

Freedom of the Mass Media and Access to Information Proclamation No. 590/2008

PROCLAMATION NO. 590/2008.

A PROCLAMATION TO PROVIDE FOR FREEDOM OF THE MASS MEDIA AND ACCESS TO INFORMATION

WHEREAS, the Constitution of the Federal Democratic Republic of Ethiopia, guarantee freedom of expression and of the mass media ;

Noting that, by prohibiting censorship, the Constitution promotes a free mass media;

Reaffirming the constitutional principle that restrictions on freedom of expression and of the mass media shall only be based on laws which secure and preserve the wellbeing of the youth, honour and reputation of persons ,national security , public order and other overriding rights;

Cognizant of the necessity of preserving and consolidating past achievements and positive practices pertaining to freedom of expression while removing structural and institutional impediments that hinder the independent operation of the mass media and the free exchange of information and ideas

Aware that a free, independent and diverse mass media with high ethical standards and professional competence plays an indispensable role in the national endeavour to build democratic order in Ethiopia;

Recalling the role of the mass media in ensuring respect for the fundamental rights and freedoms guaranteed by the Constitution, and in promoting peace, democracy, equality and justice;

Recognizing the right of the media to collect and disseminate information, including of a critical nature; realizing that an independent mass media that serves as a public forum for uninhibited democratic dialogue thrives on a viable freedom of information system that facilitates the free flow of information and ideas among citizens by enabling them to exercise their right to seek, receive and impart information and opinions freely;

Affirming the fundamental importance, in a democracy, transparent conduct of government affairs and, in particular, the right of individuals to access information held by public bodies;

Determined to promote and consolidate the values of transparency and accountability in the conduct of public affairs, as guaranteed by the Constitution, and to impose a legal obligation

on public officials to facilitate access to individuals and the mass media to information so that matters of public interest may be disclosed and discussed publicly;

Convinced of the need to amend the existing press law and to replace it by a new law that is commensurable with the ongoing democratic transformation that is taking place in Ethiopia;

Now, therefore, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE General Provisions

1. Short Title

This Proclamation may be cited as the “Freedom of the Mass Media and Access to Information Proclamation No. 590/2008”

2. Definition

In this proclamation unless the context requires otherwise:

1/ “Mass Media” means printed matter that includes periodicals and broadcasters

2/ “Printed Matter” means all material intended for public distribution, including mass media but also other printed material—including musical works, plays, pictures, cartoons, books, pamphlets, posters and commercial advertisings as well as audio, visual and audiovisual recordings, motion pictures and the likes, excluding;

a) official printed matters, notices, minutes, reports, and decisions of legislative, judicial or executive organs; or

b) materials only intended for the purpose of commerce and transport, domestic and social life, such as forms ,price lists , printed advertising matter, family advertisements, post cards, pictorial reproductions, annual business and administrative reports, as well as election documents.

3/ “Periodical” means printed material which is scheduled to appear in regular sequences of at least twice a year, which has a fixed title and which has a general distribution aimed at the entire public or a section thereof, and includes newspapers and magazines.

4/ “Broadcaster” means a body which disseminates broadcast programming, including through terrestrial transmitters, cable or satellite, for public consumption and for simultaneous reception, whether or not by subscription, through a radio and/or television broadcast receiver or other related electronic equipment, but does not include communications internal to a private organization or a government body.

5/ "Public Body" means any body established under the Federal Constitution or state constitution or any other law which forms part of any level or branch of the federal or regional state or owned, controlled or directly or indirectly substantially financed by funds provided by the federal or regional governments or accountable to the federal or regional states

6/ "Information" means any material recorded in any form.

7/ "Record" means regardless of who created it or when it was created, any recorded information in the possession and under the control of a public body and includes:

a) any document, file or manuscript;

b) any microfilm, microfiche or facsimile;

c) any reproduction of images embodied in microfilms, whether enlarged or not:

d) any other information which may be watched, read, listened to or otherwise comprehended only using a computer or any other technical device; or

e) any other information recorded in any other form or medium.

8/ "Personal Information" means information about an identifiable individual, including, but not limited to

a) information relating to the medical, educational or the academic, employment , professional or criminal history, of the individual or information relating to financial transactions in which the individual has been involved;

b) information relating to the ethnic, national or social origin, age, pregnancy, marital status colour, sexual orientation, ,physical or mental health, well-being, disability, religion, belief, conscience, culture, language or birth of the individual;

c) information relating to any identifying number, symbol or other particular assigned to the individual, the address, fingerprints or blood type of the individual;

d) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;

e) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual;

f) the views or opinions of another individual about the individual or,

g) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but excluding information about a person who passed away before 20 years,

9/ "Third Party", means any person other than the requester or the public body to which the request is made and includes a foreign government, organization , an international organization or an organ of that government or organization

10/ "Hostile or Subversive Activities" means:

a) aggression against the country;

b) any act of sabotage or terrorism aimed at the people or a strategic interest of the country whether inside or outside the country;

c) any activity aimed at changing the constitutional order by the use of force or violence; or

d) any foreign or hostile intelligence operation

11/ "Editor-in-chief" means the person who, pursuant to Article 6 of this Proclamation exercises exclusive editorial control.

12/ "Publisher" means any person who, represents, owns or has a substantial proprietary interest in a mass media or carries on the business of management of a mass media.

13/ "Printer" means any person who has been appointed by or enters into a contract with a publisher for the purpose of printing any printing matters.

14/ "Distributor" means any person who has appointed by or enters into a contract with the publisher for the purpose of wholesale distribution of printing matters.

15/ "Importer" means any person who imports mass media products from abroad with a view to distribute them in Ethiopia or who is an agent of foreign publications circulated in Ethiopia.

