

Analysis of Ethiopia's Hate Speech and Disinformation Prevention and Suppression Proclamation No.11 85 /2020

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Introduction

In 2018, the Ethiopian government embarked upon political and economic reforms aimed at addressing its long history of suppressing human rights online and offline.¹ The reforms came following the resignation of the former Prime Minister Hailemariam Dessalegn in February 2018 and the appointment of a new Prime Minister, Abiy Ahmed. As part of the reforms, the country has enacted a Hate Speech and Disinformation Prevention and Suppression Proclamation (No. 1185/2020) which aims to address hate speech which over the years has fanned inter-ethnic clashes that have left thousands dead in the Horn of Africa country.² The clashes have often been escalated by false and misleading information in the media, including social media.³ However, whereas government regulation is legitimate to control hate speech and misinformation, Ethiopia's new law poses a threat to freedom of expression and access to information online.

The objectives of the Proclamation, as stated in article 3, are:

1. Ensure that in their exercise of freedom of expression, individuals will not engage in speech that incites violence, is likely to cause public disturbance or promotes hatred and discrimination against a person or an identifiable group or community based on ethnicity, religion, race, gender or disability;
2. Promote tolerance, civil discourse and dialogue, mutual respect and understanding and strengthen democratic governance;
3. Control and suppress the dissemination and proliferation of hate speech, disinformation and other related false and misleading information.

While these objectives are novel, the Proclamation contains various provisions that undermine freedom of expression and access to information online, as highlighted below

¹ Tefo Mohapi, "The Internet Shutdown In Ethiopia Costs The Country Approximately \$500,000 A Day In Lost GDP," CIPESA, October 28, 2016, available at <https://cipesa.org/2016/10/the-internet-shutdown-in-ethiopia-costs-the-country-approximately-500000-a-day-in-lost-gdp/>; see also, CIPESA, "The Reforms Ethiopia Needs to Advance Internet Freedom: A Policy Brief," August 6, 2018, available at https://cipesa.org/?wpfb_dl=273

² Daniel Mumbere, "Ethiopia govt confirms thousands killed, millions displaced by ethnic clashes," Africanews, September 25, 2019, available at <https://www.africanews.com/2019/09/25/ethiopia-govt-confirms-thousands-killed-millions-displaced-by-ethnic-clashes/>

³ Simon Marks, "67 Killed in Ethiopia Unrest, but Nobel-Winning Prime Minister Is Quiet," The New York Times, October 25, 2019, available at <https://www.nytimes.com/2019/10/25/world/africa/ethiopia-protests-prime-minister.html>

Vague and Inexhaustible Definitions

The definitions presented in article 2 of the proclamation, specifically the definition of “hate speech” and “disinformation” are overbroad and ambiguous. In article 2.2, hate speech is defined as “speech that deliberately promotes hatred, discrimination or attack against a person or an discernable group of identity, based on ethnicity, religion, race, gender or disability” while article 2.3 defines disinformation as “speech that is false, is disseminated by a person who knew or should reasonably have known the falsity of the information and is highly likely to cause a public disturbance, riot, violence or conflict.”

These definitions do not meet the definitions of freedom of speech, expression and information laid down in article 19 of the Universal Declaration of Human Rights (UDHR), article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) and article 9 of the African Charter on Human and Peoples Rights. For instance, under the Proclamation, it is difficult to determine the scope of hate speech, namely where legitimate free speech stops and where hate speech starts. This overbroad definition renders it subject to discretionary interpretation by law enforcers such as prosecutors and courts, which creates ground for abusing citizens’ rights of freedom of expression and the right to information.

Similarly, the definition of disinformation in article 2.3 curtails expression by individuals. In many jurisdictions, criminalisation of disinformation has been held to be unconstitutional. Under article 19 of the UDHR, freedom of expression stretches beyond truthfulness of information. Further, the requirement in Ethiopia’s law for reasonable knowledge that the information disseminated is false directly has a chilling effect on freedom of expression online and proscribes individuals that may wish to express disagreement with certain information. Further, the article unfairly presumes that one who sends such information and not necessarily the author should be held answerable.

Problematic Prohibitions

Since the definitions of hate speech and disinformation are presented in a vague manner with capacity to widely affect freedom of expression, prohibitions of hate speech and disinformation in articles 4 and 5 respectively aggravate the problem. This is because the limitations arising from the definitions overlook the fact that they may limit freedom of expression and information dissemination.

Justifiable prohibitions would be as those spelt out in article 20(2) of the ICCPR to the effect that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” It should be noted that dissemination of information may not necessarily be aimed at promoting hate speech or disinformation. Hence, the prohibitions should have been informed by clear and concise definitions, excluding “dissemination”.

