

## **Ethiopian hate speech and freedom of expression: an examination of hate speech and disinformation suppression laws**

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### **Abstract**

Freedom of expression is a fundamental human right for every person around the world. It is recognized by the United Nations as the most important instrument in the Universal Declaration of Human Rights (UDHR). As with most human rights, there are limitations and restrictions on freedom of expression. Domestically, the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution in its Article 29 describes the "Right of Thought, Opinion, and Expression. Sub-Article 6 of Article 29 has limitations on freedom of expression through laws. Hate speech is one of the most globally recognized restraints on freedom of expression. Thus, there is intolerance and hostility among certain societal groups that is caused by the spread of hate speech and false information. In combating these, the Ethiopian parliament passed the bill: Hate Speech & Disinformation Suppression Proclamation No. 1185/2020. The goal of this paper was to investigate the legitimate grounds for restricting freedom of expression and to analyze the Ethiopian hate speech and disinformation suppression proclamation through the lens of international human rights law in order to provide knowledge on the anticipated challenges and opportunities in the proclamation's implementation. The research employed doctrinal methods. Accordingly, the study found that although the law is in conformity with the Ethiopian constitution, it does not conform to international hate speech law standards and principles. The law is necessary in Ethiopia's current situation, but it has flaws. Hence, genuine implementation by judicial bodies and non-legal means, including creating awareness among societies, is crucial in mitigating the limitations of the law.

**Keywords:** Freedom of expression, hate speech, disinformation, human rights, Ethiopia

## **Introduction**

Expression is a matter of liberty and right. The liberty of thought and the right to know are the sources of expression (Keith, 2004). Free expression of ideas is the lifeline of democracy. Freedom of expression is integral to the expansion and fulfilment of individual personality (Hocking, 1947). Freedom of expression is essential in a democratic setup of a state where the people are the sovereign rulers. Freedom of expression has been considered as a necessary condition for a democratic polity (Ibid.).

Article 29 of the FDRE Constitution provides for the "Right of Thought, Opinion, and Expression. In addition to enshrining freedom of expression as a fundamental 'democratic right', the Constitution stipulates that the third chapter of the Constitution (i.e., its bill of rights) needs to be interpreted in accordance with the Universal Declaration of Human Rights (UDHR) and international human rights instruments ratified by Ethiopia. Accordingly, the relevant provisions of the UDHR, the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR) and other pertinent human rights instruments ratified by Ethiopia should be read alongside this constitutional provision in order to have a full picture of the legal regime that is expected to accord protection to freedom of expression in Ethiopia (FDRE Constitution, Article 9 &13).

Ethiopia has currently introduced legislation to combat hate speech and fake news by holding social media sites responsible for content that the government deems false. But like other countries' attempts to regulate the scourge of disinformation and hate speech spread online, the law has prompted free speech concerns.

To what extent could the state go in limiting rights based on legitimate grounds? How far can the state go in protecting human dignity, individual honor and reputation, or the integrity of the judicial process? There are some points that are worth noting in relation to this. First, we might end up in a situation in which excessive limitations based on legitimate grounds would severely undermine freedom of expression (even when there is a legitimate ground for limiting freedom of expression), unless some restrictions are set on the extent to which the state can limit freedom of expression. Therefore, some form of limitation on the limitations themselves is necessary (Turkey, 2005).

There are also some other considerations that need to be considered, especially in relation to the purposes and nature of freedom of expression and also specific to the Ethiopian context. It is very difficult to ascribe one single overriding purpose or function to freedom of expression. One cannot fail to acknowledge that facilitating debate on issues of public concern, self-governance, and the democratic process are some of the most important functions of freedom of expression (Brandenburg, 1969). In addition to these, freedom of expression seems to be of such a "fragile" nature that limitations upon it could have an unintended "chilling effect" unless care is taken in designing and implementing laws limiting the freedom (Chaplinsky, 1942). In particular, in the Ethiopian context, there is a need to be highly conscious of the nature and function of freedom of expression. The political culture is very intolerant of dissent and criticism in public (Timothewos, 2010).

