

**St. MARY'S UNIVERSITY COLLEGE  
FACULTY OF LAW**

**LL.B THESIS**

**CRITICAL ASSESSMENT OF THE  
BROADCASTING SERVICE PROCLAMATION  
NO. 533/2007 IN LIGHT OF THE  
PRINCIPLES OF THE RULE OF LAW**

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**ADDIS ABABA, ETHIOPIA**

**JULY,2008**

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Submitted in Partial Fulfillment of the  
Requirements for the Bachelor Degree  
of Law (LL.B) at the Faculty of Law,  
St. Mary's University College.

**ADDIS ABABA, ETHIOPIA**

JULY, 2008

## Acknowledgements

Special thanks is due to my advisor Ato Belachew Mekuria, for his comments, guidance and editorial instructions.

I would like to thank Ato Mekuria Mekasha (a colleague) also for his support with additional source material.

I am also thankful to Woizerit Mekdes Tekeste, for adjusting the writing of this paper into her busiest schedule.

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# Part I

## 1. Introduction.

Freedom of expression is a widely accepted and recognized as right among democratic societies. It is also a right that is given recognition and protection by international organizations. Freedom of expression is a universal human right.

“Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. This right is reflected in Article 9 of the African Charter on Human and people’s rights, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 13 of the American convention on Human Rights.”<sup>1</sup>

All members of the UN had already signed the Covenant on Civil and Political Rights (ICCPR) and its Article 19 also confirms the inviolability of these rights. Many states have also adopted these rights as parts of their national laws.

The Constitution of the Federal Democratic Republic of Ethiopia under Article 29 also gives emphasis to the respect of these rights. While Article 29 (1) states “Everyone has the right to hold opinions without interference”. Article 29 (2) goes

*1. Eve Salomon-Guidelines for Broadcasting Regulation (Page 10, para. 2)*  
***NB.*** *This Guidelines is prepared by Eve Salomon for the Commonwealth Broadcasting Association and UNESCO. It is not for commercial purpose and launched in 2006.*

on, providing “Everyone has the right to freedom of expression without any interference. The 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.”<sup>2</sup>

This Constitution which has come to effect since 21<sup>st</sup> August, 1995 revealed that it has adopted these fundamental rights that are recognized by democratic societies and international organizations. The Constitution of the country has strong points around these issues. The right to hold opinions without interference and the right to freedom of expression without any interference are adopted. The question is are these rights unencumbered and absolute rights? It can be understood Ethiopia also follows systems and principles that are in place to ensure freedom of expression. In many democratic nations these freedoms are subject to such conditions and restrictions as are prescribed by law and necessary in a democratic society. Many nations put restrictions to prevent disorder or crime to protect health or morals, to prevent the disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary as well as the protection of the reputation and rights of others.

*2. The Constitution of the Federal Democratic Republic of Ethiopia; Addis Ababa (21<sup>st</sup> August, 1995)*

Article 29 (6) of the FDRE Constitution also clarifies that these rights can be limited only through laws and Article 29 (7) indicates breaches of such laws will result in liability under the law.

From the intention of these provisions we can understand that the Constitution is calling for a regulatory body and laws that can guide this area.

Even prior to the coming into effect of the FDRE Constitution (Under the Transitional Government), a press law was proclaimed under Pro. No. 34/1992. In 1999 the Broadcast Proclamation No. 178/1999 was proclaimed, but only lived for eight years, before it is repealed by proclamation No. 533/2007. This latter Proclamation is the focus of my research and my study will try to assess it in light of the principles of the rule of law. It is universally recognized that the key principle of ensuring freedom of expression should be embodied in any system of broadcast regulation. On the other hand, there should be a regulatory body that ensures democratic structures and viability to the broadcast organizations through licensing.

Proclamation No. 533/2007 establishes Broadcasting Service and a Broadcasting Authority that shall play major roles in this area.

My research is based on this Proclamation by dividing its parts into four major categories. The first part is devoted for



introductory issues followed by statement of the problem. The second part is the literature review, which shares the practice of nations that are with long traditional experiences on the media regulation, democratic processes and freedom of expression.

The third part tries to look into the legality of the Broadcast Proclamation No. 533/2007 and sees critically into the main parts of its provisions in light of the rule of law. Part four provides conclusions to the finding of my study and gives suggestions or recommendations. Here the strengths of the Proclamation along-side with the weaknesses witnessed will be entertained.

## **1.1 Statement of the Problem:**

Broadcasting is the most powerful means of communication. In many countries with high rates of illiteracy or poverty, the only means of getting news and information is through the radio. Television is not accessible to the larger part of the society. In economically more developed countries television service is replacing the radio and taken as the most trusted and main source of news. Television also provides education and entertainment to this area of the community. In this area radio is forced to stay out-doors and used mostly in cars while driving. But, the developing countries like Ethiopia, are still looking to radio as the most authoritative source of news, information, education and entertainment.

Since the early days of the Rule of Haile Sellassie that introduced the modern Broadcast technology, Ethiopian Governments had clearly understood what these media mean and had its control with firm hands. Especially during the era of the Emperor and the subsequent Military Government understood that whoever controls the content of what is watched and heard can manage the outlook and attitudes of the people. Standing at this point neither of these government thought to give a way to free expression of ideas through the means of liberalizing the broadcast media. Radio and television remained in the hands of the government with strong content control and production outputs supervision.

As the Government of Haile Sellassie and the Military regime used to reason out, it's true sometimes restricting content can be a means of protecting citizens from harmful material. But, the major reason behind the curtain is restricting citizens' access to news and information in order to maintain strong government control to prevent opposition views and opinions from being heard or seen. During the era of these two regimes neither the parliaments nor the general public openly able to discuss on the issue of press freedom and regulations that led to the legalization of its operation. Talking on the issue of press freedom and private media was also unthinkable by the then conscious level of the majority citizens. Even thinking about these rights could have brought some dangers as the practice of government control was thought to be the only legal means.

In 1991 when change of government took place in Ethiopia, democratic rights and the questions of the rule of law began to come forward by different political groups. In 1992, the Transitional Government of Ethiopia proclaimed the press proclamation No. 34/1992 which is still operative with the exception of Articles 7 and 13.

The Broadcast Proclamation No. 178/1999 which is repealed by proclamation No. 533/2007 was also promulgated as a regulating law of the broadcast media. The latter Proclamation is the one that this research focuses on. Many critics argue that the press freedom in Ethiopia is not a type

of freedom that fulfils the principles of the rule of law. Especially, opposition party members and supporters as well as some international human rights groups raise the issue of Ethiopian Broadcast media as not still fulfilling the criteria of democratic media and the rule of law.

Some critics also argue and complain that the progress with regard to the broadcast regulation is slow and was proclaimed after the lapse of many years. Some also doubt on the practicality of the private TV broadcasting.

Some critics also openly forward their views that the Broadcast Proclamation No. 533/2007 restricts democratic rights that is given in the constitution of the Federal Democratic Republic of Ethiopia. Some believe that the Proclamation gives a way to government authority to interfere in the routine broadcasting business.

Based on these stated critiques my paper tries to assess what is meant by broadcast regulation, why it is important, whether freedom of speech is unencumbered right and where is the position of Proclamation No. 533/2007 in light of the rule of law.

## Part II

### Literature Review

#### 2. Characteristics of Broadcast Media

Broadcast media is a means of communication through words or through words and pictures. Broadcast media, especially the radio sector, is believed to reach the largest audience, as in many places with high levels of illiteracy or poverty.

It is easier to reach these parts of the society as it is by the word of mouth or radio. Although the television, which requires better economic capacity and infrastructure is the most trusted and main source of news in more developed areas; radio is more authoritative in larger parts of the world. Broadcast provides education and entertainment and also disseminate information instantly. Media researches indicate that broadcast is the most powerful means of communication as it has the power of words and persuasive pictures to influence the attitude of listeners and viewers.

This effect is also amounted with the rate of speed at which the message is received by millions of audiences. Due to these since the beginning of broadcasting media, governments have been well aware of its power and have always wanted to control its output.

## 2.1 What is broadcast regulation?

Many believe that it is difficult or rather incomplete to summarize the meaning of broadcast regulation in few words. The principles of regulating broadcast media, the areas that need regulation, the rights and obligations of the broadcasters and the regulatory domain of the authority responsible for this purpose need to be stated clearly.

Legal experts and international media consultants say that broadcast regulation includes licensing process, through which governments introduce and enforce the other purposes of broadcasting regulation: the democratic, economic, socio-cultural and consumer protection purposes.

“The basic condition and criteria governing the granting and renewal of broadcasting licenses should be clearly defined in the law and the regulations governing the broadcasting licensing, procedure should be clear and precise and should be applied in an open, transparent and impartial manner.”<sup>3</sup> This expression gives emphasis to the importance of clarity, transparency and impartiality in the law that regulates broadcasting. In one hand there is a part that recognizes the freedom of expression for the interest of the people. In the other, there is a need to respect the rules put to guide this area. This means broadcast regulation needs to balance freedom of expression that does not go so far as to incite crime. The belief is that the rules codified should enable

*3. Supra note 1- (Page 10 Para. 1)*

broadcasters, viewers and listeners and the law makers where the boundaries of acceptability lie. Based on the rules set, broadcasters must be ensured editorial independence or censorship by the state or any regulatory body. Arbitrary way of media management is disastrous for both parties and what is helpful is principles set out in primary legislation that are detailed with secondary legislation created by the regulatory body.

## **2.2 Why regulate broadcasting?**

Broadcast media is proved to be the most powerful means of all communications. It is accepted as powerful means for the reason that it can influence the audience's attitude and change their thinking either for better or worse. Since the characteristics of this media have such a great impact on the general public's behavior, it became a major concern to politicians in control of government power. Despite the fact that there are many other reasons to regulate broadcasting, this stated reason is taken as priority. Especially at current democratic society, controlling its power for the democratic process is the key purpose of broadcasting regulation.