16/ "Ombudsman" means the Institution of the Ombudsman established under Proclamation No. 211/2000.

17/ "Region" mean a regional state established under Article 47 of the Constitution of the Federal Democratic Republic of Ethiopia. and shall ,for the purpose of this Proclamation ,include Addis Abeba and Diredawa

18/ "Public Relation Officer" mean a public relation officer or any other officer designated by the public body for the purpose of caring out the tasks of a public relation officer under this Proclamation.

19/ "Person" mean a physical or juridical person.

3. Gender Reference

Unless otherwise expressly provided under this Proclamation provisions referred in the masculine gender shall also apply to the feminine gender.

4. Freedom of Mass Media

1/ Freedom of the mass media is constitutionally guaranteed. Censorship in any form is prohibited.

2/Restrictions on the freedom of the mass media shall only be made by laws issued in accordance with the Constitution.

3/ All public bodies shall have regard to the right of the mass media, in fulfilling its public function, to:

- a) seek, receive and impart news or information;
- b) express opinion or criticism on various issues or;
- c) participate in the process of forming public opinion through other means.

4/Unless otherwise stipulated by express provisions of laws enacted in accordance with sub article (2) of this Article, administrative measures that impair freedom of the mass media are forbidden.

5. Right to Publish and Organize

1/ Without prejudice to the provisions of Article 7 of this Proclamation, every Ethiopian national has the right to establish a mass media.

2/ Journalists have a right to organize themselves into professional associations of their choice.

PART TWO

Right to Engage in Mass Media Activities

6. Editor-in-chief

1/ The mandate of the editor in chief designated by the publisher encompasses the power to supervise the publication of the periodical and to determine the contents thereof in such a way that nothing may be printed therein against his will. Any practice or agreement that restricts this power shall be null and void.

2/ Where the editor-in-chief of a mass media does not, for any reason, have full legal capacity, another editor-in-chief who has full legal capacity shall be appointed .

3/ The editor-in-chief who has been appointed in

accordance with sub article (2) of this Article, shall have legal responsibility for the content of the mass media outlet and shall, notwithstanding the provisions of sub article

(1) of this Article, have the power to veto the publication of any material.

7. Mass Media Ownership

1/ Any person who exercises direct or indirect effective control over a company possessing a nation-wide broadcasting license or a broadcasting license for an area with a recorded population of more than 100,000 inhabitants, may not exercise direct or indirect effective control over another company holding such a license and servicing the same or an overlapping market.

2/ Any person who exercises direct or indirect effective control over a company holding a nation-wide license or a license for an area with a recorded population of more than 100,000 inhabitants may not exercise direct or indirect effective control over a company operating a periodical servicing the same or an overlapping market

3/ Without prejudice to sub article (1) and (2) at this Article any person who exercises effective direct or indirect control over a company operating a periodical may not exercise effective direct or indirect control over another company running a periodical published in the same language and servicing the same or an overlapping market

4/ Until the procedure for determining and assessing effective control referred to in sub articles (1) to (3) of this Article shall be laid down by specific law, in the absence of evidence to the contrary, a person shall be regarded as exercising such control if he either directly or indirectly holds fifteen percent or more of the shares or capital of the entity .

5/ For the purpose of Article 5(1) of this Proclamation, a company is of an Ethiopian nationality if its total capital originates from a local source or persons holding its capital or voting rights are Ethiopian nationals and it does not include a company whose capital or voting rights are held by a locally registered business organization in which foreign nationals acquired voting rights. Similarly an association is considered as local if it is registered as local association in accordance with the charities and associations law.

6/ Any person who is not a juridical person may not own a broadcasting service, news agency service or periodicals.

7/ The provisions of this Article shall also apply to a mass media from abroad which focus primarily on domestic issues and which have been produced primarily for local audiences.

8. Distributors

Entities which offer distribution services to periodicals shall not discriminate in either the provision of those services or the fees charged for them on the basis of the content of a periodical.

9. Certificate of Registration

1/ Anyone who desires to publish a periodical shall register such periodical by providing the information referred to in sub article (3) , with the Ministry of Information where the proposed distribution goes beyond one regional state, or with the Information Bureau of the Region where the proposed distribution is restricted to one regional state.

2/ Where the activity given by law to or the purpose of any entity or public body or organization requires publishing a periodical, such organization or public body shall be deemed registered in accordance with sub article (1) of this Article.

3/ The application for registration shall include the following particulars:

a) the name and address of the publisher or the news `agency organization as well as of any branch offices if any;

b) the name of the periodical or the news service agency; and

c) the names and address of the person holding more than 2% of the shares of the publishing company or the news agency and the amount of their share

4/ Where the proposed name of the registering periodical so closely resembles the name or emblem of another periodical which has already been registered that the two may easily be confused, another name or emblem shall be registered.

5/ The periodical or news agency shall be deemed registered where the Ministry of Information or the regional bureau of the region fails to issue certificate of registration within 30 days from the date the application is submitted, or fails to notify in writing the applicant the grounds for refusal to issue it within such period .

6/ Any changes to the information provided under sub-article (3) of this Article shall be reported by the publisher company or the news agency to the registering body within fifteen days.

7/ Certificate of registration shall lapse where:

a) the publisher or the news agency provides written notification of the discontinuance of the publication or its operation ; or

b) the registered periodical or news agency fails to commence publication or rendering its service within one year of registration.

8/ The provisions of sub-article (7) of this

Article shall apply, mutatis mutandis, to sub-article(2) of this Article.

10. Imprint and Gratuitous Copies

1/ Periodicals shall, on each publication, carry the name of the publisher, printer and editor-in-chief, and the volume and number of the periodical periodicity and date of publication in a discernible manner.

2/ Broadcasters shall indicate the station name at the beginning and end of each programme, along with the name of the producer.