This makes freedom of expression very fragile and will also make the potential chilling effect of the hate speech limitations more pronounced. Hence, it is important to make sure that limitations, even those based on legitimate grounds, will be carefully scrutinized when they relate to the expression of opinions related to political matters. Such scrutiny must preclude the stifling of dissent while protecting the honor and reputation of individuals, national security, and the like. Furthermore, given that it has the function of aiding self-governance and facilitating the democratic process, a careful and critical scrutiny of the magnitude of restrictions on freedom of expression is crucial to protect people from various forms of interference and pressure in the exercise of their rights (Girmachew and Sisay, 2008).

Currently, Ethiopia is undergoing a transition to multi-party democracy following the political reforms that began after the December 2017 meeting of the ruling coalition's Executive Committee and accelerated after the national leadership change in April 2018. A growing number of individuals and groups have taken advantage of the political opening to employ the internet and social media to spread information that misleads the public and encourages animosity among communities.

In a legislative response, the law entitled "Hate Speech and Disinformation Prevention and Suppression Proclamation" was approved by the cabinet and sent to the House of People's Representatives (HPRs), the legislative chamber that promulgates federal laws. The law was enacted on February 13, 2020, when the Ethiopian parliament passed the controversial bill

countering hate speech and disinformation (Hate Speech & Disinformation Suppression Proclamation No. 1185/2020).

#### Statement of the Problem

The spread of hate speech by different media, particularly through social media, endangers the peace and also instigates different kinds of human rights violations and crimes. Currently, the government of Ethiopia has enacted an anti-hate speech proclamation to counter the spread of hate speech (Hate Speech & Disinformation Suppression Proclamation No. 1185/2020). Though the proclamation that prohibits hate speech is necessary and timely, there are limitations that can be imposed by the government that might be subjective or biased, and it might jeopardize freedom of expression and an individual's right. This article proactively looks at the two arguments and examines the law's conformity with international law. In addition to this, possible implementation challenges of the law were discussed.

The purpose of this paper was to investigate the legitimate grounds for restricting freedom of expression and to analyze the Ethiopian anti-hate speech proclamation through the lens of international human rights law in order to provide knowledge on the anticipated challenges and opportunities in the proclamation's implementation.

#### **Research Methodology**

The study employed a doctrinal method, which is a core legal research method in the sense that it is research into the law and legal concepts (Hutchinson and Duncan, 2012). This involves a critical conceptual analysis of all relevant legislation to the matter under investigation (Hutchinson, 2014). At a doctrinal level, the following primary sources were analyzed: the rules and principles that make up the Ethiopian constitution; Hate Speech & Disinformation Suppression Proclamation No. 1185/2020; Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of Racial Discrimination; African (Banjul) Charter on Human and Peoples' Rights; General Comments; and The Camden Principles on Freedom of Expression and Equality.

#### **Results and Discussion**

Legitimate grounds for limitation of freedom of expression under International Human Rights Law (Three-part test)

The full enjoyment of the rights to freedom of assembly and association and the right to vote of individuals will be guaranteed if and only if the law permits a wide-range protection of the rights

of freedom of expression (UN Human Rights Committee, General Comment No. 34, Article 19, Freedoms of opinion and expression, 2011, Paras. 24 and 22). Therefore, a limitation on the right is not only an exception but also must follow the strict grounds and conditions for the limitations on the right in order not to allow an encroachment on the fundamental right of freedom of expression (Timothewos, 2010). The ICCPR, of which Ethiopia is a signatory, in its Article 20 obliges states to regulate hate speech. In general comment no 34, the Human Rights Committee stressed that while states are required to prohibit such expression, these restrictions must nevertheless meet the strict conditions set out in Article 19 of the same covenant. The hate speech law shall stick to the requirements of legality, legitimacy, and proportionality so as to respect the reputations of others, public order, and public morals (ICCPR, UN Doc. Resolution 2200A (XXI). Art. 19 (3). Likewise, freedom of expression is a fundamental human right, primarily guaranteed under Article 29 of the FDRE constitution. Yet, the right to freedom of expression is not absolute, as can be deduced from the same article of the constitution. Restriction on the right in Ethiopia will be allowed if and only if the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect the legitimate interests of national security, public morals, and the reputations of others, which means the limitation shall pass each element of the three-part test of legitimacy, legality, and necessity or proportionality (FDRE Constitution, Article 29 (6)).