Though the world is said to move towards globalization and common understanding, the sense of nationalism and maintenance of indigenous languages and protection of culture is given importance in larger parts of our planet. Due to this interest of the people, governments also use broadcast regulation to protect cultural independence.

“An advertisement can be literally true and still be misleading. Truth can be used, for instance, to create a misleading impression, to promise more than the product will deliver.”<sup>4</sup> Taking into consideration the power of this media, advertisements put on broadcasting need to follow certain regulations that respect the interest of the public. The degree of honesty, the decency and truthfulness of advertisements aired on broadcasting need to be regulated. In addition there are other ethical matters in the world of competition that require fair treatment. These issues and other related purposes are also reasons for regulating broadcasting.

“Broadcasting stations operate on wavelengths, or frequencies, in an electromagnetic spectrum. If two stations within range of each other try to operate on the same frequency, the result is interference, which may prevent both from being heard”.<sup>5</sup> The reason for regulating broadcasting as distinct from other media, say newspapers or magazines is its being a public resource which need to be allocated on a limited frequencies. Government justify that it is a scarce resource and there is only so much spectrum available for broadcasting use in each country.

So distributing this limited public resource in fair manner needs regulatory system that also avoids overlapping of wavelengths or frequencies.

4. *L. Holsinger, Media Law-Random house (New York, 1987, P.417)*

5. *Ibid (PP. 345-55)*



## **2.3 Who is to regulate broadcasting?**

Most of the developed nations have independent bodies that regulate public and private media based on the law of each individual country. For example the United Kingdom which has rich experience in this area has independent regulatory commissions empowered to facilitate and overlook the activities of public and private broadcast services. “A license must be granted by the appropriate authority, the Independent commission or the Radio Authority, for a television or radio station to broadcast.”<sup>6</sup> The British Government while justifying the need to regulate broadcasting and putting emphasis on the requirement of independent regulatory body states that, scarcity of the spectrum and the perception of broadcasting as a powerful and influential medium make the area to be regulated under independent regulatory system.

The Council of Europe also believes that in order to guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector, adequate and proportionate regulation is important for this area. The council believes that this move will serve to guarantee the freedom of the media while at the same time ensuring a balance between that freedom and other legitimate rights and interests.

*6. Eric Borendt, Lesley Hitchens - Media Law (Pearson Education Limited, 2000 England P. 67)*

Media researchers and legal experts in the field also advise that in order to preserve broadcasting as part of the democratic process, governments should aim to create independent regulators for broadcasting. They emphasize that regulation which is independent of the state is vital to preserve the right to freedom of speech.

What do these researchers and legal experts mean by the “regulation independent of the state”? They mean that system of appointment of the regulatory body should be set out clearly in law and should be done in a democratic and transparent manner.

The duties and responsibilities of the independent authority should be set out in law, along-side its accountability. Terms for termination of appointment, funding and conflict of interests have to be set out clearly, so that the appointees or the regulations can not be subject to political pressure and influence. Members of the regulatory authority must be free of any potential personal conflict of interest with the broadcasting sector.

## **2.4 Jurisdictional Issues**

Jurisdiction regards services broadcast terrestrially, using frequencies in the blocks, which have been assigned for broadcasting use under international agreements, to the country in question. As stated in the previous sections frequencies represent a valuable public resource and requires wise management. Each public and private broadcasters are assigned

to different frequencies as to avoid overlaps. To license the use of these frequencies also helps to place restrictions on what can and cannot be broadcast, and to charge the fee for the privilege of using the spectrum.

But in many cases broadcasting regulators are faced with the question of where their jurisdiction begins and ends. This problem is observed where cable operators are not licensed as broadcasting providers (such as independent telecommunications). It is also difficult to regulate the content of broadcast services, which are carried by cable from outside the country. Regulators can not talk about what percentage of air-time should be assigned to domestic services and non-domestic, because cable and satellite services are beyond their control. But when the cable operator and the broadcaster is originated or located in that given country, regulating the content as well as other culturally sensitive materials is possible for the regulators.

“Regardless of where the programming to be broadcast is actually made, or the nationality of the broadcaster if it is using a broadcast frequency that belongs to country ‘x,’ the country ‘x’ has the jurisdiction to issue a license.”<sup>7</sup> This is a case that puts the regulators of the cross-boarder receiving country under pressure, because they do not have any jurisdiction upon the broadcasters from outside the country.

*7. Supra note 1- (Page 25, para. 1)*

## 2.5 Licensing

“In addition to obligations imposed by the general law, broadcasting has been, and continues to be, subject to special regulatory obligations and restrictions. Licenses to broadcast are required while obligations are imposed upon broadcasters concerning the type and content of programmes broadcast.”<sup>8</sup>

The writers of the book took this concept from the laws and broadcast regulations of the British, a country that has long tradition of a broadcasting system, offering both public and private commercial services. The British media, as it has long traditional history and rich regulatory experience, is seen as a model to many democratic nations. The British Broadcasting Corporation (BBC), which was first named as the British Broadcasting Company, began broadcasting in 1922. Even though it was operating as a monopoly, it was a private Company granted license by the British Government. The structure of the BBC was revised in 1927, and it became a public broadcasting corporation under the name of British Broadcasting Corporation. BBC's becoming public broadcasting service did not bring its status under the state broadcasting. The Government thought that if the broadcaster is to be able to fulfill the public service mandate, then it will be important for it to be free not just of commercial pressures, but also of state influence and control. The legislatures of the broadcasting regulation believed. “. . . the manner in which the public

*8. Supra note 6- (page 66)*

broadcaster is established and the terms under which it operates will be crucial.”<sup>9</sup> Under this principle the BBC has gone through variety of structural reforms and regulations that helped its development to the present era. At present under the British Law, there are Commissions and Authorities as well as institutions that regulate, supervise and direct the general policy of the British Broadcast media. The commissions and Authorities are empowered to oversee and facilitate the activities and needs of the public and private media in the area of radio and television. Among these Independent Television Commission (ITC) and the Radio Authority, which are established by Broadcast Act of 1990 deserve mentioning. There are preliminary licensing requirements that all services to be licensed need to fulfill. The ITC and other authorized regulatory bodies work on these tests in the area of their responsibilities. The Broadcast Act of 1990 prohibits certain persons from holding broadcast licenses, if they are below the requirements. The applicants need to pass tests such as, nationality, affiliation or activity. In addition the Commission may choose the person who offered the highest bid and at the same time proposed quality service, including technological standards and skilled manpower. The ITC, the Radio Authority and other regulatory bodies work based on the laws governing their specific areas but have many similar guidelines in common while carrying out duties.

*9. Ibid (PP. 116-120)*

Licenses are offered setting out the basic conditions to which all licensees must comply. If the broadcaster does not perform according to the terms of the license, the regulator is then in a position to consider what punitive sanctions to apply. Coverage area, technical specifications, license term, license renewal, license fees, programme format conditions and sanctions (in case of non-performance) should be covered in the broadcasting licenses. These areas should be clearly stated on the licenses so that no arbitrary measures are carried out by the regulatory body.

Apart from these, the regulatory body may include certain requirements as to control the development and expansion of broadcasting; practical limitations on cable and satellite services. There are also expectations from commercial broadcasting services to provide at least a basic news service and to carry government produced broadcast in the event of national emergency. These areas and other related issues are covered in the contract of license between the regulatory body and licensees in the British media Law as well as in many other countries.

## **2.6 Ownership and Plurality**

“Each country, subject to international agreements, has the right to determine who is and is not competent to be broadcaster within its jurisdiction. But, it is vital for the criteria for competence to be fair, and fairly applied, and based on

sound principles, which do not serve to permit only those who are sympathetic to the government to become broadcasters.”<sup>10</sup>

Many countries do provide broadcast licenses based on the principle of fair competition and “fair and proper” criteria. Only very few nations hold the broadcast media under absolute government control and guide in arbitrary manner. Those who provide licenses to license holders under broadcast laws of each country use the phrase ‘fit and proper’ to persons qualified as broadcasters. Although there is no legal definition to the phrase “fit and proper” each country gives it individual legal interpretations. To most of them if the person is said “fit and proper” to hold a license, it means that the licensee is free from criminal record involving dishonesty, or other serious crimes. Legal experts advise that while applying the “fit and proper” test unproven rumors should not affect the applicant’s rights. The remedy to this is that the regulator must avoid acting as judge and jury on potentially criminal matters.<sup>11</sup>

Also most countries require the applicants to be legal persons, means that group of persons (individuals) who have formed company to run the broadcasting activities. The company is required to be economically competent, and technologically well-equipped and has skilled manpower and professionals to run the business.

The other key criteria which most countries apply to broadcast ownership is nationality. There is a desire to reserve

*10. Supra note 1 (p. 37,para.1)*

*11. Ibid (P.37 para 6,7) taken paraphrased, with some omission.*

domestic frequencies for domestic broadcasters. Some countries, like the USA do not allow foreign operators to control domestic broadcasters. Others permit the degree of foreign investment instead of total restriction. For example Australian Government currently allowed international media companies to own up to 15% of a television network. Following a Cabinet decision in 1955, foreign ownership of Indian media is not permitted. But, in some regions of the world considerable practices is replacing this restriction.

There are reciprocal agreements between certain countries. Europe can be the best example that there are no restrictions on ownership of broadcast media within the European Union.

Political organizations are not allowed to run broadcast media in many countries. The reason applying here is just to protect political impartiality and balance in broadcasting.

In some countries also there are prohibitive laws that restrict religious organizations from owning broadcast media. Turkey is among these nations that prohibit religious organizations from running broadcasting services.

