and benefits provided for by law are respected by organs of the executive.

Article 6 sets out the powers and duties of the ombudsman and these include: supervising administrative directives issued and decisions given by executive organs; investigating complaints of maladministration and seeking remedies therefor; undertaking studies and research on ways of curbing maladministration; and making recommendations to reform laws, practices and policy.

Note, however, that in terms of article 7(4) of the Ombudsman Proclamation, the ombudsman has no power to investigate decisions given by the security forces and units of the defence forces in respect of matters of national security or defence.

Article 10 provides that the institution of the ombudsman is appointed by the House of Peoples' Representatives, recruited by a nominations committee (which includes the speaker of the House of Peoples' Representatives, the speaker of the House of the Federation as well as members of opposition parties) and nominees have to receive the support of a two-thirds vote of the members of the nominations committee.

2.6.3 The judiciary

The judiciary is an important institution for the media because generally speaking the two rely on each other to support and strengthen democratic practices in a country. The judiciary needs the media to inform the public about its judgments and its role as one of the branches of government, and the media is essential to building public trust and respect for the judiciary, which is the foundation of the rule of law in a society. Traditionally, the media needs the judiciary because of the courts' ability to protect the media from unlawful action by the state and from unfair damages claims by litigants.

Chapter Nine of the Constitution of Ethiopia is headed ‘Structure and Powers of the Courts’. In terms of article 79(1), ‘judicial powers, both at Federal and State levels are vested in the courts’. Article 78(1) of the Constitution establishes ‘an independent judiciary’. Article 79(2) provides that ‘courts of any level should be free from any interference or influence of any governmental body, government official or from any other source’. Further, article 79(3) provides that ‘judges shall exercise the functions in full independence and shall be directed solely by the law’. The courts of Ethiopia consist of:

- The Federal Supreme Court
 - In terms of article 78(2) of the Constitution of Ethiopia, the supreme federal judicial authority is vested in the Federal Supreme Court, but note that this excludes constitutional matters.
- Federal High Court and first instance courts
 - Article 78(2) also empowers the House of Peoples’ Representatives to establish lower national courts such as the Federal High Court and first instance courts.
- State courts
 - Article 78(3) of the Ethiopian Constitution provides that states ‘shall establish state supreme, high and first instance courts. Particulars shall be determined by law’.
 - In terms of article 80(2), a State Supreme Court has final judicial authority over state matters.
- Religious and customary courts
 - Article 78(5) empowers the House of Peoples’ Representatives and State Councils to establish or give official recognition to religious or customary courts.
- Importantly, the Constitution, in article 78(4), prohibits special or *ad hoc* courts from being established if they take judicial powers away from the regular courts and if they do not follow legally prescribed procedures.

2.6.4 The Council of Constitutional Enquiry

Unusually, the Ethiopian Constitution takes significant judicial powers away from the judiciary because it vests the power to:

- Interpret the Constitution – article 62(1)

- Determine constitutional disputes – article 83(1)
- Determine whether any federal or state law is unconstitutional – article 84(2),

not with the judiciary at all but with the House of the Federation, a body which falls within the legislative branch of government. This is an anomaly as in most, if not all, democratic countries, the power to interpret the Constitution and to resolve constitutional disputes (whether involving challenges to legislation or otherwise) is given to the courts, or at least to a particular court with constitutional jurisdiction. The effect of this is to substantially weaken all rights in the Constitution as the judiciary is effectively excluded from constitutional determinations in Ethiopia.

The Ethiopian Constitution also establishes a body called the Council of Constitutional Enquiry, in terms of article 82. Its roles are to investigate constitutional disputes in terms of article 84 and to refer such constitutional disputes, after investigation, to the House of the Federation for determination, which determination is to be made within 30 days, in terms of article 83(2) of the Constitution. The Council of Constitutional Enquiry is, in terms of article 82(2), made up of 11 members comprising:

- The president of the Federal Supreme Court (its president)
- The vice president of the Federal Supreme Court (its vice president)
- Six legal experts appointed by the president on the recommendation of the House of Peoples' Representatives
- Three members of the House of the Federation designated by that body.

The process appears to be that where a Constitutional issue arises in any court proceedings, the matter is referred to the Council of Constitutional Enquiry, which is empowered to make recommendations on constitutional interpretations to the House of Federation in terms of article 84(1). In terms of article 84(3), where the Council of Constitutional Enquiry determines that:

- There is no need for constitutional interpretation it shall remand the case to the concerned court for determination (any interested party may appeal such decision to the House of Federation) – article 84(3)(a) – or
- There is a need for constitutional interpretation it shall submit its recommendations to the House of the Federation for a final decision – article 84(3)(b).

2.6.5 The Federal Judicial Administrative Council and state judicial administrative councils

The judicial administrative council (JAC) (at federal or state level) is involved in most of the appointments of federal court and state court judges, respectively.

Federal judicial appointments are made by the House of Peoples' Representatives in accordance with the following processes:

- The appointments of the president and vice president of the Federal Supreme Court are recommended by the prime minister – article 81(1).
- Other federal judges are selected by the Federal Judicial Administrative Council and their names are submitted by the prime minister – article 81(2).

State judges are appointed by the state councils in accordance with the following processes:

- The appointments of the president and vice president of the state supreme courts are recommended by the chief executive of the state – article 81(3).
- Other state supreme and high court judges are recommended by the State Judicial Administrative Council, which is obliged to attempt to obtain the views of the Federal Judicial Administrative Council on such appointments and to forward such views to the State Council – article 81(4).
- Judges of state first instance courts are recommended by the State Judicial Administrative Council – article 81(5).

The JACs, at both state and federal level, are also involved in the removal of judges. In terms of article 79(4) of the Constitution, a judge cannot be removed from his or her duties before retirement age (which is determined by law – article 79(5)) unless the House of Peoples' Representatives (in the case of a federal court judge) or the State Council (in the case of a state court judge) approves (by way of a simple majority) the decision of a JAC (federal or state as the case may be) to remove a judge on the grounds of: a violation of disciplinary rules; gross incompetence; inefficiency; or inability to perform based on illness.

The JACs are relevant to the media because of their critical role in the appointment and removal of most judges, the proper functioning and independence of which are essential for democracy. Unfortunately, the Ethiopian Constitution does not specify how the JACs are to be appointed and how they are to function. Their levels of

independence are therefore open to question and are not guaranteed by the Constitution itself.

2.7 Enforcing rights under the Constitution

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill of rights, and yet remain empty of substance because they cannot be enforced.

Article 37(1) of the Constitution of Ethiopia is headed ‘Right of access to justice’ and it provides that everyone has the right to bring a justiciable matter to, and to obtain a decision or judgement by, a court of law or other competent body with judicial power. The reference to ‘other competent bodies’ is presumably a reference to the House of the Federation, which is the only body that can determine constitutional issues, including the unconstitutionality of any law in terms of article 83(1). Again this is unfortunate because it means that vital constitutional issues are not dealt with in the court system, undermining the effectiveness of constitutional rights themselves.

Another way in which rights are protected under the Ethiopian Constitution is through the provisions of the Constitution that entrench the rights contained in Chapter Three, ‘Fundamental Rights and Freedoms’. Article 105 of the Constitution requires that a constitutional amendment of Chapter Three has to be done:

- When all state councils approve the proposed amendment by majority vote
- When two-thirds of the House of Peoples’ Representatives approves the proposed amendment, and
- When two-thirds of the House of the Federation approves the proposed amendment.

2.8 The three branches of government and separation of powers

All too often, politicians, commentators and journalists use political terms such as ‘branches of government’ and ‘separation of powers’, yet working journalists may not have a clear idea what these terms mean.

2.8.1 Branches of government

It is generally recognised that governmental power is exercised by three separate branches of government, namely: the executive; the legislature; and the judiciary. The

functions of these three branches ought to be distinct and separate. It is important to note that according to article 50(1) of the Constitution of Ethiopia, Ethiopia comprises the federal government and the state members. Further, in terms of article 50(2), both the federal government and the states have legislative, executive and judicial powers. For example, in terms of article 50(3), the House of Peoples' Representatives is the highest authority of the federal government while the State Council is the highest organ of state authority. However, for the purposes of this chapter, we focus on the separation of powers at the federal level.

THE EXECUTIVE

Although the president of the Federal Democratic Republic of Ethiopia (who is elected by a two-thirds majority vote of both the House of Peoples' Representatives and the House of the Federation – article 70(2)) is the Head of State in terms of article 69 of the Constitution, he or she is not the head of the executive branch of government. In terms of article 72(1) of the Constitution, executive powers of the federal government are vested in the prime minister and in the Council of Ministers. And the ministers are appointed by the prime minister on the approval of the House of Peoples' Representatives – article 74(2).

Article 74(1) of the Constitution of Ethiopia provides that the prime minister is the chief executive, the chairman of the Council of Ministers and the commander-in-chief of the national armed forces.

The prime minister is elected from among members of the House of Peoples' Representatives – article 73(1), presumably on a simple majority.

The Council of Ministers comprises the prime minister, the deputy prime minister, ministers and such other members as may be determined by law – article 76(1). Its role is, effectively, to ensure 'the implementation of laws and decisions adopted by the House of Peoples' Representatives' – article 77(1).

In terms of article 76, the Council of Ministers is responsible to the prime minister and to the House of Peoples' Representatives.

THE LEGISLATURE

Federal legislative or law-making power in Ethiopia vests in the House of Peoples' Representatives, in terms of article 55(1) of the Ethiopian Constitution. Importantly, this includes the 'enforcement of political rights established by the Constitution' – article 55(2)(d).

In terms of article 54, the House of Peoples' Representatives is made up of a maximum of 550 elected members, elected from candidates in each electoral district for a term of five years on the basis of universal suffrage and by direct, free and fair elections held by secret ballot. At least 20 seats are to be reserved for minority nationalities and peoples. The particulars of these processes are to be determined by law.

THE JUDICIARY

Judicial power, as discussed previously in this chapter, vests in the courts with the critically important exception of constitutional matters, which vests in the House of the Federation. Essentially, the role of the judiciary is to interpret the law and to adjudicate legal disputes in accordance with the law. However, in Ethiopia the courts lack jurisdiction to pronounce on constitutional matters, which is reserved for the House of the Federation.

We have dealt with the make-up of the judiciary above and in this section we focus on the House of the Federation.

In terms of article 61, the members of the House of the Federation are elected by state councils, and these councils may choose to make such elections themselves or to hold elections to have the members of the House of the Federation elected by the people in such state directly. Each nation, nationality and people shall be represented by at least one member in the House of the Federation with an additional representative member for every one million persons in such nation, nationality or people. The nations, nationalities and people recognised in the Constitution are set out in article 47(1) of the Constitution, and comprise the following states: Tigray; Afar; Amhara; Oromia; Somalia; Benshangul/Gumuz; the Southern Nations, Nationalities and Peoples; the Gambela Peoples; and the Harari People.

2.8.2 Separation of powers

It is important in a functioning democracy to divide governmental power between different organs of the state in order to guard against the centralisation of power, which may lead to abuses of power. This is known as the separation of powers doctrine. The aim, as the Constitution of Ethiopia has done, is to separate the functions of the three branches of government – the executive, the legislature and the judiciary – so that no single branch is able to operate alone, assume complete state control and amass centralised power. While each branch performs a number of different functions, each also plays a 'watchdog' role in respect of the other. This helps to ensure that public power is exercised in a manner that is accountable to the general public and in accordance with the constitution.

2.9 Weaknesses in the Constitution that ought to be strengthened to protect the media

There are a number of respects in which the Constitution of Ethiopia is weak. If these provisions were strengthened, there would be specific benefits for Ethiopia's media.

2.9.1 Remove internal constitutional qualifiers to certain rights

The Constitution of Ethiopia, as has been set out above, makes provision for certain rights to be subject to 'internal' limitations – that is, the provision dealing with rights contains its own limitations clause, setting out ways in which a government can legitimately limit the ambit of the right.

These internal limitations occur within a number of articles on rights in Chapter Three of the Constitution of Ethiopia. They deal specifically and only with the limitation or qualification of the particular right that is dealt with in that article. As has been discussed more fully above, the rights to freedom of expression and privacy contain such an internal limitation. In other words, the article that contains the right also sets out the parameters or limitations allowable in respect of that right.

The rights contained in the provisions dealing with fundamental human rights and freedoms, set out in Chapter Three of the Constitution of Ethiopia, would be strengthened if the rights were subject to a single generally applicable limitations clause rather than each having their own limitations clause.

Such a limitations clause would apply to all of the provisions of Chapter Three of the Constitution of Ethiopia – that is, to the fundamental rights and freedoms. It would allow government to pass laws limiting rights generally, provided this is done in accordance with the provisions of a limitations clause that applies equally to all rights. It makes the ambit of the rights and the grounds for limitation much clearer for the public because there are no specific limitations provisions that apply to each right separately.