#### Legality

It conveys that the restrictions have to be made through laws, and these rule out limitations that are not prescribed by the law, though they are based on a valid ground (Mendel, 2010). In the FDRE Constitution, valid legal limitations on the right of freedom of expression are permitted only through laws (FDRE Constitution, Article 29 (6)). Unless there are clear limitations on it through law, public authorities like the legislature, executive, or judiciary, cannot make restrictions on the exercise of the right of freedom of expression. The law enacted to limit the right to free expression must be clear, precise, and easily accessible (Mendel, 2010).

In this regard, the Human Rights Committee General Comment No. 34 lays out legal precision as a mandatory requirement during enactment of a law for restricting the right of freedom of expression with the purpose of enabling an individual to set his conduct accordingly, and it must be made accessible to the public. The limitation to be enshrined in traditional, religious, or other such customary law is incompatible with valid limitations because it allows for unwarranted

aggression on the right itself (UN Human Rights Committee, "General comment no. 34, Article 19, Freedoms of opinion and expression," (2011), Par.24). Moreover, the precision of the law has a vital meaning for a state which forbids judicial activism like Ethiopia. Without judicial activism, a vague law leaves the executive uncontrolled and the law will become a mechanism of silencing dissenting views (Mgbako et al., 2008).

### Legitimacy

The legitimacy test refers to the requirement that measures must be in conformity with laws and be acceptable to the general public interest (Yohanes, 2019). In this regard, international human rights instruments provide a few grounds by which freedom of expression can be legally limited (Gunatilleke, 2021). Any intervention with the right of freedom of expression must pursue at least one of the legitimate aims listed in the ICCPR, which are exclusive and other purposes are illegitimate (UN Human Rights Committee, "General Comment No. 34, Article 19, Freedoms of opinion and expression," 2011, Para. 52). The legitimate aims must be listed exhaustively as only those of the rights of others, the protection of national security, public health, or morals. This implies that the restriction is necessary for a pressing social need, that the reasons given by the state to justify the restriction are relevant and sufficient, and that any restriction on the right to freedom of expression must adhere to international standards to limit the scope of such restrictions under Article 19(3) of the ICCPR (Bakircioglu, 2008). Therefore, state parties which are obliged to prohibit hate speech under Article 20 of the ICCPR, as with other restrictions on the right of freedom of expression, also have the obligation to justify the restriction and enact their law in strict conformity with Article 19 of the same convention (UN Human Rights Committee, "General comment no. 34, Article 19, Freedoms of opinion and expression," 2011, Para. 52). Furthermore, state parties to the ICERD must prohibit hatred that is simply compatible with the right to freedom of opinion and expression (Committee on the Elimination of Racial Discrimination, General recommendation XV on article 4 of the ICERD, (1993) para.4).

The FDRE constitution on Article 29 and the International Human Rights instruments offer grounds or legitimate aims for restricting the right of freedom of expression (Timothewos, 2010). These limitations are levied to protect the honor and reputation of individuals, the well-being of the youth, and the prohibition of propaganda for war as well as public expression of opinion intended to injure human dignity (FDRE Constitution, Article 29 (6)).

### Necessity and proportionality

Necessity and proportionality are principles by which to justify the validity of any restrictions placed on the fundamental right of freedom of expression. This means that the right to freedom of expression can be limited if it is necessary and proportionate to protect a legitimate objective, such as the rights of others, national security, public order, public health, or public morals. This part presents a high standard to overcome by a state seeking to justify its restriction, as the state must persuasively establish the necessity and the proportionality of the restriction (UN Human Rights Committee, "General Comment No. 34, Article 19, Freedoms of opinion and expression," 2011, Para.22). More precisely, the restriction must be no more than absolutely required to achieve that aim and proportionate to that goal.