3/ Periodicals with national distribution or based in Addis Ababa shall, within twenty four hours of dissemination, deposit two gratuitous copies of every volume with the Agency of the National Archives and Libraries .

4/ Where the circulation of periodical is confined within the bounds of a regional state two gratuitous copies of every volume shall be deposited within twenty four hours of dissemination, either with state public library or to the state cultural bureau

PART THREE

Access to Information

11. Objectives

The objectives of this part of the Proclamation are:

1/ to give effect to the right of citizens to access, receive and import information held by public bodies, subject to justifiable limits based on overriding public and private interests;

2/ to establish mechanisms and procedures to give effect to that right in a manner which enables persons to obtain information as quickly, inexpensively and effortlessly as is reasonably possible; and

3/ to encourage and promote public participation, public empowerment, to foster a culture of transparency, accountability and efficiency in the functions of public bodies and to encourage and promote good governance

12. Right of Access to Information

1/ All persons have the right to seek, obtain and communicate any information held by public bodies, except as expressly provided for by this Proclamation.

2/ The right referred to under sub-article (1) of this Article shall include the right to be informed whether or not the public body holds a record containing the requested information and to obtain information from any public body by means of;

a) inspection, taking extracts and notes;

b) certified copies of any records of such public authority;

c) diskettes, floppies or any other electronic mode or through print-outs where such information is stored in a computer or in any other device.

3/ Nothing in this Proclamation shall be understood as limiting the power of public bodies to provide access to information on an informal basis.

13. Duty to Publish

1/ Any public body shall publish information concerning:

- a) its organizational structure, main duties and responsibilities;
- b) the power and responsibilities of the officials as well as decision-making procedures ;
- c) description of the services it provides for the public;
- d) brief descriptions of the complaint hearing mechanism available to the public and the public body's response to frequently asked questions by the public;
- e) a description of the type of the records under its possession, a brief description of the contents of its records and the detailed explanation of the procedures to be followed by persons who wish to access this information;
- f) a description of its regulations, directives, policies, guidelines and manuals, which govern the operation and activities of its various organs, along with a description of any amendment or repeal of such provisions;
- g) its directives, regulations, guidelines and other documents which governs the activities of the employees of the organization;
- h) the name and address of the public relation officer; and
- i) other particulars.

2/ Whenever essential changes pertaining to information provided in the above provision occur, public bodies shall update at least once a year the publication referred to in sub-article (1) of this Article and shall provide a copy of the publication or make available for view to any requester. Provided, that no public body may include any matter exempted under Part Three of this Proclamation.

3/ Any public body shall:

- a) publish all relevant facts concerning important decisions and policies that affect the public not later than the time at which such decisions and policies are announced;
- b) give reasons for its decisions, including dissenting opinions, if any, whether administrative , judicial or quasi judicial in nature and shall provide a copy or allow inspections of such decisions for any person who has made a request for the information;

c) before initiating any project publish, on the principle of transparency and accountably or communicate to the public generally or the persons affected or likely to be affected by the project in particular, the relevant facts available to it or to which it has reasonable access.

14. Requests to Obtain Information

1/Any person who desires to obtain information shall present his request to the concerned public relations officer in writing, or through electronics device, clearly identifying the information he seeks. Where the requester owing to illiteracy or physical incapacity is unable to present his request in witting, the public relation officer has a duty to assist the requester by reducing his request in writing in the prescribed form.

2/In presenting a request for information, no one shall be required to provide reasons for the request.

3/ Upon receiving request for information, the public relation officer, in accordance with sub-article (1): of this Article shall as expeditiously as possible either provide the information requested up on payment of the prescribed fee, or provide a written response stating the reasons for rejecting the request on any of the grounds specified under Chapter Three of this Proclamation notifying the requester his rights of appeal. However the response shall in any case be made not more than thirty working days, of the receipt of the request.

4/ Where it is decided to provide the information on payment of such fee as may be prescribed , the public relation officer shall notify the requester in writing the amount of the fees, the manner of payment and request him to pay the fee. The period intervening between the dispatch of the said notification and payment of the fees shall be excluded for the purpose of calculating the period of thirty days referred to in sub article (2).

5/ Failure to respond to a request within the period refered to in sub- article (3) shall be deemed to be a refusal to grant the request.

6/Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately diverts the resources of the public body or would be detrimental to the safety or preservation of the record in question.

7/ Any official or employee of the public body shall have a duty to cooperate when a request for information is made to him by the public relations officer.

8/ The public relation officer to whom a request for access to a public record is made may extend the period of thirty days referred to in sub article (3) for a further period of not more than 30 working days if –

a)the office is congested with many similar requests and the information sought cannot reasonably be provided within the 30 working days; or

b)the information required to be retrieved or processed would involve the review of large number of documents and compliance with the request within the prescribed time would unreasonably divert the resources of the public body .

c)the request requires a search for records in or collection thereof from, branch offices of a public body located at different cities as a result it can not reasonably be completed within 30 working days; or

d)consultation among the different organs or divisions of the public body or with other public bodies is necessary to decide upon the request and that can not reasonably be completed within 30 working days ;or

e) the requester declares his agreement in writing for such extension.

9/Notwithstanding the provisions of sub-article(3) of this Article, any public body to whom a request for access to information regarding a matter deemed urgent is made shall provide the requested information within, a period of not more than ten working days.

10/ Without prejudice to other matters stipulated to be deemed urgent by public bodies, matters are deemed to be urgent if;

a) an application which reasonably demonstrates that failure to provide an information urgently would pose an immediate risk of danger to the life or physical well being of a person is lodged;or

b)an applicant ,whose main engagement is dissemination of information in the mass media ,made a request which reasonably demonstrates that an action taken or about to be taken by the public body should be released to the public immediately.