2.9.2 Independent broadcasting regulator and public broadcaster

There is no doubt that the broadcasting sector would be greatly strengthened if the Ethiopian Constitution gave constitutional protection for an independent broadcasting regulator and for a public broadcaster. Given the importance of both of these institutions for ensuring access to news and information by the public, it is suggested that such amendments to the Constitution would be in the public interest and would serve to strengthen both the media and democracy more generally in Ethiopia.

2.9.3 Strengthen the independence of institutions particularly related to the judiciary

While it is laudable that the Ethiopian Constitution makes provision for institutions such as the federal and state JACs, the fact that the structural independence and appointments procedures of these institutions are not provided for sufficiently in the Constitution is a weakness and undermines their independence.

A much more serious concern is that the judiciary cannot entertain cases involving constitutional matters as exclusive jurisdiction to deal with constitutional disputes is reserved for the House of the Federation. This is of significant concern and undermines the separation of powers doctrine. It also renders constitutional rights difficult to protect as a matter of course in the courts.

3 THE MEDIA AND LEGISLATION

In this section you will learn:

- What legislation is and how it comes into being
- Legislation governing the publication of print media
- Legislation governing the distribution of films
- Legislation governing the broadcasting media generally
- Legislation governing the state broadcasting sector
- Legislation that threatens a journalist's duty to protect sources
- Legislation that prohibits the publication of certain kinds of information
- Legislation dealing with the interception of communication
- Legislation dealing with punishments for laws concerning the mass media
- Legislation that regulates the affairs of media-related NGOs
- Legislation that specifically assists the media in performing its functions

3.1 Legislation: An introduction

3.1.1 What is legislation?

Legislation is a body of law consisting of acts properly passed by a body having legislative authority. As we know, federal legislative authority in Ethiopia vests in the House of Peoples' Representatives.

As a general rule the House of Peoples' Representatives and the president are ordinarily involved in passing legislation. Article 57 provides that laws deliberated

upon and passed by the House of Peoples' Representatives shall be submitted to the president for signature. If the president does not sign the law within 15 days, it nevertheless takes effect without such signature.

Article 59(2) empowers the House of Peoples' Representatives to adopt rules and procedures regarding the organisation of its work and of its legislative process.

There are detailed rules in the Constitution of Ethiopia which set out the different law-making processes that apply to different types of legislation. It is important for journalists and others in the media to be aware that the Constitution of Ethiopia requires different types of legislation to be passed in accordance with particular procedures. The procedures are complicated and need not be explained here. Journalists should, however, be aware that, in terms of the Constitution of Ethiopia, there are two kinds of federal legislation, each of which has particular procedures and/or rules applicable to it. These are:

- Ordinary legislation – the procedures and/or applicable rules are set out in articles 57–59 of the Constitution. Essentially, there has to be a quorum of the majority of members of the House of Peoples' Representatives and decisions of the House shall be by a majority vote of the members present and voting
- Legislation that amends the Constitution – the procedures and/or applicable rules are set out in articles 104 and 105 of the Constitution.

3.1.2 The difference between a bill and an act

A bill is a piece of draft legislation that is debated and usually amended by the legislative authority during the law-making process.

If a bill is passed by Parliament in accordance with the various applicable procedures required for different types of bills, as set out above, it becomes an act once it is assented to by the president, in terms of article 57 of the Constitution of Ethiopia, or unless 15 days has elapsed since the law was presented to the president for signature.

3.2 Legislation governing the print media

Unfortunately, in terms of the Freedom of the Mass Media and Access to Information Proclamation, No. 590/2008 (Proclamation 590), there are a number of constraints on the ability to operate as a print media publication in Ethiopia. In particular, Ethiopia requires the registration of periodicals, which includes newspapers and magazines, which is out of step with international best practice. These kinds of

restrictions effectively impinge upon the public's right to know by setting barriers to print media operations.

There are certain key requirements laid down by Proclamation 590 in respect of a periodical. The definition of a periodical is extremely broad and includes 'printed material which is scheduled to appear in regular sequences at least twice a year, which has a fixed title, and which has a general distribution aimed at the entire public or a sector thereof, and includes newspapers and magazines – article 2.

The key aspects of Proclamation 590 that relate to the print media are discussed below.

- Article 5.2 of Proclamation 590 limits the right to establish a mass media outlet (defined as including a periodical) to Ethiopian nationals only – that is, foreigners do not enjoy that right and only Ethiopian companies may own a periodical or news agency service.
- Article 6 requires a mass media outlet (note this includes periodicals) to appoint an editor-in-chief and failure to do so is an offence punishable by a fine in terms of article 45.2.
- Article 7.3 of Proclamation 590 makes it an offence for a person who exercises effective direct or indirect control (deemed as being a 15% shareholding – article 7.4) over a company operating a periodical to exercise such control over another company running a periodical published in the same languages and servicing the same or an overlapping market. The offence is punishable by the imposition of a fine in terms of article 45.1.
- Article 9.1 of Proclamation 590 requires the publisher of a periodical to register with the Minister of Information (where the proposed distribution is larger than one regional state) or with the relevant information bureau of the region (where the proposed distribution is within one regional state). Article 9.3 of Proclamation 590 sets out the registration details required and these include: name and address of publisher including branch offices; name of periodical and names and addresses of any person holding more than 2% of the shares in the publishing company and the amount of the shareholding. Any change to these registration details must also be registered. A publisher who fails to comply with the registration requirements commits an offence and is liable, upon conviction, to the payment of a fine in terms of article 45.2.
- Article 10.1 of Proclamation 590 requires that each publication of the periodical

carry: the names of the publisher, printer and editor-in-chief; and the volume and number of the periodical and the date of publication. Article 10.3–10.4 of Proclamation 590 requires that two copies of:

- Every periodical with a national distribution or which is distributed in the capital, Addis Ababa, is to be deposited free of charge with the Agency of the National Archives and Libraries, or
- Every periodical with a distribution within a regional state is to be deposited free of charge with the state public library or cultural bureau.

Failure to comply with the requirements of article 10 is an offence and is punishable by the payment of a fine in terms of article 45.3.

- Part Four of Proclamation 590 deals with rights and responsibilities of the media. In this regard:

- Article 40.1 makes provision for any person to have the right of reply where any factual information or matter ‘injurious to the honour or reputation of any person is reported in the mass media’. Note that the definition of ‘mass media’ includes periodicals. Article 40.1.a) sets out the periods within which such a right of reply is required to be published, namely, three days in the case of a daily publication, nine days in the case of a weekly publication or in the next issue for other types of periodicals. However, if the report or information is disseminated during an election then the time period is reduced to 24 hours in the case of a daily publication in terms of article 40.1.d).
- Failure to publish a reply or correction in terms of article 40 is an offence that is punishable upon conviction by the payment of a fine in terms of article 45.3.
- Article 40.2 and following sub-articles makes provision for a right to approach a court within three months where the editor-in-chief of a publication refuses a request for a right of reply.

3.3 Legislation governing the distribution of films

The Criminal Code, Proclamation No. 414 of 2004 makes provisions for crimes against morality and the family, which are set out in Title IV of Book V of Part II of the Criminal Code, and some of these specifically deal with films.

Article 640 makes it an offence to, among other things, import, possess, sell, distribute or circulate films (whether in a cinema, by way of projection or television

broadcast or video or in any other way – article 641) which are obscene or grossly indecent. Punishment is a period of imprisonment and a fine, and the incriminating material may be forfeited and destroyed. There are exceptions for works of artistic, literary or scientific character which are not calculated to inflame erotic feelings or lust – article 642.

Article 644 contains particular prohibitions on displaying writings or images such that they are visible from without and which stimulate unduly, pervert or misdirect the sexual instinct, arouse or stimulate unduly brutal or bloodthirsty instincts, antisocial feelings, or feelings that are inimical to the family, in minors. Punishment is a period of imprisonment and a fine, and the incriminating material may be forfeited and destroyed.

3.4 Legislation governing the broadcast media generally

3.4.1 Legislation that regulates broadcasting generally

Generally, broadcasting in Ethiopia is regulated in terms of the Broadcasting Service Proclamation, No. 533/2007 (Proclamation 533) as well as by the Freedom of the Mass Media and Access to Information Proclamation, No. 590/2008 (Proclamation 590).

Radio frequency spectrum licensing fees for broadcasting services are regulated in terms of article 3 read with Annexure 3A of the Telecommunication Licence Fee Directive, Directive 1/2004, issued in terms of the Telecommunication Proclamation No. 49/1996 and the Council of Ministers Regulations No. 47/1999 by the Ministry of Infrastructure.

3.4.2 Establishment of the EBA

Article 4 of Proclamation 533 establishes the Ethiopian Broadcasting Authority (EBA) whose objective, in terms of article 6, is ‘to ensure the expansion of a high standard, prompt and reliable broadcasting service that can contribute to political, social and economic development and to regulate same’.

Article 8 provides that the EBA has to be made up of a board, a director general, a deputy director general and necessary staff.

3.4.3 Main functions of the EBA

In terms of article 7 of Proclamation 533, the EBA’s main functions in relation to broadcasting include to:

- Ensure that a broadcasting service is conducted so as to contribute to social and economic development
- Issue, suspend and cancel broadcasting service licences
- Determine the site, coverage area, standards and types of instruments and capacities of broadcasting transmitting stations
- Control illegal transmissions
- Plan, permit, control and lease the use of radio waves allocated for broadcasting
- Prescribe technical standards for broadcasting services and equipment
- Determine broadcasting services-related complaints
- Determine and collect licence fees for broadcasting services
- Pay the appropriate fee for broadcasting radio frequencies allocated by the concerned organ – that is, the state organ responsible for allocating frequencies for different services (the organ is not specified but it is clearly not the EBA).

3.4.4 Appointment of EBA board members

In terms of article 9(1) of Proclamation 533, ‘the number of members of the board shall be determined by the Government’.

In terms of article 9(2), members of the board are to be drawn from different institutions and parts of the society and are appointed by the government on the recommendation of the Minister of Information.

In terms of article 9(3), the director general of the EBA is a member and the secretary of the board. In terms of article 12(1), the director general is appointed by the government on the recommendation of the Minister of Information.

In terms of article 9(4), the board is accountable to the Ministry of Information.

3.4.5 Funding for the EBA

Article 14 of Proclamation 533 provides that the budget of the EBA shall be allocated to it by the government.

3.4.6 Making broadcasting regulations

Article 47 of Proclamation 533 empowers the Council of Ministers and the Ministry of Information, respectively, to issue regulations and directives necessary for the proper implementation of Proclamation 533. However, there are references to the EBA making certain directives or regulations itself, for example:

- In article 21, where the EBA determines additional criteria for evaluating applicants for a broadcasting service licence
- In article 27, where the EBA determines licence fees
- In article 43, in relation to election broadcasting scheduling.

However, the actual extent of the EBA's powers are unclear and appear limited to specified issues rather than having general regulation-making powers. Indeed, article 10(3) of Proclamation 533, which article deals with powers of the board of the EBA, specifies that one of the duties of the board is to 'review and submit to the Ministry of Information, for its approval, directives to be issued for the implementation of this Proclamation', making it clear that the Ministry of Information holds general directive- and regulation-making powers.

3.4.7 General requirements/responsibilities of broadcasters in Ethiopia

General requirements and responsibilities that broadcasters are required to comply with are found in two proclamations. The Freedom of the Mass Media and Access to Information Proclamation, Proclamation No. 590/2008 (Proclamation 590) and also the Broadcasting Service Proclamation, Proclamation 533.

FOREIGN OWNERSHIP RESTRICTIONS

Article 5.2 of Proclamation 590 limits the right to establish a mass media outlet (defined as including broadcasting) to Ethiopian nationals only – that is, foreigners do not enjoy that right and only Ethiopian companies may own a periodical or news agency service.

APPOINTMENT OF AN EDITOR

Article 6 of Proclamation 590 requires a mass media outlet (note this includes broadcasters) to appoint an editor-in-chief and failure to do so is an offence punishable by a fine in terms of article 45.2.

MEDIA OWNERSHIP RESTRICTIONS

Article 7.1 of Proclamation 590 makes it an offence for a person who exercises effective direct or indirect control (deemed as being a 15% shareholding – article 7.4) over a nation-wide broadcasting licence or with a broadcast licence for an area with a population of over 100,000 to exercise such control over another company holding such a licence and servicing the same or an overlapping market.

The offence is punishable by the imposition of a fine in terms of article 45.1.