### Analysis of the Ethiopian Hate-Speech and Disinformation Suppression Proclamation No. 1185/2020 in the Lens of International Human Rights Law

Many activists, academics, and human rights defenders are concerned about the potential impact of the New Hate Speech & Disinformation Suppression Proclamation No. 1185/2020, which was adopted by the House of People Representatives.

Under article 29 sub-article 6 of the Ethiopian constitution, freedom of expression can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth and the honor and reputation of individuals (FDRE Constitution Article 29(6)).

From this, we can say that the legitimate ground of limitation is prohibited by the FDRE constitution. In light of this, the new Ethiopian hate speech and disinformation suppression proclamation falls within the legitimate grounds of limitations. The Ethiopian constitution under Article 29 stipulates legal limitations on freedom of expression by stating that any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law. In addition to enshrining freedom of expression as a fundamental 'democratic right', the Constitution stipulates that the third chapter of the Constitution (i.e., the Bill of Rights) should be interpreted in accordance with the Universal Declaration of Human Rights (UDHR) and international human rights instruments ratified by Ethiopia (FDRE Constitution, Article 13). Hence, the content of the proclamation should be read in light of international law and standards.

Accordingly, the proclamation under Article 1 defines "hate speech" broadly. For instance, hate speech means speech that incites hatred, discrimination, or attack intentionally against a person or an identifiable group, based on ethnicity, religion, race, gender, or disability, and this broad definition can enable authorities to censor any expression on the basis of its supposed accuracy (Hate Speech & Disinformation Suppression Proclamation No. 1185/2020).

Moreover, under Article 2, the proclamation defines "disinformation" as speech that is false, is disseminated by a person who knows or should reasonably have known the falsity of the information, and is highly likely to cause a public disturbance, riot, violence, or conflict (Ibid).

Besides, under Article 4 & 5 "Prohibition clause", disseminating hate speech by means of broadcast, print, or social media using text, image, audio, or video is prohibited (Ibid). In addition, the proclamation prohibits disinformation by means of broadcast, print, or social media using text, images, audio, or video. Also, it prohibits anyone from possessing such a message in the form of publication or articles (Ibid). Further, Article 5 prohibits spreading information with main or core falsified content having a high tendency to incite violence or attack with full knowledge or with an obligation to know (Ibid).

Above and beyond, the proclamation under Article 7 stipulates criminal penalties for violations of hate speech and disinformation:

1/Anyone who commits acts prohibited by Article 4 faces up to five years in prison or a fine of up to 100,000 birr.

2/If an attack against a person or a group has been committed as a result of hate speech, the punishment shall be rigorous imprisonment not exceeding five years.

3/Anyone who commits an act prohibited by Article 5 faces up to one year in prison or a fine of up to 50,000 birr.

4/If the offense of hate speech or disinformation has been committed through a social media account having more than 5,000 followers, or through a broadcast service or print media, the person responsible for the act shall be punished with simple imprisonment not exceeding three years or a fine not exceeding 100,000 birr.

5/If violence or public disturbance occurs due to the dissemination of disinformation, the punishment shall be rigorous imprisonment of up to 5 years.

6/If no violence or public disturbance has resulted due to the commission of the offense of hate speech or disinformation, and if a court of law is convinced that the correction of the convict will



be better served through alternatives other than a fine or imprisonment, the court could sentence the convict to perform mandatory community service.

7/If the offenses provided for under this proclamation are committed through the mass media, the principles of the Criminal Code stipulated in the General Part of the Code regarding "Participation in Crimes Relating to the Mass Media" (Articles 42-47) shall be applicable. (Hate Speech and Disinformation Suppression Proclamation No. 1185/2020).