Plurality in the broadcasting sense implies the number of different broadcasters competing in the broadcasting business. Many experts and media researchers believe that plurality of media ownership acts to safeguard diversity, to ensure that there is a sufficient range of sources of news, information and



opinion necessary for the proper operation of democracy. “A single owner will not want its services to compete with each other for the same audiences and advertisers, whereas different owners will all be competing for the same, populist middle ground.”<sup>12</sup>

Although many believe in the opinion given, including governments who regulate this area, there are arguments on the measurements of plurality. Authorities are concerned on a single company’s ownership over multiple broadcast platforms as well as its control. On the other hand broadcasters who are capable of running multiple broadcast platforms argue that what matters is the growth of media company to invest more money in programming and not the plurality of the broadcasters.

But, whatever arguments are there many governments in most democratic countries believe in the diversity of ownership and programme platforms.

For example in Cyprus, one company can hold only a single national television or radio license, regardless of the audience or revenue that service attracts.

“Australia is to introduce a ‘five pillars’ rule to maintain media diversity. This law will require at least five separately owned media companies in capital cities and four in rural areas. Subject to this test, a single media company will be permitted

*12 Ibid (page 39, para. 3 )*

to own one television station, two radio stations and a newspaper in the same geographic market.”<sup>13</sup>

Through close analysis of materials written on this issue it can be said that there is no conclusive preference on the argument. But, many countries prefer to apply the Cyprus or the Australian system of providing licenses.

When looking at control, in some countries like Turkey, relatives are not permitted to own shares in the same radio or television company at the same time. Some countries regulations also require a person who holds the majority share to run the broadcast company. The legislatures believe that a person with a majority share shall be accountable for the performance of a broadcast company.

Any change of the media ownership without the knowledge and permission of the regulatory body is also prohibited by many states.

Many democratic nations have some similar regulations that govern broadcast media. They also have some areas that are designed to regulate the specific situations existing in each individual country. What almost all have in common is the belief that broadcast media needs regulatory body, that facilitates the system and be responsible to grant licenses.

*13 Ibid (page 40, para 2)*

## **2.7 Content Regulation.**

Applicants of broadcast licenses are always required to agree to the program content regulations set by the authority in charge. After licenses are granted and broadcasters are in the business, they are always expected to keep the promises made on the content of program broadcasts. In many democratic states respecting the promises made regarding the types of programs or the proposals about the programs are one of the primary requirements to remain licensed. These promises of performance will be monitored by the regulator. But, it should be clear that program content regulation is not an editorial control and also different from the task of censorship. Eve Salomon in her guidelines For Broadcasting Regulation states, “There are many reasons for protection which are invoked through regulation the protection of democracy and ensuring the democratic right to free speech is not endangered by censorship; protection of the right to accurate information in news; the protection of cultural norms; and the protection of the quality of the viewing or listening experience”<sup>14</sup> These are some of the reasons that broadcast regulators raise to license and monitor the area. The broadcasting regulators believe that a frequency used by the broadcaster is a scarce public property, the holder must operate in the public interest. The question is what are these public interests?

*14. Ibid (p. 42, para.2)*

The British Broadcast Act of 1990, on its regulation of Television Programming enumerates, what areas and which parts of the programs are to be regulated as public interest. Broadcast Act 1990, SS 6 (1) - (6) and 7 (1) - (3) has enumerated detailed regulations that shall be respected by the licensees. The main themes are: - no offence in its programs against good taste or decency or likely to encourage or incite crime or offensive to public feeling.

The regulation also clarifies that news given in its programs is presented with due accuracy and impartiality.

It makes clearer also the impartiality is expected from the part of the broadcast in addressing political or industrial controversy or current public policy.

Responsibility of the programs regarding the content of religious issues is also emphasized and listed to be among the contents of control. The law also forbids technical device which, by using images of very brief duration or by other means, exploits or influence the minds of watching persons without being aware what has occurred.<sup>15</sup>

The content regulation rules that are operative in the British Broadcasting Acts, are not the unique ones to the country. Many European Nations and other democratic parts of the world are operating on similar lines. Some of these rules are even observed as ethical basis of the journalism

*15. Supra note-6 (pp. 117-119)-taken paraphrased with some detail omission*

profession. For example, the accuracy of news and impartiality (that requires equal or similar treatment of parties while reporting the news), are basic ethical matters' Accurate news requires the reduction of mistakes and errors so that news is well-verified and checked over before it is put on air for broadcast.

Impartiality rule puts responsibility on the broadcaster to give equal opportunity to individuals covered in news or other programs on controversial matters. It also requires the broadcaster to keep the service clean from being dominated by any political candidate or party. The service is required to treat each political party or candidate on similar basis by providing equal opportunities. The United States Broadcast Act on its Art. 315 states, "A station that permits any candidate for public office to use its facilities to reach an audience must stand ready to permit equivalent use by the candidate's opponent"<sup>16</sup>

The law also forbids a broadcaster from censoring the content of the candidate's messages. The broadcaster can permit broadcast services to candidates for fee or free, but what should be respected is equal opportunity to that candidate's opponents. Time sold to the political candidates of similar category has to be granted to the opponent's side. The subscription of this Act under its Art.312 also states that, refusal of the broadcaster to respect the rules of impartiality

*16. supra note 4 (page 366)*

can result in the loss of license.

The practices of many other nations also indicate that governments give due attention to the area of impartiality, especially, the parts involving political candidates, parties and election. In many countries, there are rules and guidelines for broadcasters, on the handling of party election broadcasts. This area is quite sensitive to political parties as it is believed that the more party candidates are favored on broadcast media, the more possibility of winning (getting) popular votes would be higher. To avoid this complex issue, governments usually want to regulate this by determining contents and way of treatment.

The broadcast programs' contents also need to be free from elements that incite hatred on the grounds of race, ethnicity, tribal origin, religion, sex or nationality. These principles are included in all nations' broadcast laws and also taken as parts of content regulation measurements. In addition to their being parts of the content regulation, these principles are the fundamental principles of human rights that require protection.

The contents of broadcast advertisements and the time they are put on air is also subject to content control. Decency, truthfulness, honesty and legality of broadcast advertisements are the areas where regulators want to pay attention to. In many countries there are also departments that receive viewer's complaints to assist the task of official regulators. But

each country's regulation gives different views and outlooks to the measurements of these acts and so there are no universal standards. A researcher and legal expert on media regulation, Eve Solomon states; "The most common reason for a licensee to get into regulatory difficulties is over a breach of programme content rules"<sup>17</sup> Eve Salomon comments further that official sanctions, suspension and revocation of licenses are mostly resulting from breaches of program contents regulation. She reasons out that suspension is advisable only where a broadcaster is in crisis and cannot manage to comply with regulatory rules. But suspending broadcasting as a punishment for content breaches is not fair as it is also punishing the audience.

She thinks that revocation of license maybe reasonable when there are serious breaches of laws, where broadcaster consistently shows disregard for rules and ignores instruction. She also insists that the content regulation should be clear and transparent to the contracting parties so that there will be no misunderstanding in the process. Whenever there is a breach in the promises of content broadcasts, the regulator should not act as a jury and the matter should be settled at the court of law.

*17. Supra note 1 — (page 51 para.6)*

## **Part III**

### **3. Broadcast Proclamation 533/2007**

It is a Broadcast Service Proclamation that has come into force on 23 July 2007. It was enacted by the House of Peoples' Representatives of Ethiopia to regulate the Nation's Broadcasting services. This Broadcast Service Proclamation has 50 Articles, from the 'General Part' to the 'Date of Effect'. The Proclamation brings under one regulatory system all broadcasting services; public, private, radio or television services and requires them all to be licensed and directed by an Authority established under the same Proclamation.

#### **3.1 Importance of having broadcast regulation**

Broadcasters believe that media regulation gives them clear vision and legal grounds to their performances as well as rights and duties. Each nation's authority and broadcasters suggest in common that the existence of broadcast regulation is important for promoting media freedom. Many believe that where the law that regulates broadcast media is non-existent, no broadcaster shall be caught liable for the content of broadcast materials.

Proclamation 533/2007 also on its preamble part indicates that, it is important to have such a law to promote the role of broadcast media and define the rights and obligations of persons, who undertake broadcasting services. It also states



the detailed roles of media in the development of the country as to implement basic constitutional rights, such as freedom of expression, access to information and the right to elect and be elected.<sup>18</sup>

Universally the importance of regulatory body for broadcast media is taken as a significant move for the advancement of democracy. The suggestion attached to its importance is that the regulation should be of a kind that promotes the freedom of expression and serves the public interest. The same principle works with the Ethiopian Broadcast Proclamation too. Since the preamble of this proclamation states that it is to serve the public interest and to exercise freedom of expression and the rule of law, its importance is not questionable. It is quite important to have such a system that regulates the broadcasting service area. But, what is equally important is to look into the detailed provisions of the Proclamation; the way it is structured, the power and duties of the regulatory body, as well as the scope of activities and responsibilities awarded to the broadcasters.

### **3.2 The Establishment of the Broadcast Authority**

Broadcast Proclamation 533/2007 under Article 4 establishes the Ethiopian Broadcasting Authority. Article 4 (1) states, “hereinafter” the Authority “is hereby established as an autonomous federal agency having its own legal personality”<sup>19</sup>

*18 Broadcast service Proclamation, 2007 Preamble, No. 533 Neg. Gaz year 13<sup>th</sup> No. 39*  
*19 Ibid.*

Article 4 (2) indicates that, The Authority shall be accountable to the Ministry of information. An establishment of organization or institution is seen and assessed from its structural adjustment and chain of command applied to its structural foundation. Regarding this issue one may ask whether or not the Authority established in the direction that facilitates freedom of expression.