RIGHT OF REPLY

Article 40.1 of Proclamation 590 makes provision for any person to have the right of reply where any factual information or matter ‘injurious to the honour or reputation of any person is reported in the mass media’. Note that the definition of ‘mass media’ includes broadcasters. Article 40.1.b) sets out the periods within which such a right of reply is required to be published, namely, 14 days. However, if the report or information is disseminated during an election then the time limit is 48 hours in terms of article 40.1.d).

Failure to publish a reply or correction in terms of article 40 is an offence, which is punishable upon conviction by the payment of a fine in terms of article 45.3 of Proclamation 590.

Article 40.2 and following sub-articles of Proclamation 590 make provision for a right to approach a court within three months where the programming editor refuses a request for a right of reply. Article 42 of Proclamation 533 also imposes a duty upon a broadcasting service to respect the right of reply of a person who alleges that the programme has encroached on his or her rights or has failed to represent him or her properly. The reply must be proportionate and broadcast at a similar time.

PROGRAMMING CONTENT REQUIREMENTS

- *General* – Article 30 of Proclamation 533 sets out general programming requirements, including:
 - Programmes to reflect different and balanced viewpoints and serve the public at large
 - Accuracy of content and source of programmes to be transmitted shall be ascertained
 - News to be impartial, accurate and balanced
 - Programmes may not:

- Violate dignity, personal liberty, rules of good behaviour or undermine beliefs of others
- Constitute a criminal offence against state security, the constitutionally established government or the defence force
- Maliciously accuse or defame individuals, nationalities, peoples or organisations
- Cause dissention among nationalities or peoples
- Incite war.

Note that a failure to comply with article 30 is punishable by a fine in terms of article 45(2) of Proclamation 533, and in addition where there is a violation of the prohibited programming provisions of article 30 the broadcasting-related property of a person may also be confiscated.

- *Protecting the well-being of children* – Article 31 of Proclamation 533 provides that:
 - Programming which may corrupt the outlook of children, harm their feelings and thinking or encourage them to engage in undesirable behaviour may not be transmitted at hours during which children normally watch or listen to such programmes (that is, between 05h00 and 23h00).

Note that failure to comply with article 31 is punishable by a fine in terms of article 45(3) of Proclamation 533.

- *Local content* – Article 32 of Proclamation 533 deals with national, regional and local programme requirements:
 - National transmission programming shall allocate at least 60% of its weekly transmission to national programmes.
 - Regional transmission programming shall allocate at least 60% of its weekly transmission to regional affairs programmes.
 - Local transmission programming shall allocate at least 60% of its weekly transmission to local affairs programmes.
- *Advertising* – Article 33 of Proclamation 533 contains programming requirements relating to advertisements:
 - Any advertisement must be clearly differentiated from other programming and must not affect the content of programming.
 - Commercial advertisements must be truthful, not misleading and publicise lawful trade activities.
 - Advertisements that are malicious and undermine the products and services of others are prohibited.

- No advertisements may be shown during programmes that are less than 20 minutes long or during children’s programming.

Note that a failure to comply with article 33 is generally punishable by a warning for the first violation and thereafter by a fine, except in the case of the broadcast of an advertisement that is malicious and undermines the products and services of others, which is immediately punishable by a fine – article 45(4) read with article (5) of Proclamation 533.

- *Prohibited advertisements* – Article 34 of Proclamation 533 prohibits advertisements:
 - That violate gender equality and that disregard the dignity and human rights of women
 - Relating to cigarettes or are cigarette-related
 - Relating to narcotic drugs
 - Relating to alcohol with more than 12% alcohol content
 - Relating to prescription medicines
 - That are otherwise prohibited by law.

Note that a failure to comply with article 34 is punishable by a fine in terms of article 45(4) of Proclamation 533.

- *Allocation of advertisement periods* – Article 35 of Proclamation 533 provides that:
 - Unless it is a broadcasting station that specifically broadcasts only advertisements, a broadcasting station shall not allocate more than 20% of its daily transmission or in a particular programme to advertisements.

Note that a failure to comply with article 35 is punishable by a warning for the first violation and thereafter by a fine – article 45(5) of Proclamation 533.

- *Sponsored programmes* – Article 36 of Proclamation 533 provides that:
 - Content and timing of a sponsored programme is not to be influenced by the sponsor. In particular, a sponsored programme shall not encourage the sale or hire of the sponsor’s products or services
 - Persons whose advertisements for products or services are prohibited by law may not sponsor programming
 - Commercial advertising shall not interrupt sponsored programming unless agreed between the station and the sponsor

- The sponsor's name is to be announced at the beginning and end of every sponsored programme.

Note that a failure to comply with article 36 is punishable by a warning for the first violation and thereafter by a fine – article 45(5) of Proclamation 533.

NOTIFICATION OF PERSON RESPONSIBLE FOR BROADCASTING PROGRAMMING

Article 37 of Proclamation 533 provides that a broadcasting licensee must notify the EBA of the person who is responsible for programming, and if this is more than one person, their responsibilities are to be clearly defined.

Note that a failure to comply with article 37 is punishable by a warning for the first violation and thereafter by a fine – article 45(6) of Proclamation 533.

KEEPING OF PROGRAMME RECORDS

Article 38 of Proclamation 533 provides that every transmitted programme (including news) must be kept for 30 days or until the conclusion of a complaint regarding a transmitted programme and a copy must be provided to the EBA at the licensee's cost where this is required for an investigation or inspection. Note that a failure to comply with article 38 is punishable by a warning for the first violation and thereafter by a fine – article 45(6) of Proclamation 533.

PROVIDING INFORMATION ON AIR

Article 39 of Proclamation 533 requires every station to announce its name at the beginning and end of every transmission and that the name of the programme's producer shall be announced at the beginning and end of every programme.

Note that a failure to comply with article 39 is punishable by a fine – article 45(7) of Proclamation 533.

ALLOWING ACCESS FOR INSPECTION

Article 40 of Proclamation 533 requires broadcasters to provide the EBA with access to its broadcasting station for inspection purposes.

TRANSMISSION OF EMERGENCY GOVERNMENT STATEMENTS

Article 41 of Proclamation 533 provides that:

- Any broadcasting service shall transmit, free of charge, emergency statements given by the federal or state government in relation to an incident that endangers the constitutional order of the country, a natural disaster or an epidemic that threatens public health
- Broadcasters are entitled to demand payment for the broadcast of non-emergency government statements.

TRANSMISSION OF ELECTION PERIOD STATEMENTS

Article 43 of Proclamation 533 contains a number of requirements in respect of election broadcasting, including the following:

- A broadcasting station shall allocate free airtime to registered political organisations and candidates to publicise their objects and programmes in accordance with directives to be issued by the EBA.
- Any political organisation or candidate is responsible for the legality of, and may transmit, an election campaign advertisement, and the fee charged therefor may not exceed the fee charged for commercial advertisements.

Note that a failure to comply with article 43 is punishable by a fine – article 45(7) of Proclamation 533.

3.4.8 Licensing regime for broadcasters in Ethiopia

BROADCASTING LICENCE REQUIREMENT

Article 18(1) of Proclamation 533 prohibits any person from undertaking a broadcasting activity without obtaining a broadcasting licence from the EBA. Anyone who does not comply with article 18(1) is guilty of an offence and upon conviction shall be liable to a fine in terms of article 45(1) of Proclamation 533. Article 18(2) of Proclamation 533 provides, essentially, that each broadcasting station requires its own licence.

CATEGORIES OF BROADCASTING SERVICES AND LICENCES

Article 16 of Proclamation 533 provides that there are three categories of broadcasting licences:

- *Public*: This is defined in article 2(9) as a television or radio service established for

the purpose of educating, informing and entertaining the public, in the federal or a regional state to which government budget is allocated in full or in part, and is accountable to the Federal House of Peoples' Representatives or to regional councils. Interestingly, article 3 of Proclamation 533, which deals with the scope of application of the proclamation, refers to 'government' as opposed to 'public' broadcasting services, which indicates a recognition that in Ethiopia there is *state* as opposed to genuine *public* broadcasting.

- Essentially, therefore, a public broadcasting service is a government funded service which is accountable to the federal or a state government.
- Section 16(2)(a)–(e) of Proclamation 533 provides additional detail of what is required of a public broadcasting service, namely, that it shall:
 - Enhance the participation of the public through the presentation of government policies and strategies as well as activities related to development, democracy and good governance
 - Present programmes which inform, educate and entertain the public
 - Present programmes which reflect unity of people based on equality
 - Promote and enhance the cultures and artistic values of the public
 - Serve political parties operating in accordance with the constitution and the electoral laws of the country on the basis of fair and just treatment.
- *Community*: This is defined in article 2(11) as a non-profit radio or television service established by the will and interest of the community and administered and run by the community living in a specific area or who possess a common interest.
 - Essentially this definition means that non-profit community broadcasters either meet the needs of a geographic community or a particular community of interest, such as a religious community.
 - Section 16(4)(a)–(f) of Proclamation 533 provides additional detail of what is required of a community broadcasting service, namely, that it shall:
 - Carry out its activities based on the needs of the community regarding development, education and good governance
 - Promote and develop the language, culture and artistic value of the community
 - Allow the participation of the members of the community in the preparation of its programmes

- Transmit programmes on issues involving the common interests of the community that could not get coverage on other broadcasting services
 - Utilise the income derived from different sources for the operation of the broadcasting station
 - Provide community-centred informative and entertaining programmes to promote the information, culture and knowledge of the community.
- *Commercial*: This is defined in article 2(10) as a television or radio service established for profit by a legal entity with the purpose of informing, educating or entertaining the public.
- The defining characteristic here is that it is a for-profit entity.
 - Section 16(3)(a)–(d) of Proclamation 533 provides additional detail of what is required of a commercial broadcasting service, namely, that it shall:
 - Provide equal treatment to any community in its licence area
 - Cover the whole area of its licence when transmitting programmes
 - Include regional and national news in its programmes
 - Register the broadcasting licence given by the EBA with the Ministry of Trade and Industry or with a regional trade and industry bureau.

Beyond the categories of services, there are also categories of licences that can be granted by the EBA. These are set out in article 17(1)(a)–(h) of Proclamation 533 and are:

- Terrestrial free-to-air radio broadcasting service
- Terrestrial free-to-air television broadcasting service
- Satellite radio broadcasting service
- Satellite television broadcasting service
- Satellite broadcasting service provided to customers for a fee
- Receiving and broadcasting foreign programmes to customers for a fee
- Cable television broadcasting service provided to customers for a fee
- Other broadcasting services to be prescribed by the EBA.

BROADCASTING LICENSING PROCESS

Article 19(4) of Proclamation 533 provides that an applicant for a public broadcasting or community broadcasting licence may apply to the EBA at any time

for such a licence. Article 19(1) of Proclamation 533 provides that the EBA shall invite applicants for a commercial broadcasting licence:

- By notice published in a newspaper having a wide circulation or communicated by other mass media – article 19(2).
- The invitation notice shall disclose the category of broadcasting service, the licence area, the frequency available, the time and place of submission of the application, the licence fee and any other necessary information – article 19(3).

Article 20(1)–(3) of Proclamation 533 sets out the grounds upon which the EBA may summarily reject an application for a broadcasting service licence, namely, if the applicant:

- Fails to produce legal evidence of its financial capacity and sources of funding
- Fails to produce a detailed project proposal
- Is a body that is not entitled to a licence as provided for in article 23(1)–(8), namely:
 - A body that does not have legal personality
 - An organisation not incorporated in Ethiopia or whose capital or management control is held by foreign nationals
 - A political organisation, an organisation which has a political organisation as a shareholder or where a member of a political organisation’s supreme leadership is a shareholder or member of an organisation’s management
 - A religious organisation
 - An organisation where a shareholder or member of its management has been:
 - Convicted of a serious crime
 - Deprived of exercising his or her civil political rights by a court
 - Deprived of his or her legal capacity by a court
 - An organisation where 50% of its capital is held by:
 - Another organisation which carries on the business of a printed press or news agency, or
 - A person who owns more than 20% of the capital of another organisation which carries on the business of a printed press or news agency
 - Is applying for a radio broadcasting service licence and already has:
 - A radio broadcasting service licence in the same licence area, or

- Two other radio broadcasting service licences.

Article 21(1) of Proclamation 533 requires the EBA to set criteria for evaluating applicants for a broadcasting service licence to be used by the EBA, and in terms of article 21(2)(a)–(e) these must include:

- The reliability and sufficiency of the applicant’s financial resources to run the service
- Technological capability to render the service
- Organisational capacity, knowledge and experience to render the service
- That the contents of the proposed programming would address social needs
- Transmission time allocated for the service.

Article 22 is headed ‘Decision making’ and deals with the EBA’s processes in relation to approving or rejecting an application for a broadcasting service licence. It is noteworthy that article 22(2) and (3) provides that where the EBA decides not to issue a licence, it must provide reasons for the decision and that the applicant has 14 days to appeal to the board of the EBA, which must render its appeal decision within 20 days of receipt of the appeal.