For the following reasons, these articles of the proclamation do not meet the requirements under the three-part test and Camden principles. The terms which are in the articles are subjective and indeterminate in scope. The exception is also vague, and it is very difficult for the person who is the author or possessor of the potential problematic expression to know they would be liable under the law. These uncategorized and subjective words may result in arbitrary application and abuse when interpreted. These words can cause fear of offense to a person who wants to express his ideas and engage in discussion.

The proclamation uses vague terms such as "hatred" even though it can use different international standards to define the term "hate". For example, under principle 12, the Camden Principles on Freedom of Expression and Equality define hatred as "the terms" hatred and "hostility" refer to intense and irrational emotions of opprobrium, enmity, and detestation towards the target group" (The Camden Principles on Freedom of Expression and Equality, 2009).

The hate speech proclamation does not define what "hatred" is. This is to say that the lack of a definition may lead to a wide range of interpretations of the term's meaning and it may be open to abuse when interpreted. As the proclamation does not define the important term, "what hatred means," it is not in line with the legality requirement under article 19(3) of the ICCPR.

Also, it criminalizes the "dissemination of disinformation," defined as speech that is knowingly "false," without defining this concept. It also sets criminal penalties if speech is not "truthful," which international law does not require. Contrarily, international law includes and restricts hate speech that is only likely to incite imminent violence, discrimination, or hostility, and it does not require truthfulness as the word is subjective.

Besides, the term "disseminating" does not clearly address whether sharing of a post or re-posting amounts to disseminating, which also lacks intent. It would have been great if the proclamation had used the term "advocacy" as stipulated in international standards rather than

disseminating, since the word disseminating is shortfall intent. In addition, the provisions allowing courts to use them to evaluate whether a specific speech is hate speech or not and what constitutes hate speech are not stated in the proclamation. This may cause an impartial and subjective court decision. As such, the fine in article 7, which is criminal liability, is quite enormous compared to the income of activists and writers on social media, so that this law will force individuals to self-censor free speech on the internet and even force individuals to reduce friends or followers to escape punishment. This may have a chilling effect on people's willingness to engage in open debate on some critical public issues.

Additionally, as to the Camden Principles on Freedom of Expression and Equality, the articles of the proclamation which have been discussed so far do not confirm to this internationally accepted standard of principle because under Principle 11: Restrictions 11.1. States should not impose restrictions on freedom of expression that are inconsistent with the standards outlined in Principle 2.2, and restrictions should, in particular, be provided by law, serve to protect the rights or reputations of others, national security or public order, or public health or morals, and be necessary in a democratic society to protect these interests. This implies, among other things, that restrictions: i. are clearly and narrowly defined and respond to a pressing social need; ii, are the least intrusive measures available, in the sense that there is no other measure which would be effective and yet less restrictive of freedom of expression; iii, are not overbroad, in the sense that they do not restrict speech in a wide or untargeted way, or go beyond the scope of harmful speech and rule out legitimate speech. iv, are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions they authorize. Principle 11: Restrictions 11.2. States should review their legal framework to ensure that any restrictions on freedom of expression conform to the above. The international standards specify that rules prohibiting and restricting speech should be narrowly defined and should not be overbroad in the sense that they do not restrict speech in a wide or untargeted way to prevent any abuse of restriction, but the proclamation does not narrowly define the words, and the words in the above articles are broad in scope and also are not defined narrowly and specifically (The Camden Principles on Freedom of Expression and Equality, 2009).

### Anticipated challenges and opportunities

The proclamation is believed to prevent and reduce crimes spread through hate speech and fake news, which affect the democratic system in the nation. The Bill aims to "prevent the communication of false statements of fact" and "enable measures to be taken to counteract" Accordingly, the Ethiopian legislators came up with the anti-hate speech law in order to avert the communication of false statements of fact. This is an interesting development, and it makes Ethiopia one of the handfuls of Sub-Saharan countries to have a modern content moderation law governing social media networks such as Facebook. This law hopefully can save the country from the anticipated violations of human rights that we have observed in world history, including Rwanda's genocide, which was caused by the spread of hate speech.