### **3.3 The Powers and Duties of the Authority in Light of freedom of Expression**

Article 6 of the Proclamation clarifies that the objective of the Authority is to ensure the expansion of a high standard, prompt and reliable broadcasting service. Under Article 4 it is also stated that the Authority is an autonomous federal agency that is accountable to the Ministry of Information.<sup>20</sup>

In many developed and democratic nations the existence of independent and impartial regulatory body is taken as a prior indicator to lay down ground for the freedom of expression. When we say ‘independent’ it doesn’t mean that government is not guiding the regulator on policy matters. What is required is government’s involvement in the activities and decision makings of the regulatory body should be limited so that the regulator is free from political pressure and abide only by the rules provided by the legislature. “Countries of Eastern Europe who have emerged as a new democracies such as Czech and Poland have struggled to ensure that their broadcasting regulators are

*20 Ibid.*

sufficiently independent to refute allegations of government interference and political pressure”<sup>21</sup> Looking to the objectives of Proclamation 533/2007 we can say it is a law that can lay fertile ground for the freedom of expression. To make use of this law for the advancement of freedom of expression and the rule of law its structural organization should be a kind that assist the process.

Article 7 of the Proclamation enumerates the powers and duties of the Authority under fifteen sub-articles (Art. 7 subs.1 - 15). It begins with the power of ensuring the required conduct of the broadcasting services and goes to the performance of other required acts for the implementation of its objectives. Other areas of powers and duties include; issuance, suspension and cancellation of broadcasting service licenses, determination of site and coverage area of a broadcasting station, determination of type and standard and capacity of broadcasting equipments, power to control illegal transmission, planning, permitting and controlling the use of the radio wave, conducting development and improvement of the area, prescription of technical standards for different categories and standards of equipments, supervision of operations, decision making on complaints arising in relation to broadcasting services, fixing and collecting fees for broadcasting services and others.<sup>22</sup>

Looking through the powers and duties of the Authority one may understand that, the institution is expected to handle

*21 Supra note 1 (Page 16 para.6)*

*22. Supra note 19- (taken paraphrased with some omission of details)*

vast areas. These vast areas require the organization to bring in large numbers of planners, engineers, administrative and financial experts as well as legal advisors. Here we can see that some of the areas of powers and responsibilities are crammed all together and can create inconvenience to the objectives of the Proclamation. Many developed countries legislatures have long traditions in the area of broadcast regulation and as a result assign these vast areas to different commissions or authorities so that the freedom of expression is entertained in less procedural manners. The Ethiopian legislatures might have looked into the expenses it requires to create more than one body to regulate the broadcasting. One may also argue that it is possible to formulate more than one independent bodies on parallel lines under a given commission or authority without incurring much cost. This approach may serve the public service better with clearer identification of duties and responsibility areas.

The other area is accountability. Article 4 (2) of the Proclamation states that, the Authority is accountable to the Ministry. But, in no proceeding articles the discretions of the Ministry over the Broadcasting Authority is defined. Countries that have long traditional practice in the area, advise that it is good if their relations are identified clearly. The relations between the executive (the government) and the independent regulator has to be stated publicly and clearly so that the

freedom of expression would not be hampered some where in the middle, without identifying the responsible body.

Eve Salomon states on this concept, “Firstly, significant public policy objectives should be set out clearly in the broadcasting law.

Secondly, certain powers or the power of discretion can be reserved in law for ministers. (For example, in the Republic of Ireland a power is reserved in the Broadcasting Act for the relevant Minister to be able to instruct the regulator to write a new code on content matters.

Finally, it is absolutely vital for the relevant government Ministers and officials to maintain regular and open communication with the regulator. This should not be an opportunity for political pressure to be applied, but for an on-going dialogue between the parties so that they are each informed of issues as they develop. There should be no surprises for either the regulator or the government.”<sup>23</sup>

Normalizing relations with relevant government ministries and accepting directives on public policy matters are areas where the broadcast regulator should give respect to. But these relations and discretions of the relevant ministries have to be indicated clearly in laws. In Proclamation 533/2007, this part of clarity is lacking as it is only stating the accountability of the Authority to the Ministry.

*23 Supra note 1 (Page 22, para 5-7)*

### **3.4 Organization of the Authority in light of the Rule of Law**

“The rule of law might be seen in two ways. One, known as the formal view, merely requires that the appropriate formalities required by the legal system are observed, so that the legal system functions according to identifiable rules and government operates according to law rather than whim. The other, known as the substantive view, goes further by requiring the law to possess at least some substantive qualities”.<sup>24</sup> Ian McLeod’s definition and interpretation of the rule of law may help us to look into the organization of the Authority in light of the rule of law. Many democratic countries have nearly similar organizational structures of broadcasting regulations and it is a universally recognized approach to have such an institution. The logic behind the formation of this type of regulatory body is to enhance the freedom of expression. Broadcast Proclamation 533/2007 also shares similar status and based on the principle of the rule of law. But, how far does its structural organization is well set up to accomplish this mission?

Looking through some of the relevant articles on this issue may give us clear vision.

Article 8 of the Proclamation states that the Authority shall have a Board, a Director General, a Deputy Director General and the necessary staff.

This is a universally accepted approach. A board, a director general, a deputy director general and the necessary

*24 Ian McLeod- legal Method, Palgrave Macmillan (Houndmills, Hampshire 2002)*

staff is an accepted practice in many countries. In addition to this, countries who have long traditions in this area, make further clearer and take necessary precaution so that the rule of law will not be hampered in due course. They do make clear about the persons to be appointed to the broadcasting regulatory bodies and members to be included in the board. Eve Salomon writes on this issue, “There is no ‘right’ way to go about the appointment of members to a regulatory authority. However, what should be avoided is an appointment process which is based on political favor, or left solely to presidential or ministerial discretion. There are many different models to choose from, all intended to ensure the creation of a politically balanced, independent board”.<sup>25</sup>

Article 9 of the Broadcasting Service Proclamation indicates that number of members of the Board shall be determined by the Government. It also states that, the members of the Board will be drawn from different institutions and parts of the society on the recommendation of the minister which will be finalized by the appointment of the Government. Similar to that of the Authority’s, the Board is also accountable to the Minister.<sup>26</sup>

The Proclamation states that, members of the Board will be drawn from different institutions and parts of the society. The law is expected to indicate at least the areas of the societies

*25. Supra note 1 (page 19, para. 3)*

*26 Supra note 19 (taken paraphrased with some omission of details)*

and institutions from which the Board members are expected to be drawn. But this expected specific is not included by the legislature.

It is always advisable to state which these institutions and parts of the societies are, so that the rule of law and freedom of expression will not be abused in the process of interpretation. As Eve Salomon stated there is no single universal approach or treatment to this issue. But many countries do practice the tradition of putting specifics in their laws, regarding the combination of the regulatory board members. The following examples may help us to get clearer vision on my point.

“Estonia combines political balance with professional expertise on its Broadcasting Council. Four members are appointed by the parliament from amongst recognized specialists in related fields. The other five members are appointed from amongst the members of the parliament itself, on the basis of political balance.

The Italian converged regulator, ‘Autorita per la Garanzia delle comunicazioni’ has four members each elected by the senate and the chamber of Deputies. The president of the Authority is appointed by presidential decree on the proposal of the President of the Council of Ministers, in agreement with the Minister of Communications.

In Romania, the National audiovisual Council is composed of 11 members: three elected by the senate, three by the



chamber of Deputies, two by the president and three by the Government.

Germany operates a federal system of broadcasting regulation with each “state,” or “Lender,” having its own Media Authority.

Slovenia publicly invites applications for membership to its Broadcasting council, with the seven members appointed by the National Assembly for a (renewable) term of office of five years.

The UK also invites applications for membership of Ofcom, with applicants sifted initially by Professional recruitment consultants”<sup>27</sup>

These examples show us that countries who are big or small, rich or poor, with long democratic traditions or new democracies are trying to give due attention to freedom of expression and to regulatory bodies they establish, though they differ in approaches. Each country is also careful on the mode of appointment, that members who are skillful and can act independently to balance the public interest should be brought in as members of the regulatory board.

Other areas where many democratic countries give attention to is, defining the terms of appointment and dismissal of the regulatory body’s officials.

The legislatures believe that to set out in statute these terms, will help to ensure that dismissal as well as appointment is free from political pressures and only based on the terms of

*27 Supra note 1 (page 19, para. 5-10) (Taken with some omission of details)*

appointment or breaking the rules of appointment. The Ethiopian Broadcast Service Proclamation is silent on this principle and states no conditions.

Article 14 of the Proclamation states that, the budget of the Authority shall be allocated to it by the Government. In Ethiopia's case the broadcast industry is not in a position to assist the Authority's expenditure. The Government broadcasting organization which is known as Ethiopian Television and Radio Organization has long history of broadcasting, but not organized in a way that can make it-self profitable. The newly in-coming private radio stations are also at infant stages and can not be said profitable to afford to pay for the Broadcast Regulator.

Therefore in the Ethiopian case it is convincing that the expense of the Authority is funded by the Government and books of accounts are also audited by the government body. But it could be appropriate to indicate the prospect of the Authority, that with growth of the industry it can regulate through license and fee. This can help the Regulator to work towards the achievement of future economic independence.

Where the broadcasting industry is profitable and can cover the expense of the regulator, what is internationally accepted as best method is arranging funding of the broadcasting regulator, paid by the industry it regulates through license and other fees. These method helps the broadcasting regulator with economic independence from the executives.

With the infant broadcasting system of Ethiopia, it would not be realistic to try to apply such an approach. At the same time, it is necessary not to forget or overlook the inclusion of the future economic prospects of the Authority. There should have been some articles that indicate the future economic independence of the Regulator, together with the growth and development of broadcast media industry.

## **4. Broadcast Service Licenses**

There are generally accepted justifications that it is important to indicate and emphasize the central place of media freedom. The freedom to report and discuss matters of public interest helps broadcast organizations to perform their vital roles. The Ethiopian Broadcast service proclamation also intends to give this right to the broadcasters and at the same time needs to regulate the frequency distribution (allocation) and other related activities. To facilitate these duties categories of broadcasting services are identified.