Further, article 26 of Proclamation 533 requires a licensee to apply to the EBA for an expansion licence when it intends to, among other things:

- Broadcast on additional frequencies to cover an area outside of its original broadcast coverage area. In this case, the EBA is required to ensure that the requested frequency is not held by another broadcasting service, and that there is a need for the service by the community in the area
- Upgrade the capacity of its transmitter. In this case, the EBA is required to ascertain that the equipment is compatible with the expansion plan
- Make technological changes.

Proclamation 533 also has provisions regarding:

- The process for renewing licences – article 25
- Suspension of licences for violations of Proclamation 533 – article 28
- Revocation of licences – article 29. In this regard, the grounds for the EBA’s revocation of a licence are:

- Where a licensee has failed to commence broadcasting within one year of the issuing of the licence, although if a *force majeure* event has occurred the EBA may extend the commencement period by an additional six months in terms of article 29(3)
- Where the licence was obtained by fraudulent means
- Where a broadcasting station suspends its transmission for more than one month without good cause
- If so ordered by a court
- Where the licensee stops providing the service
- For a violation of article 30(4) – that is, in relation to broadcasting of prohibited programming
- For a violation of article 27 – that is for non-payment of any fee.

Note that provision is made for appeal procedures in respect of any revocation of a licence in terms of article 29(2).

LICENCE PERIODS

Article 24(1)–(7) of Proclamation 533 sets out different licence periods for different kinds of licences, namely:

- National transmission: radio – eight years; television – 10 years
- Regional transmission: radio – 10 years; television – 12 years
- Local transmission: radio – 12 years; television – 14 years
- Transmission limited to Dire Dawe: radio – 10 years; television – 12 years
- Transmission limited to Addis Ababa: radio – six years; television – eight years
- Community broadcasting service: five years
- Short-term community broadcasting service: not more than one year.

3.4.9 Is the EBA an independent regulator?

The EBA can in no way be said to be independent. Indeed, the word ‘independent’ does not appear in Proclamation 533.

The appointments process of the board of the EBA makes it clear that it operates as an arm of government, being appointed by the government on the recommendation of the Minister of Information and being accountable to the Ministry of Information as opposed to, for example, the public via, for example, the House of Peoples’ Representatives.

Further, it is disappointing that apart from a few specific exceptions, broadcasting regulations are made by the minister.

3.4.10 Amending the legislation to strengthen the broadcast media generally

In our view a complete overhaul of the broadcasting legal framework is required to make the EBA an independent body, acting in the public interest.

- First, the EBA ought to be declared to be an independent body acting in the public interest in its founding statute. Second, its board ought to be appointed by a process characterised by public participation and with the involvement of Parliament (the House of Peoples' Representatives) rather than through a purely executive government process as it is now.
- We are of the view that the best process would be for the House of Peoples' Representatives to call for public nominations for the board, and ought to conduct a public interview and short-listing process before making the necessary recommendations to the prime minister for appointment. The board should appoint all EBA staff including the director general.
- Also, we are of the view that the EBA ought to be able to raise its own funding through levying licence fees and administrative fees and should be entirely responsible for its own processes, including being able to issue broadcasting regulations or directions on its own without any ministerial intervention.

Additionally, we believe that there ought to be more public participation in the broadcasting service licensing process and related processes such as amendments, revocations and suspensions of licences. This public participation can be ensured through having a compulsory notice and comment procedure allowing the public to air its views on licensing matters.

3.5 Legislation that regulates the state broadcast media

The state broadcast media is governed by the Ethiopian Broadcasting Corporation Establishment Proclamation No. 858/2014 (EBC Proclamation).

3.5.1 Establishment of the EBC

Article 3 of the EBC Proclamation establishes the Ethiopian Broadcasting Corporation (EBC) as 'an autonomous government institution having legal personality and rendering public service'.

3.5.2 The EBC 's mandate

Article 7 of the EBC Proclamation sets out the objectives of the EBC. In brief, these are to:

- Broadcast, on radio, television and on its website:
 - Current issues happening in the country and abroad
 - Educational and entertainment events
- Create national consensus
- Support national efforts to protect and promote national identity, dignity, diversity, tolerance and democratic unity.

Article 9 of the EBC Proclamation sets out the powers and duties of the board. Many of the duties include mandate-like issues, among them:

- To ensure that government policies and laws pertinent to the mass media are put into practice at the EBC
- To ensure that the EBC broadcasts government policies and laws that need to be publicised to society
- To ensure that political parties and classes of society with different views are given a balanced radio and television service.

3.5.3 Appointment of the EBC Board

The EBC has a board made up of a chairman, a secretary and seven members in terms of article 8(1) of the EBC Proclamation. In terms of article 8(2) read with sub-article 8(4) of the EBC Proclamation, the EBC board members must represent different classes of society and are recommended by the prime minister and appointed by the House of Peoples' Representatives for a term of five years.

Article 8(5) provides that the chief executive officer shall be the secretary and a member of the board. Article 11(1) of the EBC Proclamation provides that the chief executive officer is appointed by the House of Peoples' Representatives upon recommendation by the prime minister.

Importantly, article 8(3) provides that the board is accountable to the House of Peoples' Representatives.

3.5.4 Funding for the EBC

Article 14 of the EBC Proclamation sets out the allowable sources of funding for the EBC. These are:

- Revenues collected in accordance with this proclamation
- The budget allocated to the EBC by government in order that the corporation achieves its objectives
- Other sources.

3.5.5 The EBC: Public or state broadcaster?

There are some aspects of the regulatory framework for the EBC which suggests that it is a public as opposed to a state broadcaster. First, the EBC reports to the House of Peoples' Representatives. Second, and importantly, a multi-party body (in this case the House of Peoples' Representatives) has to appoint the board members on the recommendation of the prime minister.

However, there is clearly no public nominations process and so only candidates chosen by the prime minister can be appointed to the EBC Board. In addition, the EBC Board has no say over the appointment or removal of the chief executive officer. Third, there is no statement of editorial independence on the part of the EBC in the EBC Proclamation, and while article 3(1) describes the EBC as 'autonomous' it also clearly refers to it as a 'government institution'.

3.5.6 Weaknesses in the provisions of the EBC Proclamation which should be amended

A number of important weaknesses ought to be addressed through legislative amendments.

- Appointments of EBC board members ought to be made by the prime minister on the recommendation of the House of Peoples' Representatives following a public nominations, interview and short-listing process.
- The EBC Board ought to be able to, on its own, appoint and dismiss the chief executive officer of the EBC and all other EBC staff.
- The EBC's mandate and its board's duties ought to include language which guarantees its independence from political and commercial interference and make

it clear that its purpose is to serve only the public interest in the provision of its programming.

- The EBC Proclamation ought to make it clear that the EBC is a body established in the public interest and not as a governmental institution.

3.6 Legislation that undermines a journalist's duty to protect sources

A journalist's sources are the lifeblood of his or her profession. Without trusted sources, a journalist cannot obtain information that is not already in the public domain. However, sources will often be prepared to provide critical information only if they are confident that their identities will remain confidential and that this will be respected and protected by a journalist. This is particularly true of so-called whistleblowers – inside sources that are able to provide journalists with information regarding illegal activities, whether by company or government personnel. Consequently, democratic countries often provide special protection for journalists' sources. It is recognised that without such protection, information that the public needs to know would not be given to journalists.

❖ Criminal Code, 2004

The Criminal Code of Ethiopia is contained in Proclamation No. 414 of 2004 (Criminal Code) and is a modern law unlike many other African countries' criminal codes, which are often colonial-era statutes.

- Article 45(3) of the Criminal Code empowers a court to order the publisher or editor of a publication to disclose the source of information:
 - (a) where a crime is committed against the Constitutional Order, National Defence Force or security of the State constituting clear and imminent danger; or
 - (b) in the case of proceedings involving a serious criminal crime and where there is no alternative source of information and the information is decisive to the outcome of the case.

In all other instances, article 45(2) of the Criminal Code provides that the publisher or editor of any publication may not be compelled to disclose the source of any matter printed in the publication, which in our view is a sufficiently high level of protection for a publisher or editor, but this protection does not extend to a journalist.

- Article 448 of the Criminal Code makes it an offence to 'refuse to aid justice'. In

particular, any person who has been lawfully summoned to appear in a judicial or quasi-judicial proceeding as, among other things, a witness or who has been ordered to produce evidence and who fails to appear, to produce the evidence or answer questions, without sufficient cause, can, upon conviction, be sentenced to a period of imprisonment or a fine.

The key issue here is the qualification ‘without just cause’. Whether or not this will be interpreted to include the right of journalists to protect their sources will determine whether or not article 446 meets the requirements of article 29(2) of the Ethiopian Constitution which protects the right to freedom of expression.

Clearly, these provisions might well conflict with a journalist’s ethical obligation to protect his or her sources. However, it is important to note that whether or not requiring a journalist to reveal a source is in fact an unconstitutional violation of the right to freedom of expression will be dependent on the particular circumstances in each case, particularly on whether the information is available from any other source. Consequently, it is extremely difficult to state that these provisions are, by themselves, a violation of the right to freedom of expression under the Constitution.

3.7 Legislation that prohibits the publication of certain kinds of information

In the main, it is the Criminal Code of Ethiopia, contained in Proclamation No. 414 of 2004 (Criminal Code), that undermines the public’s right to receive information and the media’s right to publish information. The Criminal Code criminalises the act of publication in a number of instances, including:

- Prohibition of publications that constitute crimes relating to the mass media
- Prohibition of publications that constitute crimes relating to legal proceedings
- Prohibition of publications that constitute crimes against the national state
- Prohibition of publications that constitute crimes against foreign states
- Prohibition of publications that constitute fundamental crimes in violation of international law
- Prohibition of publications that constitute crimes against humanitarian organisations
- Prohibition of publications that constitute military or police crimes

- Prohibition of publications that constitute fiscal and economic crimes against the state
- Prohibition of publications that constitute crimes against the public interest or the community
- Prohibition of publications that constitute crimes against public security, peace and tranquillity
- Prohibition of publications that constitute crimes against honour
- Prohibition of publications that constitute crimes against morals or the family
- Prohibition of publications that constitute petty offences against the duties of a public office or authority.

3.7.1 Prohibition of publications that constitute crimes relating to the mass media

In a provision which is extremely uncommon, Chapter IV of Title II of the Criminal Code of Ethiopia, which is contained in Proclamation No. 414 of 2004 (Criminal Code), deals specifically with ‘crimes relating to the mass media’ which are those, in terms of article 42(2), that are ‘committed by means of newspapers, books, leaflets, journals, posters, pictures, cinemas, radio or television broadcasting or any other means of mass media’ where ‘communication is made to the public through the mass media’ and where the relevant crimes are those ‘committed against the honour of other persons, public or private safety, or any other legal rights protected by criminal law’ – article 42(3).

Article 43(1) sets out the chain of liability for crimes committed through periodicals as follows: the registered editor-in-chief or deputy editor; the publisher; the printer; the disseminator; the importer (in respect of periodicals published abroad).

Article 43(2) sets out the chain of liability for crimes committed through non-periodicals as follows: the author; the editor; the publisher; the printer; the disseminator.

Article 43(3) provides that liability for crimes committed through the broadcast media is as follows: the person responsible for the programme; the licensee.

Article 43(4) provides that if a person who would have been liable as set out above has no known place of abode in Ethiopia, and his present whereabouts cannot be ascertained, then liability shall pass to the person next liable after him.

The effect of the above is that one can be held liable for crimes effected through the mass media even when at a considerable distance from the actual writing, publication or broadcast thereof.

Article 46(1) is headed ‘Exclusion of double liability’ and it provides that punishment of one of the parties responsible in the order fixed by law in terms of article 43 excludes liability to punishment of the other parties for the same act. However, this does not apply to juridical persons (that is companies and the like) which are expressly disallowed in article 46(2) from escaping criminal liability either alone or jointly with any criminal listed in the order fixed by the law.

3.7.2 Prohibition of publications that constitute crimes relating to legal proceedings

PUBLICATIONS THAT CONSTITUTE CONTEMPT OF COURT

❖ The Criminal Code, 2004

The Criminal Code of Ethiopia is contained in Proclamation No. 414 of 2004 (Criminal Code) and is a modern law, unlike many other African countries’ criminal codes which are often colonial-era statutes.

Article 449 of the Criminal Code makes it an offence to, in the course of a judicial proceeding, insult, hold up to ridicule, threaten or disturb the court or a judge in the discharge of his duty or disturb the activities of the court in any other manner. The offence is punishable by a period of imprisonment or the imposition of a fine.