11/ Where the public relation officer deems that request made in accordance with sub article

(10) (a) and (b) of this Article is not an urgent request that requires an expedited access ,he shall communicate his decision along with a statement indicating the requester's right to make an administrative appeal within the time limit referred to in sub-article (9) of this Article No court may review on appeal such a decision.

12/ The fees payable for access to information in accordance with sub-article (2) of this Article shall not exceed the actual cost of searching, collecting and duplicating the record containing the information provided that no fee shall be charged for requests of personal information or for requests from those who cannot afford to pay.

15. Exempted Information

1/The right of access provided in Article 12 of this Proclamation applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of information, provided that this right takes effect subject to the exceptions provided in this Part.

2/The mere fact that a record has been administratively classified as confidential does not, of itself, override the right of access established by this Proclamation unless it falls within the scope of an exception set out in this Part.

16. Information Relating to Third Party

1/Any public relation officer, must reject a request for access to a record of the public body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual who has passed away before 20 years.

2/ A request referred to in sub-article(1) of this

Article may not be refused if the record consists of information:-

a)with respect to which the third party has not protested against disclosure under Article 19 of this Proclamation or has consented in writing to its disclosure to the person who has made the request;

b)that was submitted to the public body by the individual to whom it relates and the individual was informed by or on behalf of the public body, before it had been submitted , that the information belongs to a class of information that would or might be made available to the public;

c) that has already been publicly available;

d) about an individual's physical or mental health, or well- being, who is under the care of the requestor or under the age of 18 years or incapable of understanding the nature of the request, and giving access would be in the individual's best interests;

e) about an individual who is deceased and the requester is the individual's next of kin or the requester has secured the written consent of the individual's next of kin; or

f) about an individual who is or was an employee of a public body and which relates to the position of functions of the individual, including; the position or status of the individual, the title, work address, office phone number and other similar addresses of the individual, the classification, salary scale, remuneration and responsibilities of the position held or services performed by the individual and the name of the individual on a record prepared by the individual in the course of employment.

17. Commercial Information of a third Party

1/The public relation officer shall refuse a request for information if the requested information contains;

a) trade secrets of a third party;

b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would likely to cause harm to the commercial or financial interests of that third party; or

c) information supplied in confidence by a third party the disclosure of which could reasonably be expected to put that third party at disadvantage in contractual or other negotiations; or to prejudice that third party in commercial competition.

2/A record may not be refused in terms of sub-article (1) of this Article insofar as it consists of information;

a) already publicly available;

b)in relation to which a third party did not object to the disclosure under Article 19 or has consented in writing to its disclosure to the requester concerned; or

c) about the results of any product or environmental testing or other investigation supplied by a third party or the result of any such testing or investigation carried out by or on behalf of a third party and its disclosure reveals a serious public safety or environmental risk .

3/ The information referred to in sub-article

(2)/c/ of this Article may not include the results of preliminary testing of other investigation conducted for the purpose of developing methods of testing or other investigation.

18. Protection of Confidential Information of Third Party

1/ The public relation officer shall refuse a request for access to a record of the public body if ;

a) the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement and would likely result a legal action against it; or

b) the record consists of information that was supplied in confidence by a third party and if disclosure would be likely to prejudice the future supply of similar information from the similar source and where there is a public interest in the continued supply of such information.

2/ Notwithstanding the provisions of sub article /1/ (a) the public relation officer shall disclose the information if the third party has consented in writing to it's disclosure to the person who has made the request.

19. Third Party Notification and Intervention

Where a public relation officer intends to disclose any information or record, or part thereof, on a request made under this Proclamation which relates to, or has been supplied by a third party and has been treated as confidential by the third party, he shall, within 15 days from the receipt of a request, give written notice to such third party of the request and of the fact that he intends to disclose the information or record or part thereof unless he make his protest against the proposed disclosure within 15 days from the date of the issuance of the notice. Any failure to lodge such an objection shall result in bringing about the effects of Article 15(2) (b) and Article 16(2) (b) of this Proclamation

20. Protection of Safety of Individuals and Property

The public relation officer shall refuse a request for access to information if disclosure of the requested information;

1/ would be likely to endanger the life or physical safety of an individual.

2/ would reasonably be expected to prejudice or impair the security of building structure or system, including computer communication system, a means of transport or any other property structure or system; or.

3/ would be likely to prejudice or impair methods, plans or procedures for the safety of the public or any part of the public or for the protection of individual under witness protection scheme.

21. Protection of Proceedings of Law Enforcement and Legal Investigation

1/ The public relation officer may refuse a request for access to a record or a request to conform or deny the existence or non existence of any information if the record contains methods, techniques, procedures or guideline for the prevention, detection, curtailment or

investigation of a contravention or possible contravention of the law, or the prosecution of alleged offenders; and when the disclosure of such information would be likely to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence.

2/ A public relation officer may refuse a request for information relating to an alleged offender whose prosecution is under preparation or even though the preparation is completed the prosecution is not yet instituted or whose prosecution is pending and the disclosure or assuring the existence or non existence of the requested information would be likely to:

a) impede the prosecution;

b) result in a miscarriage of justice; or c) prejudice or impair the fairness or impartiality of a trial.

3/ The public relation officer may not refuse a request to access a record under this Article insofar as it contains information about the general condition of detention of persons in custody.

22. Protection of Records Privileged From Production in Legal Proceedings

The public relation officer shall refuse a request for access to a record of the public body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

23/ Defense, Security and International Relation;

1/ The public relation officer may refuse a request to access information or a request to confirm the existence or non existence of an information, if the disclosure or confirmation of the requested information would be likely to cause prejudice to the security, defense and international relations of the country.