Notably, prohibition of dissemination of potentially false information or hate speech in absence of clear and unambiguous aims runs contrary to internationally acceptable minimum standards for restrictions on freedom of expression.⁴ Accordingly, any prohibitions should be clear as to the targeted offences and in consonance with the internationally acceptable limitations including, national security or of public order, public health or morals.

⁴ United Nations Special Rapporteur on the right to freedom of opinion and expression David Kaye Visit to Ethiopia, 2-9 December 2019 End of mission statement, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25402&LangID=E>

Necessity and Proportionality Tests

While the Proclamation repeals article 486 of the Criminal Code in article 9, which had been widely used to curtail freedom of expression, harsh penalties have been reintroduced in the Proclamation.⁵ The proclamation prescribes more punitive fines and imprisonment sentences of up to 100,000 birr (USD 2,907) or two years imprisonment for hate speech (article 7.1); one to five years imprisonment where an attack is made against a person or a group (article 7.2); and up to a year of imprisonment or up to a fine of 50,000 birr (USD 1,454) for disseminating disinformation (article 7.3). In the circumstances, fines for hate speech would be considered proportionate if they ranged between 5,000 to 10,000 birr (USD 145 to 290) and imprisonment ranging between one month and 6 months.

Further, the law introduces harsh penalisation of hate speech or disinformation over social media accounts with more than 5,000 followers. The sentence prescribed is imprisonment of up to three years and a fine of 100,000 birr (USD 2,907 (article 7.4), but where violence or a public disturbance occurs as a result of dissemination of disinformation, the punishment is “rigorous imprisonment from two year up to five years” (article 7.5). The punishment of the offender is left to the discretion of the court where there is no actual violence or public disturbance (article 7.6). Notably, the fines and imprisonment sentences prescribed in article 7 fail to meet the necessity and proportionality tests which are set down in article 19(3) of the ICCPR. The two tests are usually used to determine whether there is indeed a pressing social need that justifies a particular limitation on freedom of expression.⁶

Liability of Internet Service Providers and Internet Intermediaries

Article 8.1 requires providers of social media services to “endeavour to suppress and prevent the dissemination of disinformation and hate speech through its platform.” Article 8.2 requires social media service providers to act within 24 hours to remove or take out of circulation disinformation or hate speech upon receiving notifications about such communication or post from the Ethiopian Broadcast Authority. The two provisions effectively limit content flow by imposing obligations on providers to not only limit dissemination of information but also remove content within 24 hours. Measures aimed at holding intermediaries liable for content policing contravenes international human rights instruments including the UDHR (article 19), ICCPR (article 19) and the African Charter on Human and Peoples Rights (article 9)

⁵ The repealed article 486 of the Criminal Code Proclamation prohibited the inciting of the public through false rumours to the effect that “Whoever, apart from crimes against the security of the State (Arts. 240, 257 (e) and 261 (a)): a) starts or spreads false rumours, suspicions or false charges against the Government or the public authorities or their activities, thereby disturbing or inflaming public opinion, or creating a danger of public disturbances; or b) by whatever accusation or any other means foments dissension, arouses hatred, or stirs up acts of violence or political, racial or religious disturbances, is punishable with simple imprisonment or fine, or, in serious cases, with rigorous imprisonment not exceeding three years.”

⁶ See for instance, Dominika Bychawska-Siniarska, “Protecting the Right to Freedom of Expression under the European Convention on Human Rights: A handbook for Legal Practitioners,” (Council of Europe, 2017): 44

Conclusion and recommendations.

Although the Proclamation has good intentions of curbing hate speech in Ethiopia, it fundamentally restricts freedom of expression online and the right to information. Further, the proclamation has a chilling effect on online and offline rights, which could lead to self-censorship. For instance, Journalist Yayeew Shimelis was on April 21, 2020 arrested for allegedly attempting to incite violence by spreading false information contrary to article 5 of the Proclamation and charged by the high court Lideta branch.⁷

The government should accordingly repeal or amend the law to ensure that it promotes an online and offline environment that progressively facilitates the enjoyment of free speech and access to information in line with international and regional human rights instruments.

Civil society should work collaboratively in advocacy to cause repeal or amendment of the law, while also monitoring and documenting government and private sector actions in the course of its implementation.

⁷ Mahlet Fasil, "News Update: Prosecutors Charge Journalist Yayeew with Newly Enacted Hate Speech Law," Addis Standard, April 21, 2020, available at <http://addisstandard.com/news-update-prosecutors-charge-journalist-yayeew-with-newly-enacted-hate-speech-law/>

About CIPESA



CIPESA was established in 2004 under the Catalysing Access to Information and Communications Technologies in Africa (CATIA) initiative, which was mainly funded by the UK's Department for International Development (DfID). CIPESA is a leading centre for research and the analysis of information aimed to enable policy makers in East and Southern Africa understand ICT policy issues and for various stakeholders to use ICT to improve governance and livelihoods.

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