Article 457 of the Criminal Code deals with another form of contempt of court. It provides that whoever publishes a report or spreads news which is inaccurate, tendentious or which distorts the facts and which has been drawn up for the purposes of influencing a judicial decision is guilty of an offence. The punishment is a period of imprisonment or a fine.

PUBLICATIONS THAT CONSTITUTE A BREACH OF COURT-ORDERED SECRECY

❖ The Criminal Code, 2004

The Criminal Code of Ethiopia is contained in Proclamation No. 414 of 2004 (Criminal Code) and is a modern law, unlike many other African countries’ criminal codes which are often colonial-era statutes.

Article 450 of the Criminal Code makes it an offence to disclose facts declared secret by a court and obtained in the course of court proceedings at which the person was present. Upon conviction, the punishment is a period of imprisonment or a fine.

PUBLICATIONS THAT CONSTITUTE INACCURATE OR DISTORTED REPORTING

❖ **The Criminal Code, 2004**

The Criminal Code of Ethiopia is contained in Proclamation No. 414 of 2004 (Criminal Code) and is a modern law, unlike many other African countries' criminal codes which are often colonial-era statutes.

Article 451 of the Criminal Code makes it an offence to publish, among other things, information or a report concerning judicial cases which is inaccurate or distorted. Punishment is a fine or, in more serious cases (particularly those likely to perturb public opinion or to cause injury to another), a period of imprisonment.

3.7.3 Prohibition of publications that constitute crimes against the national state

❖ **The Flag Proclamation, Proclamation 654 of 2009**

Article 23(5) of the Flag Proclamation prohibits disrespecting, dishonouring or damaging the national flag of Ethiopia 'by writing ... in public places'. The punishment is a period of rigorous imprisonment (this is defined in article 108(2) of the Criminal Code as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) or a fine.

❖ **The Criminal Code, 2004**

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for crimes against the national state, which are set out in Chapter I of Title 1 of Book III of Part II of the Criminal Code. These include:

- *Injuries and insults to the state – Attacks against the state and national and other emblems*
 - Article 244(1) of the Criminal Code makes it an offence to abuse, insult, defame or slander the state in public. The offence is punishable by a period of imprisonment or a fine.
 - Article 244(2) of the Criminal Code makes it an offence to intentionally insult or in any other way abuse an officially recognised national emblem such as the flag or insignia of Ethiopia or its regional states. The offence is punishable by a period of imprisonment or a fine.

■ *Impairment of the defensive power of the state*

Article 247 makes it a crime to publicly instigate refusals to serve in the military, mutiny or desertion or to incite any person liable to military service to commit any of the above. The offence is punishable by a range of punishments from rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) or, if in a time of war or danger thereof, with life imprisonment or death.

■ *Treason*

Article 249 makes it a crime to disclose or communicate or make accessible to, among other persons, the public, a secret, document, negotiations or decision which the interests of Ethiopia demand shall not be divulged. The offence is punishable by rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) or simple imprisonment in cases of negligence.

■ *Economic treason*

Article 250 makes it a crime to disclose or communicate or make accessible to, among other persons, the public, economic negotiations, or facts or decisions kept secret in the higher interests of Ethiopia or in those of national defence. The offence is punishable by rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) or simple imprisonment in cases of negligence.

■ *Collaboration with the enemy*

Article 251 makes it a crime for Ethiopian nationals, or those officially entrusted with the protection of Ethiopian national interests, in a time of war or of total or partial occupation of the territory of Ethiopia, to help the enemy, with the intention of promoting the objective of the enemy, including by entering any propaganda, publishing or press service designed to promote the interests of an enemy or occupying power. The offence is punishable by rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) or, in cases of exceptional gravity, with rigorous imprisonment for life or death.

■ *Espionage*

Article 252 makes it a crime to, on behalf of a foreign state, political party or

organisation, and to the detriment of Ethiopia or its institutions, organisations or nationals, collect, transmit, deliver or make available political, diplomatic, military or economic intelligence information which is secret or is not a matter of public knowledge, to an official or private service or to their agents. The offence is punishable by rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) with the periods of imprisonment being longer where the espionage is harmful to the state as opposed to private persons. Further, where espionage is carried out in a time of war or danger of war, the crime is punishable with rigorous imprisonment for life or with death.

■ *Indirect aid and encouragement of crimes against the state*

It is also important to be aware that in terms of article 254, it is a crime not to inform the authorities that a crime against the state (see above) is being prepared or has been committed. The offence is punishable by rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

❖ **Anti-Terrorism Proclamation No. 652 of 2009**

The Anti-Terrorism Proclamation is hardly a media-related law at all. It makes only one reference to publishing. The only reason it has in fact been included in this chapter is that it has been used extremely frequently against journalists.

Article 3 of the Terrorism Proclamation sets out a long list of ‘terrorist acts’. We have focused on those that could conceivably be carried out by a journalist. Essentially a ‘terrorist act’ is defined as including: ‘Whosoever or a group intending to advance a political ... or ideological cause by coercing the government, intimidating the public or section of the public, or destabilising or destroying the fundamental political, constitutional, economic or social institutions of the country’:

- Creates a serious risk to the safety ... of the public or section of the public
- Endangers, seizes or puts under the control, causes serious interference or disruption of any public service
- Attempting to do any of the above.

Terrorist acts are punishable with rigorous imprisonment (this is defined in article 108(2) of the Criminal Code as conditions of imprisonment which are more severe

than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) or with death.

Article 5 of the Terrorism Proclamation deals with rendering support to terrorism. It makes it an offence to render such support. The offence is broadly framed and includes: knowingly supporting the commission of a terrorist act or a terrorist organisation through providing ‘a skill, expertise or moral support or ... advice’. The offence is punishable with rigorous imprisonment (this is defined in article 108(2) of the Criminal Code as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

Article 6 is entitled encouragement of terrorism. Again, this offence is broadly framed and consists of publishing a statement that is likely to be understood by some or all of the members of the public as a direct or indirect encouragement to them to commit, prepare or instigate an act of terrorism. The offence is punishable with rigorous imprisonment (this is defined in article 108(2) of the Criminal Code as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

Article 7 makes it an offence intentionally to communicate that a terrorist act has been or is being or will be committed while knowing or believing that the information is false. The offence is punishable with rigorous imprisonment (this is defined in article 108(2) of the Criminal Code as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

3.7.4 Prohibition of publications that constitute crimes against foreign states

❖ The Criminal Code, 2004

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as obviously any such publication would constitute a crime in terms of the Criminal Code.

The Criminal Code makes provisions for crimes against foreign states (provided such states have reciprocal protective treatment of Ethiopia in terms of article 267) which are set out in Chapter II of Title 1 of Book III of Part II of the Criminal Code. These include:

■ *Hostile acts against a foreign state*

Article 261 makes it a crime for anyone within the territory of Ethiopia and at the risk of endangering peaceful relations with foreign countries, to attempt to disturb, by subversive activities, slander, malicious propaganda or violence, the internal political order or security of a foreign state. The offence is punishable by a period of simple or rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

■ *Insults to foreign states*

Article 264 makes it a crime for anyone to publicly abuse, insult, defame or slander a foreign state either directly or in the person of its head of state or one of its constituted authorities or accredited diplomatic or official representatives. The offence is punishable by a period of simple imprisonment or a fine.

■ *Insults to official emblems of foreign states*

Article 265 makes it a crime for anyone, out of ill-will, hatred, discontent or improper motives, to tear down, destroy, deface, insult or in any other way abuse the emblems of sovereignty of a foreign state with which Ethiopia maintains peaceful relations (particularly its insignia or national flag publicly hoisted by an official representative of such state). The offence is punishable by a period of simple imprisonment or a fine.

■ *Insults to inter-state institutions*

Article 266 makes it a crime for anyone to insult the representatives or any of the official emblems of an inter-state institution of which Ethiopia is a member. The offence is punishable by a period of simple imprisonment or a fine.

3.7.5 Prohibition of publications that constitute fundamental crimes in violation of international law

❖ **The Criminal Code, 2004**

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provision for fundamental crimes against international law (such as genocide, war crimes against the civilian population and the like) which are set out in Chapter 1 of Title II of Book III of Part II of the Criminal Code.

While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. These include:

- *War crimes against wounded, sick, shipwrecked persons or medical services*
Article 271(1)(c) makes it an offence to organise, order or engage in compelling persons engaged in, among others, journalistic activities to perform acts or carry out work contrary to, or refrain from acts required by, their professional rules and ethics designed for the benefit of the wounded, sick or civilian population. The offence is punishable by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) or rigorous imprisonment for life, or death.

- *Incitement of crimes against international law*
Article 274 makes it a crime publicly to encourage, including by writings, the following crimes against international law: genocide; war crimes against the civilian population; war crimes against wounded, sick, shipwrecked persons or medical services; war crimes against prisoners and interned persons; pillage, piracy and looting. The offence is punishable by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

3.7.6 Prohibition of publications that constitute crimes against humanitarian organisations

❖ The Criminal Code, 2004

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for crimes against humanitarian organisations, which are set out in Chapter II of Title II of Book III of Part II of the Criminal Code.

While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. These include:

- *Hostile acts against international humanitarian organisations*
Article 281(1)(a) makes it an offence to threaten or insult persons belonging to the International Red Cross or Red Crescent or corresponding organisations. The offence is punishable by a period of simple imprisonment or, in cases of

exceptional gravity or during a time of war, by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

3.7.7 Prohibition of publications that constitute military or police crimes

❖ The Criminal Code, 2004

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for military crimes which are set out in Title III of Book III of Part II of the Criminal Code, and article 340 thereof specifically makes these crimes also applicable to acts carried out against members of the police on active duty. While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. It is important to note that in terms of article 339, where the following crimes are committed for gain (that is, where the accused has been found to have been paid to commit these offences) the punishment of a significant fine may be imposed in addition to any other punishment prescribed. The military or police crimes which could involve the media include:

■ *Incitement and assistance to mutiny*

Article 301 of the Criminal Code makes it an offence to incite or assist a mutiny in a time of emergency, general mobilisation or war. The offence is punishable by a period of simple imprisonment.

■ *Crimes against guards, sentries or patrols*

Article 302 of the Criminal Code makes it an offence to insult or threaten a military guard, sentry or patrol on duty. The offence is punishable in terms of article 302 read with article 298 by a range of punishments depending on the gravity thereof and whether or not it was committed during a time of emergency, general mobilisation or war, by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment), rigorous imprisonment for life, or the death penalty.

■ *Compelling breaches of duty*

Article 323 of the Criminal Code makes it an offence to threaten a member of the defence force to execute his duty improperly or prevent him from executing a

duty. The offence is punishable by a period of simple imprisonment.

■ *Incitement to disregard military orders*

Article 332(1) of the Criminal Code makes it an offence to incite anyone to disregard a military order, to incite acts of indiscipline or breaches of military duties. The offence is punishable by a period of simple imprisonment or a fine.

■ *Publishing information regarding specified military zones and objects*

Article 333(2) of the Criminal Code makes it an offence to, among other things, reproduce, publish or communicate an account, sketch, photograph or any representation whatsoever of an establishment, work or site, access to which is forbidden by the military authorities or on military grounds. The offence is punishable by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

■ *Failing to report crimes against the defence forces and breaches of military obligations*

Article 335(1) of the Criminal Code makes it an offence to fail to report to the authorities, plans to commit mutiny or desertion. The offence is punishable by a period of simple imprisonment or, where the mutiny or desertion is at least attempted or in other serious cases, by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

Article 335(3) of the Criminal Code makes it an offence to fail to report to the authorities, plans to commit treason or espionage. Read with article 254, the offence is punishable by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

■ *Disclosing military secrets*

Article 336 of the Criminal Code makes it an offence to communicate, with an unauthorised person or to the general public, information of any kind which is not a matter of common knowledge and which by its nature constitutes a military secret (other than information the communication of which constitutes espionage or treason, which is dealt with elsewhere in this chapter). The offence is punishable by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

Note that the punishment can be reduced to simple imprisonment in the case of non-serious negligent (as opposed to intentional) disclosure.

■ *False or tendentious information*

Article 337 of the Criminal Code makes it an offence, when troops have been mobilised or are on active duty, to disseminate information, while knowing that information to be inaccurate or tendentious (that is, false), with the intention to obstruct measures ordered in the military interest, to impede or endanger movements or operations of the defence forces, to incite troops to indiscipline or insubordination, or to foment disorder and spread alarm among the population. The offence is punishable by a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) or rigorous imprisonment for life.