### **4.1. Categories of broadcasting services**

Article 16 (1) of the proclamation states that “Categories of broadcasting services shall be public commercial and community broadcasting services”.<sup>28</sup> This categorization is the first of its kind in Ethiopian broadcast law and one can sense that the legal platform done by this Proclamation may lead the future of this sector to the development of free and independent public commercial and community broadcasting services.

### **4.2 What are these categories?**

The legislature defined the roles, rights and duties of these three broadcasting services under Article 16 (2, 3 and 4). As stated under art. 16 (2) (a-e) public broadcasting service is more of a type that reflects the government policy and a good example of state-run media. The public media is to enhance the

*28. Supra note - 19*

Participation of the public through the presentation of government policies and strategies as well as activities related to development, democracy and good governance. The provision gives details of what is expected of the public broadcasting service as presenting programs which inform, educate, and entertain the public, which promote and enhance cultures and artistic values of the public, which also reflects unity of the people based on equality.

Other area of duty for the public broadcasting service includes giving service to political parties that operate according to the Constitution and the electoral laws of the country on the basis of fair and just treatment.

The Proclamation also recognizes that the objective of commercial broadcasting is profit-making. But, there are duties given to it regarding community treatment, license area coverage of its programs, and inclusion of regional and national news in its programs and registration of the license before the Ministry of Trade and Industry or the Regional Bureau.

The duties and obligations of the community broadcasting services are not that much at variance from the public broadcasting services, except that they are limited to a given community rather than wider coverage of national services. In the community broadcasting service, language, culture and artistic values of the community is expected to be given focus. Participation of the members of the community in the preparation of its programs, inclusion of issues involving the

common interests of the community and providing community centered, informative and entertaining programs are elaborated as the main duties of community broadcasting services.<sup>29</sup>

### **4.3 The Rationale behind the categorization**

Categorization of broadcasting services into public, commercial and community services is a widely accepted practice in many developed nations. The degree of responsibility, the program content and conditions that regulate these three areas are different. Equally, the target audiences they serve are also different. In most cases, public services, which are taken as national services will be expected to carry greater public service obligations than commercial and community services.

Most countries also expect commercial television services which use national frequencies to provide at least a basic news service and to carry government produced programs on event of national emergency.

Regarding the community broadcasting service, many countries take it reasonable to apply local language obligations and to provide programming which is of a particular interest to the local audience. Community broadcasting services are bound to respect the interest of the community that they reach or cover.

*29 Ibid*

The Ethiopian Broadcast service Proclamation also takes the public service as a category that carries major economic, social and political obligations than the remaining two categories. Where state runs such a broadcast media fully or partially this nature is taken as an acceptable norm. But, what fully matters in the independence of the media is the way that broadcasting media is structured.

The duties and obligations stated under Articles that refer to commercial broadcast service (Art. 16.3) have universal characters and meet democratic standards. But in a practice of many democratic countries, commercial services are also obliged to carry political parties' messages in accordance with the law of the country for fee or free on the basis of fair and just treatment during election periods. Proclamation 533/2007 puts this obligation only on public broadcasting and is silent with the commercial services. Since the commercial service also use national frequencies, the obligation to carry political parties' message during election periods should have been assigned to this sector too.

As the broadcasting services are categorized under article 16 of the Proclamation, categories of broadcasting service licenses are also elaborated under Article 17. Article 17/1 (a-h) states the service license areas as:-

- Terrestrial to air free radio broadcasting service,
- Terrestrial to air free-television broadcasting service,
- Satellite radio broadcasting service,

- Satellite television broadcasting service,
- Satellite broadcasting service provided to customers for fee,
- Receiving and broadcasting foreign programs to customers for fee,
- Cable television broadcasting service provided to customers for fee,
- Other broadcasting services to be prescribed by the Authority.<sup>30</sup>

Here it can be noticed that about seven categories of broadcast service license areas are specifically stated. The categories stated give opportunities to broadcast service licensees to be engaged with the areas of their preference. This approach of license categorization is well taken and has universal character of broadcast service license classification.

#### **4.4 Requirement of license and invitation to applicants**

Article 18 (1) states that no person may undertake broadcasting service without obtaining a broadcasting service license from the Authority. Under Article 18 (2) it also states that a licensee can only operate one broadcasting station with one license.<sup>31</sup>

It is a well accepted norm at the global level that a broadcaster need to obtain a license from a state authority where he intends to give broadcasting service.

*30- Ibid*  
*31 - Ibid*



Each country has the right to determine who is and is not competent to be a broadcaster within its jurisdiction.

Each country also has a responsibility of distributing the frequency available in a fair and justifiable manner. So no person should be allowed to be a broadcaster without obtaining legal license that gives him the right to broadcast on a specified wavelength. It is also acceptable practice that a person operates only one broadcasting station with one license, since he has no right to claim for what he is not granted a license.

Article 19 of the Proclamation deals with invitation to applicants, an approach or treatment to be given to persons intending to compete for obtaining broadcasting service license. The Broadcasting Authority invites applicants by notice published in a newspaper having a wide circulation or communicated by other mass media. The notice shall disclose the category of broadcasting service for which the license is intended to be issued ...<sup>32</sup>

Most countries have some sort of licensing or permit system in place that can serve their media policy and availability of radio waves. In some countries they follow the licensing process to be done on a first-come, first-serve basis. Some follow the licensing process that the Ethiopian Broadcasting Authority is legitimizing to apply. Both ways are

logical and recognized as legal practices, but for the Ethiopian situation the invitation to applicants system seems preferable. This preference can be justified in two ways.

- a. When the licensing process is to be done on a first-come, first-serve basis the practical consequences would be in question and favoritism issue may arise.
- b. There are only limited number of radio waves to be awarded to applicants in the Ethiopian situation. Therefore, the question of who should have the right to be a broadcaster and how many different broadcasters should be there must be determined through invitation to applicants, which is presumed to be transparent.

#### **4.5 Unacceptable Application**

Article 20 specifies that any application may be rejected, without going into detail screening if the applicant fails to produce legal evidence to ascertain its financial capacity and source of financing and if he fails to produce detailed project proposal ...<sup>33</sup>

The financial capacity and project proposals are the two major areas on which many countries' broadcast regulators based their decision for the award or denial of broadcast license. The question of source of finance is sometimes

*33-Ibid*

difficult to verify and leads to subjective judgment. Thus many countries do not insist much on this issue as far as the status of the applicant is identified. What is common to many countries' broadcast regulators is that before license is offered basic conditions are set out and all the licensees must comply to these basic conditions.

#### **4.6 Criteria for issuance of license**

Article 21 of the Proclamation elaborates the conditions to be met for the issuance of license. It states that the Authority shall set criteria that enable it to evaluate the capability of applicants. But, reliability and sufficiency of the applicants' financial sources to run the service, capability of equipments and technologies listed in the applicants' proposal, organizational capacity, knowledge and experience, contents of the programs submitted and time allocations is underlined to be taken into consideration while the Authority sets out criteria.<sup>34</sup>

The legislature clearly stated that the Authority shall give attention to these areas while setting the criteria which enable it to evaluate the capability of applicants. Clear and effective criteria may help the regulator to select the right person that would carry on the broadcast business with good service. It can also ensure that licensees are responsible and also understand their responsibilities from the beginning.

**34. *Ibid***

As I have already stated in my literature part of this paper, these criteria are widely practiced and universally accepted in the area of broadcast regulation in many developed or democratic countries.

The Ethiopian legislature has recognized and accepted these standardized criteria which is believed to help for the selection of the relatively best capable persons from among many competitors. The detailed criteria to be worked out by the Authority is also equally important and should lead to the practicality and applicability of the Proclamation.

#### **4.7 Bodies not to be issued licenses**

Article 23 of the Proclamation deals with the persons not legally allowed to involve in the broadcast service business. This Article enumerates details of the bodies that may not be issued with broadcasting service licenses.

- The body that is not conferred with a legal personality,
- Organizations not incorporated in Ethiopia (with some exceptions),
- Organization in which its capital or its management control is held by foreign nationals,
- An organization of a political organization or of which a political organization is a shareholder . . . or its supreme leadership is shareholder,
- A religious organization,

- An organization of which its owner or any of its owners or a member of its management is convicted with a serious crime ... or lost his legal capacity,
- An organization applying for a television broadcasting service license while already having a license for television broadcasting service or more than one license for radio broadcasting service,
- An organization applying for a radio broadcast in service license while having a license for radio broadcasting service in the same license area or two licenses in different license areas,
- An organization of which more than 50% of its capital is held by another organization which carries on the business of print press or news agency or a person that owns more than 20% of the capital of such organization.<sup>35(a)</sup>

The Ethiopian Broadcast Service Proclamation prohibits these groups of persons from involving in the broadcast media business or from securing additional licenses in the areas stated. Until it is not contradicting with humanitarian issues and proved impartial, restrictions of licenses against some areas and refusal of additional licenses to certain class of persons is not taken as discriminatory measures. A state is expected to manage this area of the media in a fair, logical and legal manner and only required to provide rational legality

*35 (a) Ibid -(taken with some omission of details)*

of its action. From this point of view the restrictions and refusals stated under Article 23 of the Proclamation are based on some legal and public security grounds as well as the development stage of the broadcast media. States usually use licensing process to introduce and enforce the other purposes of broadcasting regulation, which are the democratic, economic, cultural and consumer protection purposes.

Let us look into some of the restricted or refused areas to show where the rationality or irrationality lies. In many democratic states broadcast media business is run or licensed to bodies that are conferred with legal personality and an individual is not allowed to be a sole proprietor of broadcast organizations. Only very few developed countries allow this area to sole ownership. The Ethiopian Broadcast service law also prohibits a body that is not conferred with a legal personality to get a license.