2/ Without prejudice to the provisions of sub article (1) of this Article, the information provided under the same sub article includes information:

a) relating to military operation, exercises, military tactics or strategy undertaken in preparation of hostilities or in connection with the detection, prevention, suppression or curtailment of subversive or hostile activities.

b) relating to the quantity, characteristics, opacity, power, vulnerabilities or function or capability or deployment or utility of weapons or any other equipment used for the detecting,

preventing or suppressing or curtailing of subversive or hostile activities or any thing being designed, developed, produced or considered for use as weapons or such other equipment;

c) relating to the characteristics ,capabilities vulnerability ,potential ,deployment or function of any military force , unit or personnel or any body or person entrusted with the task of detecting, preventing ,suppressing or curtailing hostile or subversive activities or

d) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in this sub article under (a),(b),(c)and(f)

e) on the identity of a confidential source and any other source of information referred to in this sub-article under (f);or

f) held for the purpose of intelligence relating to the national defence or relating to the detection, defence, suppression or curtailment of subversive or hostile activities or relating to another state or an international organization or used by or on behalf of the country in the process of deliberation and consultation in the conduct of international affairs

g) information supplied by or on behalf of the country to another state or an international organization in terms of an international agreement or arrangement with that state or organization which requires the information to be held in confidence; or

h) required to be held in confidence by an international agreement or international customary law; or

i) on the positions adopted or to be adopted by the country, another state or an international organization for the purpose of present or future international negotiations; or

j) that constitutes diplomatic correspondence exchanged with another state or with an international organization or official correspondence

exchanged with diplomatic missions or consular posts of the country.

24. Cabinet Documents

1/ The public relation officer shall not permit any request for an access to a cabinet record or a request to conform the existence or non existence of information contained in a cabinet record other than those records that are made available to the general public by the decision of the cabinet .

2/ Without prejudice to sub article (1) of this Article, a cabinet document shall include:

a) a record that has been submitted to the cabinet for its consideration or is proposed by a head of the public body to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the cabinet;

b) an official document of a cabinet;

c) a document that is a copy of, or a part of, or contains an extract from, the document referred to in sub-article (a) or (b); or a record the disclosure of which would involve the disclosure of any deliberation or decision of cabinet, or its committee other than a document by which a decision of the cabinet was officially published.

25. Economic Interests and Financial Welfare of the Country and Commercial Activities of Public Bodies

1/ The public relation officer may refuse a request for access to a record of the body or a request to confirm the existence or non existence of any information if its disclosure would likely to jeopardize the economic interests or financial welfare of the nation or the ability of the government to manage the economy of the country.

2/ The information referred to in sub-article (1) includes, without limiting the generality of that sub article, information about;

a) a contemplated change in , or maintenance of, a policy substantially affecting the currency, coinage, legal tender, exchange rates or foreign investment;

b) a contemplated change in or decision not to change; credit or interest rates, customs or excise duties, taxes or any other source of revenue, the regulation or supervision of financial institutions, government borrowing, or the regulation of prices of goods or services, rents or wages, salaries or other incomes; or

c) a contemplated sale or acquisition of immovable or movable property or a contemplated international trade agreement.

3/ The information referred to in sub-article (2) /c/ includes, without limiting the generality of that sub article, information about an agreement, or contemplated agreement, to transfer any interest in or right to shares in the capital of a public body to any person which is not a public body referred to in article (2) /4/ of the definition of 'public body

4/ unless the record consists information already publicly available or information about or owned by public body other than the public body to which the request is made ,which has consented in writing to its disclosure to the requester ,or information about results of any product or environmental testing or other investigations carried out by or on behalf of the

public body the disclosure of which would reveal serious public safety or environmental risk, The public relation officer shall refuse access to a record if the record contains;

- a) trade secrets of the state or a public body;
- b) financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which would be likely to cause harm to the commercial or financial interests of the state or a public body;
- c) information, the disclosure of which could reasonably be expected to prejudice a public body in commercial competition or to put a public body at a disadvantage in contractual or other negotiations. .

26. Operations of Public Bodies

1/ The public relation officer shall refuse a request for access to a record of the body if;

- a) the record contains an opinion, advice, report or recommendation obtained or prepared or an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or
- b) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid communication of an opinion, advice, report of recommendation or conduct of a consultation, discussion or deliberation; or
- c) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

2/ The public relation officer may refuse a request for access to a record of the body if;

- a) the disclosure of the record could reasonably be expected to jeopardize the effectiveness of a monitoring, auditing examining or testing, procedures or methods used by a public body;
- b) the record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of the material would breach an express or implied promise which was made to the person who supplied the material and to the effect that the material or the identity of the person who supplied it, or both, would be held in confidence; or

c) the record contains a notes, preliminary, working or any other draft of an official of a public body.

3/A record may not be refused in terms of sub-article (1) and (2) in so far as it consists of an account of, or a statement of reasons required to be given in court proceedings.

27. Requests that are too broad, likely to divert resources or pertaining to informations to be published in the future

Notwithstanding the provisions of Article 12 of this Proclamation, the public relations officer may reject the request to obtain information where:

- 1) the request is too general or is of such a nature that the information required to be retrieved or processed would involve disproportionate diversion of human and material resources or would adversely interferes with the functioning of such authority;
- 2) the request is insufficiently precise to enable the information sought to be identified, and the requester has failed to reframe his request even though the public relations officer has provided him with assistance to this end
- 3) the request relates to Information that is required by law, regulation, directives or order to be published at a particular time and such information is likely to be published within 30 days of the receipt of such request; or
- 4) the request relates to information contained in published material generally available for the public .

28. public interst override

Notwithstanding the exceptions in article 15-25 of this proclamation a public body may not refuse a request for information unless the harm to the protected interest which would be caused by disclosure outweighs the public interest in disclosure .