3.7.8 Prohibition of publications that constitute fiscal and economic crimes against the state

❖ **The Criminal Code, 2004**

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for fiscal and economic crimes against the state, which are set out in Title IV of Book III of Part II of the Criminal Code. While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. These include:

■ *Incitement to refusal to pay taxes*

Article 337 of the Criminal Code makes it an offence to incite another person to refuse to pay the taxes or dues prescribed by law. The offence is punishable by a period of simple imprisonment, or in more serious cases resulting from the spread of the crime, to a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

3.7.9 Prohibition of publications that constitute crimes against the public interest or the community

❖ **The Criminal Code, 2004**

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia

published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for crimes against the public interest or the community, which are set out in Book IV [note that this is incorrectly numbered] of Part II of the Criminal Code. While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. These include the following:

■ *Violence and coercion*

Article 441 of the Criminal Code makes it an offence by threats to prevent a public servant from performing an act which it is his duty to perform or force him to perform an act which he is not supposed to do. The offence is punishable by a fine or a period of simple imprisonment.

■ *Failure to report a crime*

Article 443 of the Criminal Code makes it an offence to fail to report to the authorities the fact of the commission, or the identity of the perpetrator, of a crime punishable with death or rigorous imprisonment for life. The offence is punishable by a fine or a period of simple imprisonment. Similar provisions regarding false reports to authorities or false denunciations or accusations are contained in articles 446 and 447, respectively, of the Criminal Code, although in relation to false accusations, the punishment may be a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

3.7.10 Prohibition of publications that constitute crimes against public security, peace and tranquillity

❖ **The Criminal Code, 2004**

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for crimes against public security, peace and tranquillity, which are set out in Title VI of Book IV of Part II of the Criminal Code. While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. The crimes against public security, peace and tranquillity which could involve the media include the following:

■ *Public provocation to or defence of a crime*

Article 480 makes it an offence to publicly, by writing, provoke others to commit acts of violence or to defend such a crime or its perpetrator. The offence is punishable with imprisonment or a fine.

■ *Alarming the public*

Article 485 makes it an offence to spread alarm among the public by, among other things, spreading false rumours concerning threats of danger to the community (especially that of invasion, assassination, fire, devastation or pillage) or imminent catastrophe or calamity. The offence is punishable by a period of imprisonment or a fine. Note that where this is likely to cause serious disturbances or disorder, a penalty of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) can be imposed.

■ *Inciting the public through false rumours*

Article 486 makes it an offence to, among other things, start or spread false rumours against the government or the public authorities, thereby disturbing or inflaming public opinion. Further, article 486 also makes it an offence to arouse hatred or stir up acts of violence or political, racial or religious disturbances. The punishment for these crimes is a period of imprisonment or a fine or, in serious cases, a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment).

It is also important to have regard to article 813 of the Criminal Code which deals with less serious cases of publishing false, exaggerated or biased news intended to perturb public order or tranquillity. The punishment is a fine or arrest but not a period of imprisonment.

■ *Seditious demonstrations*

Article 487 makes it an offence to distribute seditious or threatening remarks in any public place or meeting or to publicly incite others to disobey laws or orders issued by lawful authority. The offence is punishable by a period of imprisonment or a fine.

3.7.11 Prohibition of publications that constitute crimes against honour

❖ **The Criminal Code, 2004**

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia

published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for crimes against honour which are set out in Title III of Book V of Part II of the Criminal Code. While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. The crimes against honour which could involve the media include the following:

■ *Defamation and calumny*

Article 613(1) of the Criminal Code makes it an offence to impute a fact or conduct concerning a person with the intent to injure his honour or reputation to another person. This is the offence of defamation. In terms of article 613(2), where the imputed facts or conduct are false and are spread with knowledge of the falsity, this constitutes the offence of calumny. Punishment for defamation or calumny is a period of imprisonment or a fine. It is critical to note that the fact that the imputation is true does not absolve a person of the offence of defamation. Truth is only a defence if there was no intention to injure the reputation of another or if the person acted in the public interest – article 614.

Note that in terms of article 618, additional punishments can be imposed where the defamation or calumny has been deliberately committed against a public servant in the discharge of his official duty.

3.7.12 Prohibition of publications that constitute crimes against morals and the family

❖ **The Criminal Code, 2004**

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for crimes against morals and the family, which are set out in Title IV of Book V of Part II of the Criminal Code. While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. The crimes against morals and the family which could involve the media include the following:

■ *Obscene or indecent publications*

Article 640 makes it an offence to, among other things, import, possess, sell,

distribute or circulate writings, images or films which are obscene or grossly indecent. Punishment is a period of imprisonment and a fine, and the incriminating material may be forfeited and destroyed. There are exceptions for works which are artistic, literary or scientific in character and which are not calculated to inflame erotic feelings or lust – article 642.

Article 644 contains particular prohibitions on displaying writings or images such that they are visible from without and which stimulate unduly, or pervert or misdirect the sexual instinct, arouse or stimulate unduly brutal or bloodthirsty instincts, antisocial feelings, or feelings that are inimical to the family, in minors. Punishment is a period of imprisonment and a fine and the incriminating material may be forfeited and destroyed.

3.7.13 Prohibition on publications that constitute petty offences against the duties of a public office or authority

❖ The Criminal Code, 2004

As dealt with above, Chapter IV of Title II of the Criminal Code of Ethiopia published in Proclamation No. 141 of 2004 (Criminal Code) deals with crimes that are carried out through the mass media. Consequently, it is important to be aware of crimes that are capable of being so carried out as any such publication would constitute a crime in terms of the Criminal Code. The Criminal Code makes provisions for petty offences against the duties of a public office or public authority, which are set out in Chapter IV of Title I of Book VIII of the Criminal Code. While most of these are defined in ways that make it impossible for them to be carried out by the media *per se*, some could involve the media. The petty offences against the duties of a public office or a public authority which could involve the media include the following:

■ Undue publications

Article 804 of the Criminal Code is a general provision which specifies that whoever contravenes any official directive, regulation or order prohibiting the disclosure of acts, deliberations or decisions of an authority is punishable with a fine or arrest. Further, in terms of article 761 of the Criminal Code, the following measures shall also be taken, namely: confiscation by the state; withdrawal of a licence; and suspension or closing of a media establishment.

3.8 Legislation dealing with the interception of communication

❖ Terrorism Proclamation No. 652 of 2009

Article 14(1) of the Terrorism Proclamation empowers the National Intelligence and

Security Service to obtain a court warrant to:

- Intercept or conduct surveillance on the telephone, fax, radio, internet, electronic, postal and similar communications of a person suspected of terrorism
- Enter into any premises in secret to enforce interception
- Install or remove instruments enabling the interception.

Article 14(2) provides that all information obtained through interception shall be kept in secret.

❖ **The Criminal Code, 2004**

The Criminal Code of Ethiopia which is contained in Proclamation No. 141 of 2004 (the Criminal Code) makes it a crime, in terms of articles 706 and 707 to, without authorisation, access a computer, computer system or computer network and negligently or intentionally take or use data or computer services or damage a computer, computer system or computer network. The punishment ranges from a period of imprisonment or a fine to a period of rigorous imprisonment (this is defined in article 108(2) as conditions of imprisonment which are more severe than simple imprisonment, in specific prisons which are designated as prisons for rigorous imprisonment) and a fine.

Article 708 makes it an offence to, without authorisation, access a computer, computer system or computer network, and negligently or intentionally disrupt the use thereof by an authorised user. The punishment is a period of imprisonment or a fine.

It is also an offence to produce, distribute, or possess instruments, secret codes or passwords with the intention to further the commission of one of the above offences. The punishment is a period of imprisonment or a fine – article 709.

3.9 Legislation dealing with punishments for laws concerning the mass media

❖ **The Criminal Code, 2004**

The Criminal Code of Ethiopia which is contained in Proclamation No. 141 of 2004 (Criminal Code) provides in article 812 that whoever contravenes the laws, regulations or directives concerning the printing, publication, sale, distribution or control of printed documents, public advertisements, posters or notices transmitted through the radio, television, internet or other public media, is punishable with a fine

or arrest. Further, in terms of article 761 of the Criminal Code, the following measures shall also be taken, namely: confiscation by the state; withdrawal of a licence; and suspension or closing of a media establishment.

3.10 Legislation that regulates the affairs of media-related NGOs

❖ The Charities and Societies Proclamation, No. 621 of 2009

It would appear the Charities and Societies Proclamation No. 621 of 2009 ought not to impact the media significantly. However, this is not the case because the proclamation has been used to restrict the operations of media advocacy and related NGOs.

The proclamation makes a distinction between Ethiopian and foreign charities but is not applicable to religious or cultural organisations or organisations operating in accordance with an agreement with the government – articles 1 and 2.

The proclamation creates the Charities and Societies Agency, which is an institution of the federal government – article 4. The agency is empowered to license, register and supervise charities and societies – article 6. The director-general and the seven-member board of the Charities and Societies Agency are appointed by government, although two of the board members are nominated from the charities and societies – article 8.

Charitable organisations are required to acquire a registration and licensing certificate from the agency in order to carry out charitable acts – article 15(2). Similarly, societies (defined as persons organised on a non-profit and voluntary basis for the promotion of the rights and interests of its members – article 55(1)) also have to be registered with the Charities and Societies Agency – article 64(2).

The licences granted to a charity or society by the agency have to be renewed every three years – article 76(1).

There are records that are required to be kept by charities and societies and these include records of all monies received. Note that no anonymous donations may be received – article 77. There are also prohibitions on public collections – article 98.

Perhaps the most problematic aspect of the proclamation is that it makes a distinction between the kinds of work that foreign charities and societies can do and those that Ethiopian charities and societies can do. (Note that an Ethiopian charity is defined in article 1 as one that receives not more than 10% of its funding from foreign sources.) Article 14(5) provides that only an Ethiopian charity may have the following purposes:

- The advancement of human and democratic rights
- The promotion of equality of nations, nationalities and peoples and that of gender and religion
- The promotion of rights of the disabled and children’s rights
- The promotion of conflict resolution or reconciliation
- Any other purposes as may be prescribed by directives of the agency.

This is extremely draconian as it effectively prohibits a charity or society with the above aims from operating in Ethiopia if it is foreign or if it receives more than 10% of its funding from foreign sources. Most media-related NGOs promote human and democratic rights such as press freedom and freedom of expression, and therefore would be effectively prohibited from operating unless they were almost entirely locally funded.

3.11 Legislation that specifically assists the media in performing its functions

In countries that are committed to democracy, governments pass legislation which specifically promotes accountability and transparency of both public and private institutions. Such statutes, while not specifically designed for use by the media, can and often are used by the media to uncover and publicise information in the public interest.

❖ The Criminal Code, 2004

The Criminal Code of Ethiopia which is contained in Proclamation No. 141 of 2004 (Criminal Code) provides, at article 47 which is headed ‘Immunity’, that an author, publisher or distributor of a true record or representation, which is correct in form, of public debates or acts of a legislative, administrative or judicial authority, the distribution of which is not expressly prohibited by law or by a specific decision, shall not be liable to punishment.

❖ The Freedom of the Mass Media and Access to Information Proclamation, 2008

Part Three of the Freedom of the Mass Media and Access to Information Proclamation, No. 590 of 2008 (here, Access to Information Proclamation), is headed ‘Access to information’. Article 11 sets out the objectives of Part Three. These include:

- Giving effect to the right of citizens to access and receive information held by

public bodies, subject to justifiable limits based on overriding public and private interests

- Establishing mechanisms and procedures to give effect to that right in a manner which enables persons to obtain information as quickly, inexpensively and effortlessly as is reasonably possible
- Encouraging and promoting public participation, public empowerment, fostering a culture of transparency, accountability and efficiency in the functions of public bodies and to encourage and promote good governance.

Article 12(1) provides that all persons have the right to seek, obtain and communicate any information held by public bodies, except as expressly provided for by this proclamation. This right includes the rights to be informed as to whether or not the public body holds a record containing the requested information, and to obtain the information by means of inspection, certified copies and electronic means.

Article 14(3) and (8) requires the information to be provided upon request within 30 working days, although this may be extended by an additional 30 working days for practical reasons.

Grounds for rejecting an information request are set out in various articles and include the following:

- Defective requests such as those that are too broad, are likely to divert state resources or which relate to information soon to be published – article 27.
- Peremptory grounds, that is, grounds upon which the public official must refuse access to the information:
 - *Personal information about a third party*: Where this would involve the unreasonable disclosure of personal information about a third party including a deceased individual who has been dead less than 20 years – article 16.
 - *Commercial information of a third party*: Where this would involve the disclosure of: trade secrets; financial, commercial, scientific or technical information of a third party where disclosure would be likely to cause harm to the commercial or financial interests of such person; information supplied in confidence where disclosure could be reasonably predicted to put the third party at a disadvantage in contractual or other negotiations or in commercial competition – article 17.

- *Confidential information of a third party:* Where this would constitute a breach of the duty of confidence owed to the third party or where the record was supplied in confidence, and disclosure would be likely to prejudice the future supply of similar information – article 18.