Many democratic and developed countries also prohibit foreigners or foreign capital management from controlling broadcast media service. Only some countries within the European Union and Australia (to any foreigner with some close supervision) allow foreign investment in broadcasting service. There are factors that lead to prohibition of foreign investment in the broadcast media sector. It is well known that the prime objective of foreign investment is gaining profit. Consideration of socio-cultural side of a given society is out of their domain. As they are not part of that society they may

also lack awareness and concern about the politics, socio-economic and cultural values of host countries. In most cases laws that govern foreign investors are also based on bilateral agreements that give them protection from that of the nationals'. As a result of all these factors, countries prefer to retain this powerful media sector in the hands of nationals, which is easier to regulate based on national laws.

The prohibitive measures taken against political organizations and their supreme leadership from being a shareholder or member of management of broadcast media service also have some legal grounds. Political bodies have prior objective of winning the minds and hearts of the people to gain votes that would enable them to hold political office. A political body that gets opportunity of holding broadcast license would use this opportunity to promote its political organization and member politicians rather than accommodating opponent's view. Partiality would follow and imbalance may result among the bodies favored with licenses and those without licenses. So, as a means of seeking to protect political impartiality and balance in broadcasting prohibiting political bodies from holding broadcasting licenses is acceptable. In a country where political balance is a particular concern restrictions should be legally considered to protect political impartiality and balance in broadcasting.

Another area that is prohibited to be issued broadcast service license under Ethiopian broadcast service law is a

religious organization. Governments have their logical or political approaches towards the treatment of religious organizations and as a result of this, each country has its own rules. But, most developed countries put no restrictions on religious bodies. There is a question whether an outright ban of religious organizations from this right violates the human rights to freedom of religious expression. But, countries who prohibit this right have their own justifications, such as reducing inflammability of religious conflicts and the limitation of frequency availability.

Article 27 of the FDRE Constitution recognizes freedom of religion, belief and opinion. Article 27 (1) of the Constitution recognizes these rights with all its forms, but without specifying the right to impart or broadcast religious messages on broadcast media. Article 27 (5) states, “Freedom to express or manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and necessary to protect public safety, health, education, public morality, or the fundamental human rights and freedoms of others, and to ensure the independence of the state from religion.”<sup>35(b)</sup> It may be arguable whether the provision under Article 27 (5) would give a way for the Broadcast Service Proclamation to restrict religious bodies from issuance of broadcast licenses or not. Whatever justification the Ethiopian legislature has in mind Article 23 (4) of the Proclamation restricts religious bodies from

*35 (b)-Supra note 2*



being issued with broadcast license. It is possible to argue for or against based on Article 27 (1) and 27 (5) of the FDRE Constitution. But, from logical point of view, I can conclude that this country cannot accommodate all currently operating religious organizations with issuance of broadcast licenses as it has only limited resources of radio waves or spectrum.

For the remaining other bodies that are denied broadcast service licenses there are justifications that would support the intention of the Ethiopian legislature. As about an organization which its owner or a member of its management is convicted of a serious crime, it is an acceptable practice that no government gives a broadcast service license to such a body.

Concerning the restriction on organization having more than 50% of its capital engaged in another media and the question of application for the second license in the same medium, radio or television, it is a matter of policy. Every country wants a direction which it thinks would help the development of that sector in practical applicability. From the intention of the Ethiopian legislature we can understand that the law wants to give priority to an organization that is ready to apply its efforts and capital on the broadcast service sector. It also takes preferential stance that an organization that is not issued with broadcast service license should get priority over a person who is applying for the second license of same medium. The grounds of these restrictions are well-based and

justifiable as well as sharing practices of some democratic countries.

#### **4.8 Validity period and Renewal of license, Expansion, License and annual fee**

Article 24 of the Proclamation states the validity period of broadcast licenses. It categorizes the validity periods into radio and TV and also considers it into national level and local level. It elaborates that where transmission is at national level validity period is 8 years for radio and 10 years for television, where the transmission is limited to regional state, 10 years for radio and 12 years for television, where the transmission is limited to local level, 12 years for radio and 14 years for television; for Addis Ababa 6 years for radio and 8 years for television. The community broadcasting service is valid for 5 years while short term broadcasting is limited to the validity not more than 1 year.<sup>36</sup>

The Ethiopian Broadcast Service Proclamation categorizes the validity periods of these licenses on related grounds to that of some European Broadcast License laws. The British Broadcast Act of 1990,s 86 (1) and (3) is a good comparison to show this fact.

86(1) license shall be in writing and . . . shall continue in force for such a period as may be specified in the license (3) the following licenses namely:-

*36 Supra note — 19*

- (a) any license to provide a national, local or satellite service,
- (b) any license to provide a licensable sound programme service, and
- (c) any license to provide additional services, shall not continue in force for a period of more than eight years.

The national, local and additional licenses have been granted for eight-year period; while the other services referred to in s 86 (3) are usually issued for 5 year periods. License periods for restricted services can vary from 28 days to five years depending upon the type of service which has been licensed.<sup>37</sup>

Although the rationales behind the validity periods are not expected to be defined in proclamations, it is understandable that governments want to control this media, at least on policy matters on closer ranges. The license is a legal document, which in effect sets out the contact between the regulator and the broadcaster. If the broadcaster does not perform according to the terms of the license, the regulator is then in the position to consider what legal actions to apply. This and other related reasons make the validity period of broadcasting service licenses important to countries that have regulatory bodies. The same can be true with Article 24 of the Ethiopian Broadcast Service Proclamation.

*37 Supra note 6-page 103*

The renewal of license stated under Article 25 of the Proclamation puts the validity period of the renewed license under the determination of the Authority. The Authority also has the power to ascertain the service rendered by the licensee during the past validity period before the renewal of the license is assured.<sup>38</sup>

Article 26 of the Proclamation puts down condition of when the licensee intends to provide additional broadcasting service, upgrade the capacity of the station or make technological changes and upgrade the capacity of the transmitter.<sup>39</sup>

It is through obtaining of an expansion license that the licensee can perform these extra activities. This depends upon the law and policy of each country's regulator. As far as the structure and procedural setup of the organization is democratically competent this condition is legally acceptable.

Article 27 is on license and annual fee.<sup>40</sup> In most of the developed countries media, regulatory bodies are independent from states' fund grants. They are independent economically because their licensees are economically strong enough to support the regulators' budgets through licenses and annual fees. Although Ethiopian licensees are very few in number and also at an infant stage, indicating this area in the Proclamation with clear obligations and responsibilities is essential.

*38 — Supra note 191 (taken paraphrased with some omission of details)*

*39 — Ibid*

*40 — Ibid*

## **4.9 Suspension and revocation of license**

Article 28 of the Proclamation gives the Authority the right to suspend broadcast license where the licensee violates the provisions of the Proclamation.<sup>41</sup> But, it does not make distinction between parts which lead to suspension whenever violated, and the parts that result with revocation of the license for illegal acts or omissions. Regulators of the developed countries do not take suspension as a preferable means unless a broadcaster is in crisis and cannot manage to comply with regulatory rules. Eve Salomon writes on this issue; “suspension of broadcasting as a punishment for content breaches is not fair, as it does not only punishes the broadcaster, but also its audience.”<sup>42</sup> She suggests further that instead of punishing the audience by forcing them miss their favorite programs, suspension should be limited to breaches that are happening frequently and that are severe. She thinks that if suspension is taken as a normal punishment that applies whenever minor breaches appears it would be disastrous to the broadcaster’s business and the regulator’s credibility as well as to the audience’s interest.

The Ethiopian Broadcast Service Authority also in its specific license regulation should make clearer the conditions that result in suspension. It also should prefer to call in senior management of the broadcaster immediately to explain its

*41 -Ibid*

*42- Supra note-1*

*page 53 para. 3*

concerns and to hear from the broadcaster how it will rectify the situation before applying suspension measure.

Article 29 of the Proclamation states grounds that lead a broadcasting service to revocation of license.<sup>43</sup> Suspension is a temporary cease or taking off air the broadcasting service of a licensee's programs until some decisions are given or some conditions are met. But, revocation results with total closure of the broadcasting service and cancellation of the license. Countries do apply suspension and revocation when their broadcasters do not comply with the laws of their regulators. What differ from country to country are conditions that put in the licenses for the application of these two measures. The Ethiopian Broadcast Service Proclamation puts that, the license is revoked where the broadcaster fails to commence transmission, where the license is obtained by fraudulent, where the court orders closure of the station, where the licensee stops the service, where provisions of the proclamation are violated, and where the licensee fails to discharge its obligations. It is universally agreed and acceptable that when the licensee does not comply with laws and commits serious breaches of rules revocation is appropriate. When a broadcaster shows disregard of rules and instructions from the regulator, if a broadcaster does not pay license fees and unwilling to pay and when there is breach of the ownership requirements the sanction that follows is revocation of license.

*43- Supra note 19*

The Ethiopian Broadcast Service Proclamation is also based on universally recognized grounds for the revocation of broadcast license. But, the Proclamation gives the right to revoke the license to the Authority without showing the process for revocation. Where the Authority believes the licensee fails to discharge its obligations, where it also thinks the provisions of the Proclamations are violated, where the license is obtained by fraud, revocation is to apply upon the broadcaster. Where the licensee is aggrieved by the decision of the Authority, appeals to the Board is respected. But, the provision does not state the right beyond that, which means the right to appeal to the court of law. The process for revocation should have been set out in the Proclamation to avoid the regulator acting in an arbitrary or inconsistent way. A decision of revocation of license should have been reviewed by the court of law, as this process is an important safeguard to protect an independent regulatory process.