29. Severability

When a request for access is made to a record of a public body containing information which may or shall be refused in terms of any provision of this proclamation, disclosure of that part of the record which does not contain exempted information may be allowed if it can reasonably be severed from any part that contains such information.

30. Language of access

A requester whose request for access to a record of a public body has been granted may,

1/ If the record exists in the language that the requester prefers, be given access in that language; or

2/ If the record does not exist in the language preferred, be given access in any language the record exists.

31. Appeals Against Refusals of Information

1/Any person who is aggrieved by the decision of the public relation officer under this part may lodge his appeal to the concerned head of public body within 30 days from the day the decision is made.

2/If the appellant can prove sufficiently that he could not lodge his appeal due to force major, the head of the public body may accept the appeal after the lapse of period referred to in sub-article (1).

3/The head of the public body to which the appeal is lodged shall give a decision with in 10 days.

4/ Any person who is aggrieved by the decision of the head of the public body may lodge his appeal the to Ombudsman within 30 days of receiving that decision.

32 Responsibilities of the Ombudsman

1/ The ombudsman shall within 18 months after the commencement of Part Three of this Proclamation compile a guide, in an easily comprehensible form and manner, as may be required by a person who wants to exercise his right under this section, which contains –

a)the objects of this section;

b)the address of the public relation officer of each public body and the deputy officer;

c) the description of the main functions of every public body;

d)the manner and form of request for information under Article 12 of this Proclamation;

e)the assistance available from the public relation officer in terms of this proclamation;

f)the assistance available from the Ombudsman institute in terms of this proclamation;

g)legal remedies available regarding failure to comply with a right or duty conferred or imposed by Part Three of this Proclamation;

h)the manner of lodging administrative appeals;

i)the manner of lodging appeal with court against a decision by the public information officer or the head of a public body;

j)the description of information which public bodies are required to publish by this section of the proclamation and the procedures to be followed to obtain access to these manuals;

k)requests with respect to which access fees are payable and requests eligible for partial or full exemption from payment;

l)guidelines and instructions that assist public relation officers of public bodies to implement the provisions of this section in a uniform manner;

2/ the Ombudsman in addition to the powers and responsibilities given to it by this proclamation shall, to the extent that resources are available,

a) monitor the implementation of this section on the basis of reports submitted to it under article 36 (1), prepare an annual report to the council of peoples representatives

b)make recommendations for development, improvement, or reform both of a general nature and directed at specific public bodies

c) co-operate in the delivery or undertake training activities for public relation officers on the right of access to information and effective implementation of part three of this proclamation;

d) publicize the requirements of this part and the rights of individuals

e) with respect to the duty to publish in terms of Article 13 of this Proclamation, determine public bodies which , owing to the nature of their operation ,should compile their manuals together or those public bodies which must share the cost of compilation or whose' cost should be covered by other public bodies. ;

f) compile and make widely available a guides and code of practices on how to use this proclamation;

g) make recommendations to the house of peoples representatives regarding the development, improvement ,reform and /or amendment of this proclamation

h) perform such other acts as may be required for the implementation of this proclamation

3/ the Ombudsman shall have powers necessary for it to carry out the tasks and responsibilities given to it under this section and it shall get adequate additional budget necessary for carrying its task from the house of peoples representatives

4/ the chief Ombudsman shall submit annual report to the house of people's representatives on his performance

33. Administrative Appeals

1/ In reviewing any appeal under sub-article 31(4), the Ombudsman may examine any record held by a public body, except documents subject to a certificate issued in accordance with Article 35 but, in doing so, shall ensure that any exempt information under this Proclamation is not disclosed.

2/ The Ombudsman shall decide any appeal under Article 31(4) within thirty days.

3/ The ombudsman shall have the power to reject any appeal, or to order any public body to provide the requested information or to take such other action as is appropriate to ensure that the public body meets its obligations under this Proclamation.

34. Court Appeals

1/ Any person who is aggrieved by a decision of the ombudsman may lodge an appeal against that decision within thirty days to the Federal First Instance Court in the case of federal public bodies or to the Regional High Court in case of regional public bodies.

2/ Subject to the provisions of Article 35, a court reviewing an appeal under this article may examine any record of a public body and no such record may be withheld from the court on any ground.

3/ The court, in deciding the matter, shall not disclose any exempt information under this Proclamation. the court may, where necessary, receive evidence or hear argument in the absence of the applicant or his representative.

4/ The court shall decide upon the appeal within thirty days. In addition to the order it gives on the merits of the case, the court may also order payments of costs or expenses.

35 Issuance of Certificates

1/ In so far as the information sought to be accessed or the existence or non existence of which is sought to be confirmed relates to national security, national defense or international relations the head of the public body may issue a certificate certifying that the information falls within the scope of exceptions set out in Article 22 and that disclosure of the information would be almost certain to cause serious harm to national security.

2/ Notwithstanding any provision in this Part, neither the Ombudsman nor any court may review a decision under sub-article (1) to issue a certificate.

3/ Any certificate under sub-article (1) must be tabled in the House of Peoples' Representatives within 30 days of its issuance and the House may either approve or rescind the certificate.

36. Duty to Report

1/ As s soon as practicable and not later than 30th of

May in each year, the public relation officer of each public body shall submit to the ombudsman, a report regarding the activities of the public body in implementing the provisions of chapter three of this proclamation.

2/ The report referred to in sub article /1/ of this Article shall consist;

- a) the number of requests for access received;
- b) the number of requests for access granted access in full;
- c) the number of requests for access refused in full and refused partially;
- d) the number of internal appeals made to the head of the public body and the number of granted requests as a result of these internal appeals;
- e) the number of appeals made to the Ombudsman
- f) The number of court appeals; and
- g) Such other matters as may be prescribed by law

3/ The head of public body shall include in his annual working report to the council of ministers and peoples representative in the case of federal public bodies or to the national regional government council and national regional council , the report referred to in sub-article (1).