Despite this, the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, David Kaye, and other academics have already expressed their concerns that parts of the law do not meet international standards (A/HRC/38/35). And the proclamation does not give definition and meaning to some words, which can cause misinterpretation of the law by the enforcement body.

As the law is replete with provisions that could impinge on freedom of expression, the proclamation would have a frightening effect on freedom of expression in Ethiopia. It has a strict criminal provision that includes both imprisonment and a severe fine. The government and politicians may use the hate speech law as a tool of repression and to target their opponents.

On the other hand, Ethiopia needs to be very strict in interpreting legal provisions that restrict free expression. The law should not risk stifling critical public debate on important issues that ensure the participation of the people in the political affairs of their country, and the hate speech law should not become another tool for repression. The government is under pressure to respond to violence that has at times been aggravated by speeches and statements shared through social media and some societal groups have suffered displacement and human rights violations. Hence, in order to halt the spread of hate speech and disinformation in the country, proclamation of the law that punishes and criminalizes hate speech and disinformation is timely and necessary. However, the law that opens the door for law enforcement officials to violate rights to free expression is no solution.

## **Conclusion**

Over the past years, certain societal groups have suffered internal violence, displacement, and human rights violations that were caused by hate speech and disinformation. The ICCPR requires states to prohibit by law any advocacy of national racial or religious hatred that constitutes incitement to discrimination, hostility, or violence under Article 20 part 2, but these prohibitions must be subject to strict conditions outlined in Article 19 paragraph 3. The restriction may be legitimate only under certain conditions; the so-called "three-part test," which states that limitations must be provided by law, formulated with sufficient precision; the law must pursue a legitimate aim such as protecting national security, public order, public health, or morals; and the law must be necessary and proportionate, with a direct and immediate connection between the expression and the restriction. The Human Rights HR Committee has also made clear that limitations on electronic forms of communication or expression disseminated over the internet must be justified according to the same criteria as non-electronic or off-line communication (UN Human Rights Committee, General Comment No. 29). Besides, the Ethiopian constitution under Article 29 Sub-Article 6 lays down the grounds and conditions for limiting freedom of expression. Sub-Article 7 stipulates that "Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law."

Despite this, the Hate Speech & Disinformation Suppression Proclamation No. 1185/2020 uses terms that are subjective and indeterminate in scope. The exceptions are also vague, and it is difficult for the person who is the author or possessor of the potential problematic expression to know whether they would be liable under the law. When these uncategorized and subjective words are interpreted, they can result in arbitrary application and abuse, and they can cause fear of offence to a person who wants to express his or her ideas and engage in discussion. This leads to the conclusion that the limitations on freedom of expression outlined in the hate speech proclamation have a flaw when viewed through the lens of international law. Hate speech laws are promulgated by the government to halt the spread of hate speech in the country. They are necessary and proportional. There is a direct and immediate connection between hate speech expressions and the threats that cause unrest and human rights violations. However, the defective content in the proclamation could lead to misinterpretation and abuse, which further influences democratization.

## **Recommendation**

Based on the findings, the following recommendations are presented:

- The defective content in the proclamation that can create abuse needs to be addressed through the judicial system. Besides, other regulations have to be enacted to include a guarantee to prevent politicians from using the law to target their opponents. The law should not be a frightening mechanism for free speech that challenges the politicians in power.
- The Federal government needs to prepare enabling regulations to clarify vague terms and is also expected to define and give internationally accepted meanings to some important words in the proclamation.
- While applying the law, judges and public prosecutors should get advanced short-term training for the proper implementation of hate speech laws since the proclamation has loopholes and this could further increase excessive power for judges and public prosecutors.
- Work has to be done on media literacy and on how to report to the social media networks for content moderation.

Finally, the government needs to work mainly to tackle hate speech through non-legal means, for instance, by creating awareness among societies, faith-based institutions, and academia to engage in dialogue to tackle the problem.

## **Conflict of interest**

The authors declare that they have no conflict of interest.

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