## **5. Transmission of Programs by Broadcasting Service Licensees**

### **5.1 Is the general direction clear and based on the principles of the rule of law?**

Article 30 of the Broadcasting Service Proclamation contains four sub-articles. It is a general part that adopts the humanitarian law and combines it with media ethics. It states

about the programs to be transmitted, how it shall reflect different and balanced view points to serve the public at large; the need for accuracy and ascertainment of the content and source of program to be transmitted; and the need for impartiality and accuracy of every news. It also states the programs intended for transmission may not violate the dignity and personal liberty of mankind, may not also commit a criminal offense against the security of the state, and the Constitution ... and may not accuse maliciously or defame individuals, nation/nationalities, peoples or organizations. It may not cause dissension among people or incite war.<sup>44</sup>

Every democratic state has its own policy and guiding direction for broadcasting service, be it public, commercial or community service. Content regulation of broadcast material is about protecting viewers and listeners from being harmed or offended, in their role as consumers, and protected against misleading advertising claims. It is also about ensuring the democratic right to free speech is not endangered by censorship. It is about working toward the peace, understanding and cooperation of the peoples at a national or global basis.

Article 30 of the Ethiopian Broadcasting Service Proclamation is also based on these universally recognized principles. Its general direction is clear and also based on the principles of the rule of law.



## **5.2 Is the program control mechanism legally acceptable?**

As I have stated above, the general direction that is under Article 30 has legal grounds. It is within the frame of universally recognized and practiced norms. Some of the points included are laws that are internationally recognized as human rights protection mechanism. Therefore, it is possible to say that the content control mechanism set is legally acceptable.

Article 31 of the Proclamation that puts conditions on some of the broadcast programs for protecting the well-being of children is also legally acceptable. There is not single set of content standard which can be applied universally and each country sets conditions on broadcast programs to protect the minors. Types of programs that are acceptable to be viewed at any time in one country may not be suitable for broadcast at all in another. But, most countries do make compromise between protecting children and providing appropriate content for adults. The main purpose of restricting certain programs for the children's well-being is to keep away children from materials which would damage them morally, psychologically or physically. Article 31 of the Proclamation also states condition that certain programs may corrupt the outlook of children or harm their feelings and thinking or encourage them to undesirable behavior. Due to this potential risks the legislator has fixed the transmissions of such programs from 11.00 pm.

in the evenings up to 5 am in the morning.<sup>45</sup> Considering that the specifics and details that show demarcation lines between the adults and children programs will be made clear in due course, what is legislated for current need is acceptable.

National, Regional and local transmissions of programs are also allocated under Article 32.<sup>46</sup> It is stated that the national, regional and local transmissions have to make 60% of the total broadcast. This is to encourage the national program production and to limit the foreign programs retransmission, through being an affiliate or importing them for scheduled needs. This is useful approach for the development of local program production and cultural protection.

### **5.3 Advertisements**

Article 33 states that there shall be a clear distinction between advertisements and other programs. It also calls that it shall be truthful, not misleading and publicize lawful trade activities. The transmission of malicious or undermining advertisement on the products or services of others is also prohibited. Article 34 also states areas of prohibited advertisements. Under this article advertisement that violates gender equality and that disregards the dignity and human rights of women are prohibited. It also prohibits advertisements of cigarette, narcotic drugs, and liquors with more than 12% of alcohol content and advertisement that encourage users to buy

*45. Ibid*

*46-Ibid*

medicine. Allocation of the advertisement period is also stated as 20% of the daily transmission.<sup>47</sup>

Article 33, 34 and 35 of the Proclamation is well-arranged and covered the area differentiation of advertisement from other programs up to the allocation of advertisement in the daily transmission. This kind of legislating the area and the prohibitions of certain behaviors and certain commercial advertisements is appropriate.

## **6. OBLIGATIONS OF LICENCEES**

The Ethiopian Broadcasting Service Proclamation under part five, Articles 37-43 has stated obligations of the licensees. The obligations under Arts. 37 - 40 include notifying the person who has been assigned to be responsible for the transmission of programs; keeping the record of every transmitted program, including news for 30 days; announcing the name of the station at the beginning and end of every transmission; duty to give access to its broadcasting station and to furnish the required documents for inspection. Under Arts. 41-43 also there are more obligations to be complied with by the licensee. These include transmitting free of charge, emergency statements given by the federal or regional state government; the obligation to respect the right of a person to give reply when the transmitted program has encroached on his right or failed to be presented properly and transmission of election period statements for political organizations and

*47-ibid*

candidates by allocating free airtime.<sup>48</sup>

## **6.1 Legality of the obligations listed**

In broadcasting service laws of many countries it is normal and legal for licensees to comply with legal requirements, including secondary legislation, which arises from the broadcast laws and any standard codes issued by the regulator. So, the Ethiopian Broadcasting Service Proclamation is legislating these obligatory parts within the area of recognized legal norm. Notification of responsible person to the regulator helps to normalize communication between the licensee and the regulator as well as to identify the responsible person for the breaches occurred on transmission. It could be said that no organization carries its business without publicizing its managerial bodies to the appropriate governmental bodies.

Record keeping on transmitted programs for 30 days is also a normal practice in the broadcasting business. The question of imbalance, impartiality or bias may arise from the program sources on the transmitted items. Violations of the obligations of the broadcaster may be claimed by the regulator or a court of law may order for the supply of a piece for verification in case dispute arises. This obligation is useful to verify the broadcaster's messages where there is misunderstanding with the broadcaster's intention or where there is a real breach of the broadcast regulation.

*48-Ibid*

Providing information at the beginning and end of transmission is a normal practice of broadcasters and even it contributes to the gaining of wider popularity to the broadcaster. It is also a mechanism of identifying who that broadcaster is in case of legal, social, or economic relations with the broadcaster.

No broadcaster can stay in the business where it denies the inspection of its organization by the regulatory body. Inspectors may require documents or supervise the standards of the broadcasting equipment which would qualify the station for the renewal of its license. So, it can be concluded that this obligation has strong legal grounds.

Duty to respect the right to reply is another obligation that the Broadcasting Service Proclamation puts on the broadcaster. News and other broadcast programs are expected to be objective, accurate and impartial. These qualities and other related factors are professional and ethical requirements. Broadcasters are expected to be fair. When this practice is not respected, broadcasters are required to offer a prompt right of reply to any person or organization who has been treated unfairly in a program. This universally recognized right is appropriately considered in the Proclamation.

Transmission of election period statements to political parties and candidates is also an obligation assigned to broadcasters under the Ethiopian Broadcasting Service Proclamation. Globally, as well as to the Ethiopian specifics

election periods guidelines are very important. It is true that many politicians think that broadcast service play major role to win or lose the people's vote. Regulation in this area is designed to ensure that each political party or candidate gets proper coverage. In many countries practice it is accepted that major parties are entitled to greater coverage than minor parties. This is because they already hold the most seats and have registered the most candidates. Based on this a broadcaster must treat parties or candidates on equal and similar basis, as the application of proportional airtime requires. To solve this problem and to prove the fairness of a broadcaster the regulator should allot specific amounts of airtime to each party according to a clear and pre-determined formula. The Ethiopian Broadcasting Proclamation also states that political organizations' and candidates' objectives and programs are transmitted for free and election campaign advertisement's charges may not exceed the fee charged for commercial advertisements. But it does not mention about the equal opportunity and treatment of parties and candidates. A broadcaster may need to have clear and transparent guidelines from the regulator on the treatment and time allocation for parties and candidates. This gap should be filled in the secondary legislation or regulation of the Authority.

## **6.2 Miscellaneous provisions**

- Power of inspection

Article 44 of the Proclamation states the right awarded to the Authority by law that is to inspect a broadcasting service organization during working hours.<sup>49</sup>

Inspection is one of the methods that helps the regulator whether licensees are complying with the requirements or conditions agreed upon on the license award. It may also help the licensee to communicate closely with the Authority for further improvement of its program content and technical standard. So, the regulatory body has a legal right to inspect the organization through physical presence or through other means, such as monitoring program content and the like.

Article 45 states penalties under its seven sub-articles 45 (1-7), that may apply upon a person found guilty of violating some parts or laws of this Proclamation.<sup>50</sup> The penalties that could apply on violation of some specified articles (laws) ranges from 100 thousands to 5 thousands birr (the minimum); The areas that result in such penalties are stated as; requirement of license, violation of the program content regulation stated under Article 31 of the Proclamation, transmission of malicious or undermining advertisements, and non-compliance with obligations of the licensees stated under Articles 37-43.

Levying fines on broadcasters as a sanction against violations of regulatory laws is a legal practice in many countries. In cases of relatively minor breaches, a letter of

*49-ibid — (taken paraphrased)*

*50-ibid — (taken paraphrased)*

warning to the broadcaster may suffice. But, when the breach is serious a fine is taken as an appropriate measure. The fine is also expected to be proportionate to the offence committed.

The Broadcasting Service Proclamation has enumerated the offences and the penalties that may follow. What is not clear is the process of its applicability. Is the Authority, by its own jurisdiction entitled to levy the fines upon offenders or is it through the judicial system? It's true that all details may not be included in the proclamation. Details may follow in the secondary regulation of the Authority or Ministry. But, the applicability of these penalties and the forum that is to be used should have been indicated. Reasonably speaking, it must be the court/ the judicial organ that interprets and applies the Proclamation, at least where it comes to imposition of penalties.



- **Confiscation**

Broadcasting Service Proclamation 533/2007 states under Article 46 about violations that lead person's property to confiscation.<sup>51</sup> It elaborates that violations of the conditions listed under article 30 (4) of the Proclamation puts person's property under confiscation. The confiscation may result in addition to the principal penalty.<sup>52</sup> The provision states further that when a person is found guilty of violating conditions set under Article 30 (4) the confiscation is in accordance with provisions of the relevant criminal law. This provision is clear and acceptable that the confiscation process is carried out through a judicial system. The relevant criminal law that the proclamation is referring to is Article 98 of the criminal code of the FDRE. Under the title "Confiscation of property" Article 98 (1) states.