37. Powers to Make Regulations.

The council of ministers may make regulations regarding;

1)Schedules of fees payable for different categories of information and, the conditions under which such fees are reduced or waived;

2) The procedures for the custody and classification of information regarded as confidential or declassification of records;

3) Any matter which is required for the implementation of the provisions of part three of this proclamation.

38. Record Maintenance

1/ The Ombudsman shall, after appropriate consultation with interested parties, issue and from time to time update a Code of Practice relating to the custody , management and disposal of records.

2/Every public body is under an obligation to maintain its records in accordance with the Code of Practice stipulated in sub- article (1).

3/ Every public body shall ensure that adequate procedures are in place for the correction of personal information.

39. Miscellaneous

1/ No person is criminally or civilly liable for for anything done in good faith in the exercise or performance of any power or duty under this part. of the proclamation .

2/ No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or which would disclose a serious threat to health, safety or the environment, as long as he acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

3/ For purposes of sub-article (2), wrongdoing means the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, abuse of power or serious misconduct, whether linked to individual wrongdoing or not.

4/ Any person who with intent to deny a right of access to information in terms of this section ;

a) destroys, damages or alters a record;

b) conceals a record;

c) falsifies a record or makes a false record; commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

5/ Information relating to any occurrence, event or matter which took place, occurred or happened more than twenty-five years before the date on which any request is made under Article 14 shall be provided to any person making a request under that article, provided that this sub-article shall not apply to the exceptions in articles 16, 17, 18 and 23.

6/ It is prohibited to make any document confidential in order to cover corruption, contravention of laws, organizational or personal incompetence, inefficiency or scandals.

PART FOUR

Rights and Responsibilities of the Media

40. Right of Reply or correction

1/ Where any factual information or matter injurious to the honor or reputation of any person is reported in a mass media, such person shall have the right to have his reply inserted, free of charge in publication in which the report appeared;

a) The editor or his deputy shall have a duty to publish free of charge and with out correction any reply addressed to him, incase of a daily news paper within three days of receipt or, incase of a weekly news paper within nine days of receipt and in other publications in the next issue appearing after receipt;

b) Where the statement which has given rise the reply is made in broadcasted radio or television program, the responsible program editor shall, free of charge and with out correction, insert the reply in the next part of the program or other similar program within fourteen days of receipt;

c) Any reply shall be proportional, relevant to the report that has given rise to it and shall have a lawful content.

d) if the report or information is disseminated during the election process, the time limit referred to in sub-article (1)/a/ and /b/ shall be educed ,in the case of the three days limit to twenty four hours, in the case of fourteen days limit to forty eight hours;

e) the provisions of sub-article (1)/d/ shall only apply when the reply is submitted to the mass media six hours before the publication goes to print or the program on which it is to appear is on air .

2/ Any person whose right of reply is refused may apply to the court to compel the chief editor of the periodical or program to insert the reply in the press.

3/ The court before which the application is lodged shall give its decision within ten days from the day the petition is submitted to it however during election period the court shall pronounce its decision within twenty four hours

4) The court may when the responsible person under Article 43 refuses to comply with its order to insert the reply render him liable to punishment. .

5) The provisions of this article shall not affect the provision of Article 2049 of the civil code.

6) The provisions sub article (1) to (5) are applicable only if the request for insertion of a reply is made to the mass media within three months from the day the report which has given rise to it was published or went on air.

7)The provisions of this article shall mutatis mutandis apply to enforce the right of a person to correct any incorrectly reported factual statement regarding him.

PART FIVE Taking lawful measures

41. liability

1) The media establishment may incur joint criminal or civil liability with the responsible person under Article 41 of the Penal Code for a criminal offence committed through the mass media or a civil damage caused by the media

2) In an action for defamation through the mass media the court may award, having regard to the seriousness of the moral damage, compensation up to 1000,000 birr having regard to the seriousness of the damage.

3/ In case of conflict between the provisions of the Penal Code and the provisions of this Proclamation under Part 5 and 6 the latter shall prevail

4/ A claim for damage caused by the mass media may be made even if the criminal prosecution under this Proclamation is barred by the period of limitation or the prosecution is defeated .

42. Impounding

1/ Notwithstanding any contrary provision in any other law, no periodical or book shall be impounded except as provided for in this article.

2/ where The Federal or Regional public prosecutor ,as the case may be , has sufficient reason to believe that a periodical or a book which is about to be disseminated contains illegal matter which would, if disseminated, lead to a clear and present grave danger to the

national security which could not otherwise be averted through a subsequent imposition of sanctions , may issue an order to impound the periodical.

3/ In cases of extreme emergency, where it is not possible to obtain a court order in time to prevent the harm, the public prosecutor may order the periodical or the book to be impounded, provided that he shall notify a court of the order within 48 hours and the court shall determine within 24 hours whether or not the prosecutors order shall be upheld.

4/ the court to which the an order to impound a periodical or a book issued by a public prosecutor, is submitted may:

a) if it deems that periodical or the book contains unlawful matter that is likely to cause serious danger, uphold the public prosecutors measure and order that criminal proceedings be instituted, or application for confiscation of the printed matter be submitted, within two weeks from the date on which the court pronounced its decision. if the public prosecution fails to take such action, the court shall revoke the order to seize the periodical or the book and bar its dissemination

b) if it deems that the content of a periodical or a book is lawful and not likely to cause any damage ,revoke the impoundment order issued by the public prosecutor and may order the the release of the publication. Unless otherwise the a stay of execution is issued by an appellate court the order shall be executed after the lapse of 72 hours.