It is important to note that many of the above articles do contain exceptions to the duty to keep information confidential and these include: with the consent of the third party; where the information is already publicly available; where the information relates to the health or well-being of a minor or a person incapable of understanding the nature of the request and giving access would be in the individual's best interests.

Article 19 makes provision for third parties to be notified about requests for access to information concerning them.

- *Protection of safety of individuals and property:* Where disclosure would be likely to: endanger the life or physical safety of an individual; impair the security of building structures or systems including a computer communication or transport system; prejudice public safety procedures or a witness protection programme – article 20.
 - *Privileged records:* Where a record is privileged from production in legal proceedings unless the privilege has been waived – article 22.
 - *Cabinet documents:* Where a record is a Cabinet record other than those which the Cabinet has decided to make available to the general public – article 24.
 - *Operations of public bodies:* Where the record contains an opinion, report or recommendation in respect of a deliberation or minutes of a meeting in respect of policy development or to take a decision conferred or imposed by law; and where disclosure could reasonably be expected to frustrate the deliberative process or successful implementation of policy of the public body – article 26(1).
- Discretionary grounds, that is, grounds upon which the public official may refuse access to the information:
- *Protection of proceedings – law enforcement and legal investigation:* Where the record contains methods, techniques, procedures or guidelines for the: prevention, detection or investigation of crimes or prosecution of alleged offenders; or where the information could lead to the circumvention of the law or facilitate the commission of an offence; or lead to a miscarriage of justice – article 21.
 - *Defence, security and international relations:* Where disclosure would be likely to cause prejudice to the security, defence and

international relations of the country. The article sets out detailed examples – article 23.

- *Economic interests and financial welfare of the country and commercial activities of public bodies:* Where disclosure would be likely to jeopardise the economic interests or financial welfare of the nation or the ability of the government to manage the economy of the country. The article sets out detailed examples – article 25.
- *Operations of public bodies:* Where disclosure could reasonably be expected to jeopardise the effectiveness of monitoring, auditing, examining or testing of procedures or methods used by a public body; where the record contains evaluative material or draft notes – article 26(2).

It is important to note that article 28 contains a public interest override which provides that notwithstanding the grounds for refusal to provide access to information set out above, a public body may not refuse a request for information unless the harm to the protected interest which would be caused by disclosure outweighs the public interest in disclosure. Further, article 29 provides for severability of a record in the event that only part thereof is exempted from disclosure. Article 32 sets out various responsibilities of the ombudsman in relation to ensuring access to information.

The Access to Information Proclamation is critically important for the media. If used properly, particularly in respect of ongoing investigative journalism, it can provide access to extremely valuable information. However, it is only as effective as the willingness of public officers in government departments to comply with its provisions and of the courts to enforce them.

❖ **Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation, 2010**

In looking at the Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation, No. 699/2010 (Whistleblowers Proclamation), we focus on those provisions that protect whistleblowers, although it is important to note that the Whistleblowers Proclamation also deals with protection of witnesses.

The Whistleblowers Proclamation is aimed at granting protection to persons who have given, or have agreed to give, information in the investigation or trial of an offence involving a suspect punishable with rigorous imprisonment for 10 or more years or with death, and where the offence may not be revealed or established by means other than the information provided by the whistleblower, and where it is believed that the threat of serious danger exists to the life, security, freedom or

property of the whistleblower – article 3. Article 4 sets out the various types of protection measures that are available to a whistleblower, including being part of a witness protection programme and immunity from prosecution.

Whistleblower legislation is important because it assists in the uncovering of serious crimes, often in respect of corruption at senior levels of government. It is obviously only as effective as the effectiveness of the protections provided to whistleblowers.

4 REGULATIONS AFFECTING THE MEDIA

In this section you will learn:

- What regulations are
- Key regulations that affect the media – print and broadcast
- Key regulations that regulate the making of films

4.1 Definition of regulations

Regulations are subordinate legislation. They are legal rules that are made in terms of a statute or proclamation. Regulations are legal mechanisms for allowing a body other than parliament to make legally binding rules governing an industry or sector without needing parliament to pass a specific statute thereon.

4.2 Key regulations governing the print and broadcast media

4.2.1 Code of Conduct for the Mass Media and Journalists on the Manner of Reporting About Elections Regulations, No. 6/2010

Article 59(4) of the Electoral Law Amendment Proclamation 532 of 2007 empowers the National Electoral Board to develop a set of regulations containing a code of conduct for the mass media and journalists when reporting on elections. These have been promulgated in the Code of Conduct for the Mass Media and Journalists on the Manner of Reporting About Elections Regulations, No. 6/2010 (Elections Regulations). Key features of the Elections Regulations which apply to any journalist or media house engaged in the production or dissemination of news, reportage or information concerning elections, include the following:

RESPECT FOR THE LAW

Article 5 of the Elections Regulations requires every journalist and media entity to comply with the constitution and other laws and regulations.

RESPONSIBILITIES OF JOURNALISTS

Article 6(1)–(12) of the Elections Regulations sets out the responsibilities of journalists, which include:

- Reporting accurately and without bias
- Reporting only fact-based information, the origin of which is known to the journalist
- Not suppressing essential information
- Observing professional secrecy regarding the source of information obtained in confidence
- Reporting in a balanced manner, which requires seeking comment from all sides to a story
- Correcting published information that is found to be ‘harmfully inaccurate’
- Reporting the views of candidates and political parties directly and in their own words where possible
- Avoiding language or expressions that may further discrimination or violence on any grounds including race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins
- Properly contextualising when reporting the opinions of those who advocate discrimination or violence and reporting the opinions of those against whom such opinions are directed
- Not accepting any inducement from a political party, candidate or any other source
- Not making any promises to a political party or candidate about the content of a news report
- Taking due care in reporting the findings of opinion polls, including informing the public on who commissioned and carried out the poll and when, how many people were interviewed and where, the margin of error and the exact wording of questions

- Avoiding the following ‘grave professional offences’:
 - Plagiarism
 - Malicious misrepresentation
 - Calumny, slander, libel or unfounded accusations
 - Acceptance of a bribe in any form in consideration for either publication or suppression of publication.

RESPONSIBILITIES OF THE MEDIA

Article 7(1)–(14) of the Elections Regulations sets out the responsibilities of the media, which include the following:

- The media must clearly separate facts from comment.
- When reporting the news, the media must reflect the facts as honestly perceived by the journalist.
- Comment may reflect the editorial policy of the publication.
- Publicly owned media ought not to express an editorial opinion for or against any political party or candidate.
- Publicly owned broadcast media have a duty to be balanced and impartial in their election reporting and not to discriminate against any party in granting access to on-air time.
- If media houses accept paid political advertising, they shall do so on a non-discriminatory basis and at equal rights for all political parties.
- Media houses shall cover news, interviews, information or current affairs programmes or articles.
- The public media shall not be biased in favour of or against any party or candidate.
- The media shall provide equitable and regular coverage to all political parties, candidates and platforms.
- The media shall encourage and provide access to voters to express their opinions.
- The media shall promote democratic values such as the rule of law, accountability and good governance.

- The media shall ensure that every candidate or party that makes a reasonable claim of having been defamed or otherwise injured by a broadcast or publication, shall either be granted the opportunity to reply or shall be entitled to a correction or retraction. The reply, correction or retraction shall be broadcast or published as soon as possible.
- The media shall provide news coverage of press conferences and public statements concerning matters of political controversy caused or made by the head of government, government ministers or members of Parliament subject to a right of reply, particularly by those also standing for office.
- Publicly owned media shall publish or broadcast voter education material.
- Every media outlet shall provide voter education that is accurate and impartial and must effectively inform voters about the voting process including: how, when and where to vote; how to register to vote; the secrecy of the ballot; the importance of voting; the functions of the offices that are under contention; and similar matters.
- Every media outlet shall provide voter education in minority languages and targeted at groups that traditionally may have been excluded from the political process, such as women and people with disabilities.
- Every media outlet shall monitor their own output to ensure that it conforms to the requirements set out in these regulations.

4.2.2 Broadcasting Service Grievance Handling Directive, No. 3/2008

The Council of Ministers has issued the Broadcasting Service Grievance Handling Directive, No. 3/2008 (Grievance Directive) acting in terms of article 47 of Proclamation 533, the Broadcasting Proclamation. Key features of the Grievance Directive include the following:

FORMS OF GRIEVANCE

Article 3 of the Grievance Directive grants any person the right to petition the Ethiopian Broadcasting Authority (EBA) in respect of any broadcaster. Note that article 9 of the Grievance Directive makes it applicable to all public, commercial and community broadcasting services in Ethiopia. Such a petition must include:

- The name and address of the petitioner

- The name of the broadcaster, type of broadcasting service, causes of the grievance and date and time thereof and title of the relevant programme
- The violation of the right or injury giving rise to the grievance
- If the grievance has previously been submitted to the broadcaster, the results thereof or the reply thereto are to be stated.

If similar grievances in respect of the same broadcaster are submitted by different aggrieved persons, they can be considered together by the EBA.

UNACCEPTABLE GRIEVANCES

Article 4 provides that the following kinds of grievances may be rejected out of hand:

- Where a court has jurisdiction
- If the case is still pending before court
- If the cause of the grievance is older than 30 days. Note, however, that where a complainant submits copies of the transmitted programme, the complaint may be considered for a period of up to six months.

DISCLOSURES OF TRANSGRESSIONS OF LAW BY BROADCASTERS

Article 5 of the Grievance Directive empowers any person to give information to the EBA when a broadcaster transgresses the laws of the country, and the inspector of the EBA shall make a ruling thereon after examining the information provided.

DECISION-MAKING PROCEDURES

Article 6 read with article 8 of the Grievance Directive deals with the decision-making process on grievances and provides as follows:

- The EBA is to assign an expert to register complaints.
- Once it is found that it is necessary to examine a complaint, a grievance hearing team reviews the case by gathering necessary evidence and information, including calling for the broadcaster's response to the grievance, which must be responded to within five days.

- A decision of the grievance hearing team must be communicated to the petitioner and the broadcaster in writing.
- An appeal against the grievance hearing team's decision can be made to the EBA's management committee within 14 days.
- The management committee's decision is given after examining the grievance and the decision of the grievance hearing team.
- If the complainant or the broadcaster is dissatisfied with the decision of the management committee, a further appeal can be submitted to the board of the EBA within 14 days. The board's decision is final.

MEASURES THAT CAN BE IMPOSED ON BROADCASTERS AS A RESULT OF A GRIEVANCE

Article 7 of the Grievance Directive provides for the following kinds of measures that can be imposed on a broadcaster found to have caused a legitimate grievance:

- The broadcaster must arrange a proportional amount of airtime to give the corrected version within two days of the grievance.
- If the transmitted programme cannot be corrected, it must not be rebroadcast.
- The decision is to be broadcast.
- The broadcasters broadcasting service licence may be suspended or revoked.
- The matter may be referred to court if the case involves criminal or civil liability.

4.2.3 Community Radio Broadcasting Service Directive, No. 3/2008

The Council of Ministers has issued the Community Radio Broadcasting Service Directive, No. 2/2008 (Community Radio Directive) acting in terms of article 47 of the Broadcasting Proclamation No. 533/2007. Key features of the Community Radio Directive that are not repetitious of the provisions of Proclamation 533, include the following:

CATEGORIES OF COMMUNITY RADIO SERVICES

Article 3 of the Community Radio Directive provides for the following categories of community radio services:

- *Geographical*: To serve the needs of a community which is living in a specific geographical area and having common languages, culture, values and whose interest is not covered by any other media.
- *Common interest*: To serve the needs of the community which is not restricted to a geographical area and which has a common interest, such as:
 - An organisation of individuals or an institution that is providing a service in regard to education or work to satisfy the needs of those people or the institution
 - A common culture and history, where the service promotes and develops such common culture and history, including in respect of artistic value
 - An association of professionals, women and others in order to fulfil their objectives.

POWER OF TRANSMISSION EQUIPMENT FOR COMMUNITY BROADCASTING SERVICES

Article 9 of the Community Radio Directive limits the effective radiated power of transmission equipment to 1 kW.

NOTIFICATION OF CHANGES OF INFORMATION

Article 18 of the Community Radio Directive requires a licensee to notify the EBC in writing within 14 days:

- When transmission is terminated for more than one month
- Of a change of management
- Of a change of programme or transmission times
- Of a change of address.

PROGRAMMING REQUIREMENTS

Articles 19–24 deal with programming requirements applicable to community radio services:

- A community radio station is required to focus 60% of its programmes on community issues.
- A community radio station is required to give priority to music, singers and artists from the community.