- "Subject to the following provisions of this Article, where the law makes provision for confiscation the court may order the confiscation of the estate, or part thereof, of the criminal."<sup>53</sup>

*51- Ibid - (taken paraphrased)*

*52- Ibid (the conditions set under Article 30 (4) are stated and analyzed under the appropriate order of the paper.)*

*53-Proc. No. 414/2004-the criminal code of FDRE (9<sup>th</sup> may, 2005, Addis Ababa)*

## Part IV.

### 7. RECOMMENDATION and CONCLUSION

Ethiopia is one of the oldest and ancient nations in the world history. During these long periods of state practices it went through slow process of development, civilization and traditional means of dispute settlements. Its aristocratic rulers were in most cases suspicious of building close relations with the outside world. Instead, internal (regional) conflicts and building of political power to create a unitary state was given priority. This consumed much of the time, the economy and lives of its people. The idea and means of media communication was unthinkable and information exchange was limited to personal communications and rumors until the 20<sup>th</sup> century. This shows us the print and broadcast media, that could assist a state to inform, educate and entertain its people had come to existence relatively too late. Even after that, its existence could not be more than communicating the messages its rulers wanted to reach the population at large. There were no laws that could guide the media or a broadcaster by indicating its rights and obligations. It was under the 1960 Civil Code of Ethiopia that certain rights and obligations of an author, writer or publisher were stated in a scattered way. Some exemplary articles regarding this area in the Civil Code are:-

- Defamation — Articles 2044, 2135
- Absence of intent to injure — Article 2045

- Matters of public interest — Article 246
- The Truth of Alleged facts — Article 2047
- Justification — Article 2049.<sup>54</sup>

Provisions which are found in a scattered form may help to solve immediate legal disputes but can not help much for the development and potential needs of the media industry. Special laws that are based on the development stage of the sector at national and global level should be there.

Proclamation No. 533/2007 is inclined toward the fulfillment of these needs. Its introductory part (the preamble) also states the importance of having such a regulatory laws to exercise the basic Constitutional rights, to ensure proper and fair utilization of the limited radio wave, to clearly define the rights and obligations of persons who undertake broadcasting service and so-forth.<sup>55</sup>

The Broadcasting Service Proclamation 533/2007 can be regarded as a legal base for a broadcaster and the freedom of expression. The Proclamation has the key principles that would ensure freedom of expression and also put some restrictions on areas that are considered necessary in democratic society. Abdul Waheed Kahn, Assistant Director-General for Information and Communication (UNESCO), under a preface he wrote to a book, “Guidelines for Broadcasting Regulation states, “It requires a balancing act to determine which aspects of broadcasting can be regulated to protect

*54-Proc No. 165 of 1960-civil Code of the Empire of Ethiopia (5<sup>th</sup> May 1960)*

*55-Supra not 19 — Preamble taken Paraphrased with some omission of details)*

citizens' rights but at the same time not to provide an opportunity for 'powers that be' to curtail freedom. One needs to strike a balance between the independence of the regulator and the government's own purpose to pursue public policy objectives; and as determining where the balance lies between the potentially conflicting rights of the broadcaster, society, and the individual."<sup>56</sup>

The Ethiopian Broadcasting Service Proclamation reflects that the Government has concerns to regulate broadcasting media to pursue public policy objectives. The Government wants to regulate this area for democratic purpose. It also wants to regulate the area as the owner of the scarce resource (radio waves-spectrum) that should be distributed in a fair and equitable manner. The Proclamation also determines rights and obligations of a broadcaster and conditions that should be fulfilled to become a licensee. The law also puts restrictions on certain programs content areas including advertisements, which need to fulfill some requirements. An autonomous Broadcasting Authority which regulates the broadcasting is also established under this Proclamation.

## **7.1 Highlights on the strength and Weaknesses of the Proclamation**

### **a. The importance and need of having broadcasting regulation**

Due to the fact that broadcast media is the most powerful means of communication, television and radio are

*56- Supra not 1 — Preface — Abdul Waheed Khan*

now the main sources of information throughout the world. Most people around the world are depending upon the information they receive through these media to make decisions that can affect their lives. So governments need to regulate the area by deciding who shall hold the broadcasting license. Through the award of license, rights and obligations of a broadcaster is also made identifiable. This is an accepted practice throughout the world, that as an independent broadcasting industry develops there is a need for independent regulatory system to license and oversee this industry.

The Ethiopian Government also follows this trend which has universal character. It is important to have a regulatory system that can play important roles in the development of the broadcast industry. Therefore, Broadcasting Service Proclamation 533/2007 is a timely proclaimed law that can assist the development of the broadcast media industry.

**b. The Broadcasting Authority**

Without the establishment of an authority that is independent to regulate the broadcasting service, no government can manage the system and facilitate the development of this industry. Broadcasting Proclamation 533/2007 has established an Authority with defined objectives, powers and duties. Its organization is also defined. Assigning duties and responsibilities to an independent regulatory body is a well accepted practice throughout the world. But, the assignment of duties and responsibilities should take into consideration the capacity and means to render good service.

Article 7 of the Proclamation elaborates the powers and duties of the Broadcasting Authority. The areas of these duties and responsibilities are very wide. As we can well notice, the area covers radio and television. Each has its own specific area of engineering, equipments and program production system. For an Authority to regulate these duties may create inconvenience. It may be difficult and needs longer procedural processes for the broadcaster when a single authority handles the tasks from licensing to the engineering. It could have been better to create more than one independent regulatory bodies under an umbrella of a commission or authority based on the nature of these broadcasting systems, managing areas, control and legal parts.

In every country's broadcasting service law it is a recognized legal norm that an independent regulator is accountable to a relevant executive body. The Ethiopian Broadcasting Service Proclamation also did the same by assigning the Authority's accountability to the Ministry of Information. But, what lacks in this accountability is clarity. The relation between the Ministry and the Authority is not stated clearly. Most country's experience shows that where the relation between the two is clearly mentioned it helps that freedom of expression would not be hampered because of needs that do not solely depend on so called 'public interest' or in other words for mere political reasons.

### **c. Determination of the board members**

Article 9 of the Proclamation indicates that members of the Board shall be determined by the Government. The method of determining board members is not uniform in many countries. In some countries the legislature assigns broadcast board members. In others, the executive body alone, or agreement of the two organs form the broadcast board members. In the Ethiopian case members of the Board are appointed by the Government on the recommendation of the Minister of Information.

The Proclamation also states on the selection of the Board Members that they will be drawn from different institutions and parts of the society. These stated areas are not specific and are too general. The legislature is expected to state the areas of the societies and institutions from which the Board Members would be drawn.

The Broadcasting Service Proclamation has strong sides that it states the appointment of director General and Deputy Director General and other officials as well as employees of the Authority. But, it does not define the conditions for the appointment and dismissal of the regulatory body's high officials. Defining these conditions ensures the practice of the rule of law rather than favoritism and political bias.

### **d. Suspension and Revocation of License**

Broadcasting Service Proclamation 533/2007 has strong sides on Broadcast Service Licenses part. The categorization, the

invitation to applicants and bodies to be issued and not to be issued licenses are well identified with acceptable standards.

But, there are some which could trigger remarks. Article 28 states suspension of a broadcasting license where the licensee violates the provisions of this Proclamation. But, it does not make distinction between the types of violations that lead to suspension or revocation. The violations that lead to suspension should have been defined specifically to avoid generality of provision.

Article 29 elaborates the conditions that result in revocation of a license. The violations that lead to revocation of license are legally acceptable. But, what is missing in the revocation provision is the due process of law. The provision should have included some legal procedures that give the broadcaster to appear before the court of law and being heard. The final decision of revocation should go beyond the final decision of the Board. The broadcaster who is not satisfied with the Board's decision could appeal to the court of law.

#### **e. Conclusion**

Broadcasting Service Proclamation 533/2007 states under its preamble that, broadcasting service plays a major role in exercising the basic constitutional rights such as freedom of expression, access to information and the right to elect and be elected.<sup>57</sup> Just by analyzing this point one can see that it is important for democratic societies to have a wide range of

*57 supra note -19 (Preamble — Para2)*



independent and autonomous means of communication, in order to be able to reflect a diversity of ideas and opinions. Without having this means of communication a broadcaster can not fulfill the needs of the society. Therefore, having a broadcasting service law for the Ethiopian broadcaster is an important achievement. Once the base is founded broadcasters could work further to ensure the freedom of expression by working with the Authority established.

As already elaborated in parts of my paper, the Ethiopian Broadcasting Service law has an acceptable standard of universality and democratic purpose. There are also weaknesses in some parts. Lack of clarity in accountability, powers and duties of the Authority and the Board could be raised as examples. With some few exceptions that may need amendment or further elaborations in the regulation of the Authority or the Ministry, it can be concluded that Broadcasting Service Proclamation 533/2007 is a law based on democratic purposes. It is a legal frame, structured on the principles of the rule of law.

# BIBLIOGRAPHY

## BOOKS

➤ **Barendt, Lesley Hitchens.**

Media Law Pearson Education Limited Edinburgh Gate,  
(Harlow, 2000)

➤ **E.Mayeux**

Broadcasting News Writing and Reporting, second edition.  
Times Mirror Higher Education Group Inc., 2460 Kerper  
Boulevard, Dubuque (IA. 1996)

➤ **Hausman**

Crafting the News for Electronic Media.  
Wadsworth Publishing Company, Belmont, California (1992).

➤ **L. Holsinger**

Media Law. Random House, New York (1987)

➤ **Mcleod**

Legal Method. Palgrave Macmillan (Houndmills, Hampshire  
2002)

➤ **Salomon**

Guidelines for Broadcasting Regulation For the Commonwealth  
Broadcasting Association and UNESCO.  
UNESCO (2006)

## LAWS

- Civil Code of The Empire of Ethiopia. 1960, Proc. No. 165 Neg. Goz. 19<sup>th</sup> year No. 2.
  
- Constitution of The Federal Democratic Republic of Ethiopia. 1995, Proc. No.1/1995.
  
- Criminal Code of The Federal Democratic Republic of Ethiopia. 2004, Proc. No. 414/2004.

I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Asfaw Iddosa Bikkile

Sign. \_\_\_\_\_