

Reporters Without Borders

<http://www.rsf.org/ethiopie-although-still-at-draft-stage-new-06-07-2012,42957.html>

Africa - Ethiopia

Correction and update

Although still at draft stage, new telecoms rules give cause for concern

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Reporters Without Borders wishes to correct a [report](#) published on its website on 7 June stating that the 2012 Proclamation on Telecom Fraud Offences had been ratified by the Ethiopian authorities. We understand that the document has not yet been approved, despite the fact that the agenda circulated to journalists covering Parliament on May 24 explicitly said: "Examine and Endorse a Proclamation on Telecom Fraud Offences". More than 99 percent of the assembly's members belong to the ruling party. Reporters Without Borders understands from media reports that the bill was drawn up by the [Information Network Security Agency](#) (INSA), tabled for discussion by the Ministry of Communication and Information Technology and has now been referred to the Science, Communication and Technology Affairs Standing Committee for further inspection.

The Ethiopian government's position

Asked about the intent of the law and its potential to clamp down on communication, a government spokesman, Shimeles Kemal, told a Reporters Without Borders representative that "the compelling reasons behind the promulgation of this law are technological progress and the alarming increase in the incidence of illegal telephone services that bypass the national network, posing loss of revenue and national security risks". He said his government wished to create no new offences but rather to address telecoms-related fraud that could not have been dealt with under existing laws.

It was wrong to assume that this law was intended to regulate media content one way or another, Shimeles said, adding: "It should be viewed as a legal framework that addresses the serious national security issues highlighted by the increasing merger of telecoms services with the Internet. Content-related matters are dealt with by our media laws."

"The law was never meant to criminalize VoIP services such as Skype or others", he told Reporters Without Borders "Neither did it aim to restrict any-Internet-based voice service that takes place between PCs, PC to phone and Internet-based phone-to phone services. Had this been the case, the agency could have used existing laws to ban VoIP and charge users in court."

Reporters Without Borders notes that an earlier order, No. 281/2002: "Proclamation to Provide for the Amendment of Telecommunications Proclamation" presents a danger to all users of Internet-based voice communication. Amendment 11 of the current 2002 law, under which no one has been convicted or sentenced yet, makes all communication by fax or voice via the Internet illegal and liable to a fine or a prison sentence of up to five years.

Reporters Without Borders still concerned

Reporters Without Borders still believes that the 2012 Proclamation on Telecom Fraud Offences as it is worded currently is disproportionately vague and could be applied to severely restrict the use of VoIP, ensuring the Ethio-Telecom network retains its service monopoly and maintains its revenue levels. The criminal law should be precise and be interpreted, we believe, as unambiguously as possible to protect people's right to communicate using VoIP services.

Because of the way in which Ethiopia's justice system has handled matters of freedom of expression in recent years, we take an extremely cautious view of this move by the government.

The articles in their current form are phrased too broadly and could have serious negative effects on how journalists and dissidents use communications via the Internet, putting them at a greater risk of surveillance and inevitable legal pitfalls. The current definition of telecommunications services and telecommunications equipment could cover blogging platforms and social networks, as pointed out by the [OWNI website](#).

The risks for individuals cannot be underestimated. Article 5 of the second section of the bill, covering offences of illegal interception and access, provides for up to 15 years' imprisonment and a fine for anyone who "without the authorization of the provider or lawful user, or any other competent authority ... illegally obtains access to any telecommunications system".

In addition, article 6 of the second section of the bill specifies that anyone who uses the telecommunications network or apparatus to disseminate any "terrorizing" or "obscene" message, or uses the infrastructure for "any other illegal purpose" could be liable for a penalty of up to eight years' imprisonment. The vagueness of this wording is a cause for concern. Broad interpretation of the 2009 anti-terrorism law has already led to the arrest and [sentencing of journalists to long prison terms](#).

Article 10, paragraph four, can be understood to mean the provision and use of VoIP services (it does not specify whether this means paid-for as well as free of charge), whether intentionally or "by negligence", are offences punishable by up to two years' imprisonment.

(Paragraph 3/"Whosoever provides telephone call or fax services through the internet commits an offence and shall be punishable with rigorous imprisonment from 3 to 8 years and with fine". Paragraph 4/"Whosoever intentionally or by negligence obtains the service stipulated under sub-article (3) of this Article commits an offence and shall be punishable with imprisonment from 3 months to 2 years and with fine".)

This article could have serious implications for Internet cafes and their customers. Internet cafes are the main point of Internet access for Ethiopians. The country's connection coverage is extremely low – around 0.7 percent. Any measures designed to restrict VoIP use in Internet cafes would have an adverse effect on a considerable number of Ethiopian Internet users.

Equally alarming is what we believe are pervasive surveillance powers granted to the police by this bill. Under article 14, a police officer may request the court in writing for a covert search warrant "where he has reasonable grounds to believe that a telecom fraud offence has been committed or is likely to be committed." It also allows evidence gathered through such interception or surveillance to be admissible.

The ministry would have excessive powers not only over businesses and institutions but also over individuals since the bill requires anyone who uses or holds any telecommunication equipment first to obtain a permit. Cases where this is waived are an exception (*paragraph 3.3 of section two: the Ministry shall "prescribe types of telecommunication equipment the manufacturing, assembling, sale or the use of which shall not require permits"*).

Lastly, it is regrettable that the draft has no safeguard clause designed to protect freedom of expression and excluding the use of VoIP from the bill's scope.

Government ready to hold talks

Reporters Without Borders, acting as an international watchdog regarding legislation that could impinge on freedom of information, asks the Ethiopian authorities not to approve the '2012 Proclamation on Telecom Fraud Offences' as it stands. The organization is willing to hold discussions with the government to try to clarify the bill and ensure it protects the basic rights of people to communicate while addressing the government's concerns about cyber security.

On June 29, Shimeles reiterated to Reporters Without Borders his government's readiness to work with international organizations that could lend technical expertise on guidelines for freedom of information and related legislation to ensure international best practice and standards are upheld. "We have worked in the past with international organizations and we still welcome those who want to engage in consultative discussions with a view to support the frameworks' ability to promote and protect the right to information and media development," he said "We intend to do that while diligently working to address any loopholes that might

undermine our national interests and security.”