- A community radio station is required to transmit programming in the languages chosen by the community.
- A community radio station is required to mention its name, address and motto on air.
- A community radio station is required to provide a scheduled programme and, except in the case of emergency government and public statements and current and necessary community issues, the licensee shall not transmit any programmes outside of the schedule.

MANAGEMENT REQUIREMENTS

Article 25 of the Community Radio Directive sets out the management requirements of a community radio service. These include:

- Having a general assembly of members or representatives of the community
- Having a board of no fewer than five and no more than nine members, elected from the community in a democratic way and on a voluntary basis
- Employing a general manager and technical manager on a permanent basis
- Having members of the community participate in administrative and programme preparation activities
- Requiring the management to ensure community participation in programme preparation, programme appraisals, and administrative and financial aspects in order to run the community radio service together
- Submitting an organisational document, in accordance with the EBA's requirements, to the EBA.

EDITORIAL POLICY

Article 26 of the Community Radio Directive requires a community radio licensee to develop editorial policies in accordance with the laws and directives of Ethiopia, and provide a broadcasting service that is credible, balanced and accurate.

4.2.4 The Commercial Radio Broadcasting Services Directive No. 1/2008

The Council of Ministers has issued the Commercial Radio Broadcasting Services Directive, No. 1/2008 (Commercial Radio Directive) acting in terms of article 47 of the Broadcasting Proclamation No. 533/2007. Key features of the Commercial Radio Directive that are not repetitious of the provisions of Proclamation 533, include the following:

INVITATION OF APPLICANTS

Article 6 of the Commercial Radio Directive makes provision for the EBA to invite applications for commercial radio broadcasting service licences by way of a notice published in the mass media. Note that the EBA has the discretion to invite public comment on the applicants but that this is not a legal requirement.

PROCEDURE FOR THE ISSUANCE OF COMMERCIAL RADIO LICENCES

Article 9 of the Commercial Radio Directive sets up the process for deciding upon the issuance of the commercial radio licence, namely:

- The licence team of the EBA submits the results of its initial screening (in accordance with article 23 of Proclamation 533, which is dealt with elsewhere in this chapter) with due explanations thereon to the chief executive (that is, the director-general in terms of article 12(2) of Proclamation 533) of the EBA.
- The director-general of the EBA makes a decision indicating those applicants who are to proceed to a second round.
- The licence team of the EBA evaluates those applicants against the criteria set out in article 8 of the Directive (which mirror the criteria set out in article 21 of Proclamation 533, which is dealt with elsewhere in this chapter) and forwards its recommendation to the chief executive with the list of applicants entitled to a licence and those to whom it would deny a licence.
- The chief executive makes a decision thereon, indicating who is entitled to a licence and who was denied a licence.
- Those applicants entitled to a licence must pay the prescribed fee within one month and sign the necessary documentation prepared by the EBA, failing which the licence shall be cancelled.

- Those applicants denied a licence are entitled to reasons for such denial and may appeal to the board of the EBA within 14 days of the decision of the chief executive.
- All licensees are required to register the licence issued by the EBA with the Ministry of Trade and Industry or the Regional Bureau of Trade and Industry as the case may be.

DUTIES AND RESPONSIBILITIES OF THE LICENSEE

Article 11 of the Commercial Radio Directive sets out the duties and responsibilities of the licensee. These are largely repetitious of the provisions of Proclamation 533 and it is not necessary to set them out in detail here.

LICENCE CONDITIONS

Article 12 of the Commercial Radio Directive provides that the EBA is to prepare a set of licence conditions based on conditions contained in the licence application and the licensee is required to sign these.

CHANGES IN RESPECT OF LICENCES

- Article 19 of the Commercial Radio Directive provides that the EBA's prior approval is required for:
 - An increase or reduction in the permitted capacity of the transmitter
 - Changes to the type, length and height of the antennae
 - Changes to the location of the transmitter or antennae
 - Variations in the contracts relating to the position or ownership of the broadcasting property
 - Changes in the holding of shares or transfers of shares in the licensee
 - Receipt of radio programming from foreign or domestic broadcasters to be transmitted on the commercial radio service.
- Article 20 of the Commercial Radio Directive requires notification to be given to the EBA for:
 - Discontinuance of transmission due to equipment failure
 - Dismissal or a change in the programme director
 - Changes of programmes and transmission hours
 - Changes of address.

RECORD KEEPING

Besides the programming records which are to be kept in terms of article 38 of Proclamation 533 (and which are dealt with elsewhere in this chapter), article 22 of the Commercial Radio Directive sets out the particulars that licensees are required to keep a record of, namely:

- Business plan and annual budget
- Accounting records and annual audit reports
- Investment activities
- Contracts and agreements concluded by the licensee or its agent
- Donors and non-monetary aid received
- A list of employees together with their position, years of service and a training scheme designed by the licensee
- The programme schedule and any amendments thereto.

PROHIBITION ON TRANSFER OF THE RADIO STATION

Article 23 of the Commercial Radio Directive prohibits the transfer, sale, lease or pledge of the licence or of any rights acquired in the licence. If the licensee is unable to carry out the broadcasting operations of the licence, it may return the licence to the EBA and apply for the necessary transfer to another party. However, only upon the approval of the EBA can a licensee transfer the broadcast equipment to another party.

This is a significant provision because it makes the commercial trade in broadcasting assets potentially extremely cumbersome and difficult because it requires a return of the licence prior to the transfer thereof, which is obviously fraught with commercial risk.

4.2.5 The Subscription Broadcasting Service Directive No. 4/2009

The Council of Ministers has issued the Subscription Broadcasting Service Directive, No. 4/2009 (Subscription Broadcasting Directive) acting in terms of article 47 of the Broadcasting Proclamation No. 533/2007. Key features of the Subscription

Broadcasting Directive that are not repetitious of the provisions of Proclamation 533, include the following:

DEFINITION OF A SUBSCRIPTION BROADCASTING SERVICE

Article 1(1) of the Subscription Broadcasting Directive defines a ‘subscription broadcasting service’ as ‘a foreign country broadcast transmission program service... and giving the service by using the set device or password’.

As one can see, the definition is extremely poorly drafted but it does make it clear that subscription broadcasting services appear to be defined only in terms of foreign programming.

APPLICATIONS FOR A SUBSCRIPTION LICENCE

- Article 4 of the Subscription Broadcasting Directive deals with the application form and supporting documentation that must be submitted by an applicant for a subscription broadcasting licence. Besides the usual information required in terms of Proclamation 533 (and which is dealt with elsewhere in this chapter), article 4(1) requires that the EBA’s application form include:
 - The types and numbers of channels to be transmitted
 - The system used to provide the service to customers.
- Article 4(2) also requires the following documentation to be submitted with a subscription licence application, namely:
 - The applicant’s memorandum and articles of association
 - Confirmatory documentation that the applicant is established by Ethiopian citizens
 - The agreement document between the applicants and the foreign country broadcast service organisation to provide the programming to the customers
 - A project study of the service
 - Other necessary documentation.

Note that applications for a subscription licence can be made at any time and do not require an invitation to apply to have been issued by the EBA. This is specifically provided for in article 5(1) of the Subscription Broadcasting Directive.

PROCEDURE FOR THE ISSUANCE OF SUBSCRIPTION BROADCAST LICENCES

Articles 5 and 6 of the Subscription Broadcasting Directive set up the process for deciding upon the issuance of a subscription broadcasting licence, namely:

- The EBA licence team evaluates the applicants and forwards its recommendation to the director-general with the list of applicants entitled to a licence and those to whom it would deny a licence.
- The EBA chief executive makes a decision thereon, indicating who is entitled to a licence and who was denied a licence.
- Those applicants entitled to a licence must pay the prescribed fee within one month and sign the necessary documentation prepared by the EBA, failing which the licence shall be cancelled.
- Those applicants denied a licence are entitled to reasons for such denial.

LICENCE CONDITIONS

Article 7 of the Subscription Broadcasting Directive provides that the EBA is to prepare a set of licence conditions based on conditions contained in the licence application and the licensee is required to sign these.

DUTIES AND RESPONSIBILITIES OF THE LICENSEE

Article 8 of the Subscription Broadcasting Directive sets out the duties and responsibilities of the licensee. These are largely repetitious of the provisions of Proclamation 533 and it is not necessary to set them out in detail here, save for those which relate only to subscription broadcasting, namely:

- Notifying the EBA of any change in any payment tariff charged for the service
- Notifying the EBA of channel type, channel numbers and content of the programmes transmitted to the customers
- Submitting programmes to the EBA which are provided to customers without payment.

PERIOD OF VALIDITY OF A SUBSCRIPTION LICENCE

Article 9 provides that a subscription licence is valid for a period of five years and may be renewed.

ADDITIONAL CHANNEL ACCREDITATION

Article 15 requires a licensee to obtain channel accreditation from the EBA for channels in addition to those previously licensed. Accreditation application is to be made on the prescribed form and the EBA is required to give written reasons for any refused channel.

CHANGES IN RESPECT OF LICENCES

Article 16 of the Subscription Broadcasting Directive provides that notification is to be given to the EBA within five days of any of the following happening:

- Changes of address
- When the licensee changes or terminates the agreement with the foreign country broadcasters
- Any other change of information provided to the EBA at the time of the licence application.

4.3 Key regulations that regulate the making of films

The Council of Ministers issued the Film Shooting Permit Council of Ministers Regulations 66/2000 (Film Regulations) in terms of article 5 of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 4/1995.

Article 5 of the Film Regulations provides that a foreigner wishing to shoot a feature or documentary film in Ethiopia shall obtain a permit from the Ministry of Information and Culture.

Note that article 3(1) of the Film Regulations specifically exempts film establishments 'which are permanently established and licensed in Ethiopia'.

Article 6 of the Film Regulations requires a foreigner to submit an application to the Ministry of Information and Culture not later than 10 days prior to the day on which he or she is due to commence filming. The application is to contain the following information and submissions:

- The purpose and title of the film
- The duration and location of the proposed film shoot

- The proposed total production cost of the film and the portion thereof that is to be spent in Ethiopia
- A copy of the film script together with a synopsis thereof
- Where a particular Ethiopian personality is to be portrayed in the film, a copy of a certified document of no objection from that person or his or her heirs
- In the case of a co-production involving an Ethiopian entity, a copy of the agreement indicating the responsibilities and liabilities of each party
- The nationality of the film crew, including passport numbers, countries issuing the passports, permanent and temporary addresses, and any other information required by the Ministry.

Article 7(1) of the Film Regulations requires the Ministry of Information and Culture to issue the necessary permit within three days provided the application has been duly made and the film permit fee (determined in terms of article 12 of the Film Regulations) has been duly paid.

Note that in terms of article 7(2) of the Film Regulations, the permit may indicate locations prohibited for filming.

Article 8 of the Film Regulations provides that where an applicant for a film permit wishes to use an aircraft for shooting the film, the applicant shall also obtain a flight permit from the Ethiopian Civil Aviation Authority, which may be applied for through the Ministry of Information and Culture.

Article 9 of the Film Regulations requires a permit holder to appear in person and sign an undertaking to adhere to the conditions of the permit and to respect the laws of the country, and on completion of the project to submit two English copies of the film produced to the Ministry of Information and Culture.

5 MEDIA SELF-REGULATION

Self-regulation is a form of regulation that is established voluntarily. A grouping or body establishes its own mechanisms for regulation and enforcement that are not imposed, for example, in a statute or regulation. Media bodies often introduce self-regulation in the form of codes of media ethics and good governance.

Sadly, media-self regulation does not appear to be effective in Ethiopia and we have

not been provided with any examples of self-regulatory codes which have been developed by Ethiopian media houses or organisations.

6 CASE LAW AND THE MEDIA

We were not provided with any case law dealing with media law issues as at the date of writing.

NOTES

- 1 <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html> and <https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Population+Ethiopia>, last accessed 30 June 2016.
- 2 <http://www.bloomberg.com/news/articles/2015-12-14/ethiopia-oromo-protests-trigger-fatal-ethnic-clashes-group-says> and <https://www.hrw.org/world-report/2015/country-chapters/ethiopia>, last accessed 30 June 2016.
- 3 <http://www.worldbank.org/en/topic/poverty/publication/ethiopia-poverty-assessment>, last accessed 30 June 2016.
- 4 <http://www.budde.com.au/Research/Ethiopia-Telecoms-Mobile-and-Broadband-Statistics-and-Analyses.html>, last accessed 30 June 2016.
- 5 <http://www.pressreference.com/Co-Fa/Ethiopia.html>, last accessed 30 June 2016.
- 6 <https://www.eff.org/deeplinks/2015/10/zone-9-bloggers-are-free-ethiopia-still-thinks-encryption-terrorism>, last accessed 30 June 2016.
- 7 <https://www.hrw.org/news/2015/01/21/ethiopia-media-being-decimated>, last accessed 30 June 2016.