5/ Once criminal proceedings have been instituted for offences committed through media periodical or a book or an application is made to the court for a periodical or a book to be confiscated, the court shall have the power to order the publication to be impounded and its further dissemination be barred, or revoke an order , that has been issued under sub article 3 .

6/ If an offence has been committed by a mass media product and no one is liable under article 43 of the penal code for the offence, the public prosecutor or the private complainant may apply to have the publication confiscated instead of instituting criminal proceedings. The same applies if no summons can be served in Ethiopia on the person liable for the offence.

7/If the time referred to in sub article (4) is insufficient having regard to the nature of the impounded matter or for any reasonable cause, the court may, on the request of the prosecution, permit an extension of the period up to two weeks.

8/ An order for the impoundment of a periodical or book shall contain a statement indicating the offending passage or passages in the publication which occasioned the order and shall

specify the volume, part, issue, or installment in which these passages occur.

9/ An order for the Impoundment of a periodical

or book shall relate only to copies intended for dissemination. The police shall execute an impoundment order forthwith.

10/ The prosecutor shall be legally liable for a malicious exercise his powers under this article

43. Manner of Instituting and Hearing Mass Media Related Cases

1/ Unless the attorney general decides otherwise any person who is suspected of committing an offence through the mass media shall be brought before the court without being remanded for further investigation in accordance with Article (59)/2/ and /3/ of the Criminal Procedure Code.

2/The Court having jurisdiction over the case shall commence the hearing of the case within 15 days from the filing of the charge.

3/ The court shall cause the accused person to obtain a copy of the charge ,together with a copy of other evidences, if any ,at least five days before the commencement of the trial..

4/The court shall pronounce its judgment within one month from the commencement of the trial.

5/ Where the accused person has not been duly summoned because he was not found at his address, the court shall order the publication of the summons notifying that the hearing shall proceed in his absence should he fail to appear within seven days.

6/Where the person is not satisfied by the judgment given in default, he may lodge an appeal in accordance with Article 44 .

7/save otherwise for prosecutions for false accusations and defamation against the constitutionally established legislative, executive or judicial authorities prosecutions for defamation and false accusation committed against individuals or private organization through the mass media shall be instituted and conducted by the private complainants.

8/The court shall, cause the copy of the judgment it renders pursuant to sub-article

(4) of this article to be sent to the Ministry of Information or concerned Information Bureau of the Regional state..

44. Appeal

1/ The party who is aggrieved by the decision of the court shall lodge his memorandum of appeal to the appellate court within thirty days of the rendering of the decision, and the rendering court shall give the appellant copies of the decision within 24 hours of receiving the party's notice to appeal.

2/ The appellate court shall give decision within 10 days of the receiving the memorandum of appeal.

45. Penalties

1/ Anyone who has contravened the provisions of articles 7(1)-(3) shall be punished with a fine of not less than 20,000 birr and not exceeding 200,000 birr.

2/ Any publisher of a periodical or broadcaster who, in violation of article 6(2), failed to appoint a responsible editor, failed to comply with obligations set out under article 9(6) or violates the obligations provided under article 10 shall be punished with a fine up to 15,000 birr

3/ Where an editor in chief or program editor has improperly failed to publish or broadcast a reply or correction sent to the mass media pursuant to article 40 of this Proclamation, shall be fined up to 15,000 birr.

4/ Any person who violates article 6(1) or article 8 may be fined up to 15,000 birr.

5/ If in an offence committed through a mass media the defendant is convicted, the court may, upon request by the party, issue an order for the verdict to be published in that mass media outlet.

6/ The court may issue an injunction forbidding further dissemination of mass media output in respect of which a conviction or order of impoundment has been issued.

46. Statute of Limitation

1/ Subject to Article 28(1) of the Constitution, no criminal proceeding for an offence committed through a periodical may be instituted after the lapse of one year from the date when the offending matter was published.

2/ For broadcasters, the period in sub-article (1) shall be six months from the date when the program was broadcast.

Part Six Miscellaneous Provisions

47. Scope of Application

1/ the proclamation shall be applicable on periodicals if

a)The periodical obtains a certificate of registration

b)The publication duplicated and bears the name of the publisher ,the printer , the place of publication and the date and year of its publication,

2/ Printed matters shall be regarded as mass media only when they are disseminated. Periodicals shall be deemed to have been disseminated when they are delivered for sale or distribution and broadcasts shall be deemed to have been disseminated once they have been disseminated over the airwaves.

3/ Without prejudice to the provisions of this Proclamation, a picture, whether it is not together with written material, shall be regarded as printed matter.

4/ This Proclamation shall not be applicable to pornographic printed matters, whether they are offered for sale or free of charge.

48. *Transitory Provisions*

1/ Periodicals in operation prior to the coming into force of this Proclamation shall bring themselves into conformity with Article 9 within ninety days of the coming into force of this Proclamation.

2/ In order to provide public bodies an opportunity to put in place the necessary arrangements to facilitate implementation. Part III of this Proclamation shall enter into force one year after the date this Proclamation is published in the Negarit Gazeta. The House of Peoples' Representatives may extend this period for a duration of not more than one year .

49. *Conflict with Other Laws*

Laws, regulations, directives, orders and practices which are inconsistent with this Proclamation shall, to the extent of that inconsistency, not be applicable.

50. *Repealed laws*

Except Articles 8 and 19 of the Press Proclamation No. 34/1992 which shall remain in force until the coming in to force of the provisions of Part Three of this Proclamation all the remaining articles are hereby repealed.

51. *Effective Date*

This Proclamation shall enter into force up on the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this 4th day of December, 2008

GIRMA WOLDEGIORGIS
PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA