

# The Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance: Challenges and Prospects

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The nature of the environment in which national human rights institutions (NHRIs) operate determines their effectiveness in building a human rights culture. NHRIs operating in a non-democratic tradition reflect the system itself since the nature of the social, political and legal environment in such system contains informal constraints affecting their overall activities. The Ethiopian Human Rights Commission (Commission) was set up as part of democratic institutions following regime change in the early 1990s. It embarked on discharging functions vested in it in a framework that is not favorable for such institution to be effective. Lack of democratic tradition and good governance, poor culture of respect for human rights, weak institutions, and financial constraints are among the major hurdles limiting the effectiveness of the Commission. Against the prevailing environment, the article examines the effectiveness of the Commission in meeting its objectives on the basis of the evaluation of the practice of the Commission since it started its operation in 2004. Specifically, the performance of the Commission so far in the areas of promotion (sensitization and education) and protection (complaint-handling), and monitoring of human rights are reviewed to see if the institution is effective in defending human rights and thereby building good governance. After highlighting its success story, the major worrying trends and setbacks in developing a culture of respect for human rights and building good governance are explored. Before doing so, the article offers an overview of the establishment, structure, mandate and power of the Commission. Also, a concise statement on the linkage between the overall objectives of NHRIs in general and of the Commission in particular and good governance is offered to indicate that the institution is meant to serve as one of the institutional mechanisms to bring about good governance in the nation.

## 1. Establishment of the Commission: Context and Process

Regarding the mode of setting up, NHRIs can be established in three ways: by constitution (or amendment of constitution), by act of parliament, and by presidential decree.<sup>1</sup> The setting up of NHRIs stipulated in constitutional text, represents the most powerful option as it guarantees the permanence of the institutions, is found in countries that have recently undergone constitutional reforms and are marked by grave human rights violations in the past.<sup>2</sup>

Coming to Ethiopia, the evolution of the discourse on democracy, human rights, and democratic institutions in the country took place at a time of significant legal and political change. After a protracted armed struggle, the current ruling party, the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) ousted the former military regime from power in 1991 coinciding with the fall of the Socialist Camp and the resulting wave of democratization.

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<sup>1</sup> B. Lindsnaes and L. Lindholt, 'National Human Rights Institutions-Standard Setting and Achievements', in B. Lindsnaes, L. Lindholt and C. Yigen (eds.), *National Human Rights Institutions: Articles and Working Papers*, the Danish Centre for Human Rights, 2001, 14 (hereinafter referred to as 'Working Papers and Articles').

<sup>2</sup> *Ibid.*, 14-15.

Issues of democratic governance, human rights, rule of law, and decentralization emerged as central ones after the demise of the military regime.<sup>3</sup> The then transitional government undertook major transformative measures overhauling the political landscape, orientation, civil service, and economic policy of the nation aimed at redressing past injustices, atrocities and dire economic conditions amid high public expectations to usher in a new era.<sup>4</sup>

Faced with the epic task of creating a foundation for a democratic system, those involved in crafting a new *constitution* looked to providing a rights-based constitution anchored in the rule of law and limited government. A set of provisions with human rights orientation was believed to play a central role in this regard. This justifies the due regard the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) bestows to fundamental rights and freedoms.<sup>5</sup>

Realizing that the existing courts cannot alone shoulder the protection of human rights, the framers of the *Constitution* agreed on the need for democratic institutions that can significantly contribute building democratic governance and accountability systems.<sup>6</sup> The Commission was thus created as one of the rights-protective mechanisms as a response to a history of authoritarian rule in general and a notorious military dictatorship in particular that caused immense carnage.<sup>7</sup>

Compared to other legislation, the process of enacting the enabling statute of the Commission and the Ombudsman Institute is unprecedented considering a wider public and expert participation amid heightened public expectation.<sup>8</sup> Specifically, it involved an input of international experts and practitioners of NHRIs, public discussion throughout the country on draft legislation and workshop of local experts on it.<sup>9</sup> Drawing on this, Parliament eventually

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<sup>3</sup> Mohammed Abdo, 'The Ethiopian Human Rights Commission: Challenges Confronting Its Effective Functioning', *Chinese Year Book of Human Rights*, Vol. 4, 2006, 27-28.

<sup>4</sup> The measures undertaken include, *inter alia*, the framing of new *constitution*, inception of federal arrangement and decentralization, structural adjustment and adoption of market-oriented economic policy.

<sup>5</sup> The 'Preamble' of the Constitution declares that its objective is to build a political community based on the rule of law for the purpose of ensuring lasting peace and guaranteeing a democratic order. Protection of human rights and fundamental freedoms is a key to achieve this commitment. At least a third of 106 provisions of the FDRE Constitution are on human rights. Its Chapter Three contains a Bill of Rights. Article 13(1) makes it incumbent on all government organs at all level to respect and enforce the Constitution.

<sup>6</sup> Sub-Articles 14 and 15 of Article 55 of the FDRE Constitution stipulate the establishment of the Human Rights Commission and the Ombudsman Institute respectively. The setting up of the Auditor General and the National Election Board are envisaged under Articles 101 and 102 of the Constitution respectively.

<sup>7</sup> This is implicit from and reflected in the document prepared, in Amharic, by the *Legal Standing Committee* of the *House of People's Representatives* to elaborate draft laws to establish the Commission and the Ombudsman, 1999, 1.

<sup>8</sup> Ethiopia chose to have two separate institutions-one for administrative oversight and the other for human rights issues. Gravity of both human rights abuses and administrative malpractices along with the sheer size of the country are among the major rationale for setting up two distinct institutions. This is inferred from the document prepared by Parliament to elaborate the enabling statutes of the two institutions indicate this impliedly. See *supra* note 7, *op. cit.*, 1.

<sup>9</sup> The Government arranged an international conference in 1997 that managed to bring together about 68 well-known experts, jurists, and activists, officials of national human rights institutions of many states and other officials and representatives. The Conference was organized with a view to drawing on the experience elsewhere as the national democratic institutions were a new phenomenon in Ethiopia. The Conference and the deliberations on papers presented therein contributed significantly to the concept paper developed by parliament for the public discussions in order to eventually draft legislation for the two institutions. The concept paper contains options to be chosen by the public after public discussion regarding issues such as the structure, mandate, operational powers, leadership, and accessibility of the Commission. National

enacted the enabling legislation of the Commission, Proclamation No. 210/2000, in 2000 (Proclamation) pursuant to Article 55(14) of the FDRE Constitution. However, the nomination of the Chief Commissioner took place only in July 2004 and of the other two Commissioners a year later. The delay in the enactment of the legislation and appointment of officials was attributed to the Ethio-Eritrean War (1998-2000) that diverted the attention of the government to issues of maintaining national security.<sup>10</sup> On top of the war, the process was stalled by political and bureaucratic procedures.<sup>11</sup>

Although the Commission's enabling legislation involved a broad-based consultation of the general public and experts, both local and international human rights NGOs were excluded from the consultation, triggering criticism.<sup>12</sup> Despite this, the setting up of the Commission can be regarded as willingness on the part of the government to change the complex human rights situation in the country.<sup>13</sup> Because an apparent lack of appropriate social and political action and determination to condemn and sanction social norms abusive of human rights has been of concern in the country for a long time.<sup>14</sup>

Upon its establishment, there was high expectation of what the Commission would offer. This is unsurprising in a nation where the immense violation of dignity of citizens at the hands of the brutal military junta was still fresh in the memory of millions of people. Whether the Commission has lived up to that expectation is evident from the discussion on its success story and setbacks, beginning from section 5.

## 2. Structure of the Commission

Both a statutory and constitutional body, the Commission is an independent autonomous institution accountable to Parliament (the House of People's Representatives). Compared to NHRIs elsewhere, it is a relatively small institution, composed of a Chief Commissioner, a Deputy Chief Commissioner and a Commissioner for Children and Women, and other commissioners as may be deemed necessary, and the necessary personnel.<sup>15</sup> Given the large number of ethnic groups in the country, coupled with limited posts for officials, one may not obviously expect the Commission to replicate such diversity at a time.

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discussions on the concept paper were held at the capital cities of the nine units of the Federation, as well as Addis Ababa and Ambo. Ethiopian experts made deliberations on the outcome of the discussion held on the concept paper and the choice made by the public regarding the would-be normative content of the legislation. They submitted their findings to the parliament. Building on this, the parliament made a *draft Act* and presented it to the public deliberation. See Abdo, *supra* note 3, *op. cit.*, 27; See also Mohammed Abdo, 'Challenges Facing the New Ethiopian Ombudsman Institution', *International Ombudsman Yearbook*, Vol. 6, 2002, p. 78; see also *supra* note 7, *op. cit.*, 1-2.

<sup>10</sup> Ethiopian Human Rights Commission, 'Strategic Plan for the Ethiopian Human Rights Commission 2006-2011', the *Office of the Team of International Consultants* and the *Justice for All and Prison Fellowship Ethiopia*, 2006, 47 (hereinafter referred to as 'Strategic Plan 2006-2011').

<sup>11</sup> World Bank, Ethiopia: *Legal and Judicial Sector Assessment*, 2004, 32.

<sup>12</sup> Human Rights Watch criticized the exclusion of local and international NGOs from the whole process and described the act as a worrying matter from the early inception of the Commission; see Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa*, 2001, 60.

<sup>13</sup> Sarah Vaughan and Kjelit Tronvoll, *The Culture of Power in Contemporary Ethiopian Political Life*, SIDA Studies No. 10, 2005, 57.

<sup>14</sup> *Ibid.*

<sup>15</sup> The Australian Human Rights Commission has 6 commissioners, including the President. The South African Human Rights Commission has at least five Commissioners. Compared to its size and population, Ghana is a small country, but the Ghanaian Human Rights and Administrative Justice Commission has three Commissioners.

Since its inception up to 2011, the Commission's operation was confined to its head office, located in the capital, Addis Ababa. Increasing its outreach, the Commission, in 2011, set up branch offices in different parts of the country, with most of them in the Capital cities of different States.<sup>16</sup> Apart from advancing the promotion and protection of human rights at the local level, the decentralization has enhanced the Commission's staff diversity and pluralism as local staff and local vernaculars are used to conduct their respective activities.<sup>17</sup> While regional offices mean better access, physical access remains a barrier for much of the rural population.

The Proclamation provides a number of rules guaranteeing the institutional independence of the Commission in terms of allocation of funding, and appointment and dismissal of and immunity to its officials.<sup>18</sup> Other guarantees of independence in the form of its authority to recruit, and employ staff and to adopt working rules and procedures are provided under the legislation.<sup>19</sup>

Generally, the Proclamation meets, at least theoretically, the requirement of the Paris Principles regarding the independence of NHRIs. The issue is, however, whether the officials appointed to run the institution are, in practice, truly independent of party politics and the executive while discharging their functions. This is significant given the fact that the country did not, to a large extent, have institutions that were and are capable of functioning independently of the government of the day.<sup>20</sup> That apparently is why scepticism was raised at the very inception of the Commission, as regards the independence of the first officials that assumed office.<sup>21</sup>

Although apparently in full compliance with the Paris Principles, the Commission is not accredited as yet. Its attempt to get accredited commenced in 2010. It was supposed to submit its application along with requisite documents for accreditation purpose but failed to act within a schedule fixed by the International Coordination Committee of National Human

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<sup>16</sup> Hawassa, Bahr Dar, Mekele, Gambella and Jijiga as well as Jimma are where the branch offices were set up in 2011. Parliament approved the proposed establishment of these branch offices in December 2010. Seven more branch offices will be established in the fiscal year 2011/2012. See Ethiopian Human Rights Commission, Bulletin, Vol. 1, No. 05, 2011, 2. The decision to set up branch offices supports the view that the Commission is not under the instruction of Parliament as to how to go about doing so. The initiative to set the branches was made by the Commission itself and prior discussion with Parliament made it possible for securing funding for branch offices.

<sup>17</sup> Training activities used to be handled by the Head Office is nowadays run by the branch offices and complaints are also being entertained by the same. See the UNDP, Democratic Institutions Program, Annual Report, 2011, 18.

<sup>18</sup> It provides that the budget of the Commission is to be drawn and submitted to the parliament by itself (Article 19(2)). The executive agencies do not have a say in this regard, which helps to avoid financial manipulation by them and secures the independence of the institution. To ensure the independent appointment of officials, the law sets up an independent Committee, the 'Nomination Committee'. See Article 11 of the Proclamation.

<sup>19</sup> Article 35 of the enabling act of the Commission provides that the Commissioners may not be held civilly or criminally liable for any act done or omitted, observations made or opinions issued, in good faith and in the exercise of their functions. This immunity protects the independence of the members to carry out their functions without fear of prosecution. Article 19 of the legislation also indicates that the institution is entitled to hire its staff and come up with its operational rules and procedures.

<sup>20</sup> Abdo, *supra* note 3, *op. cit.*, 34.

<sup>21</sup> The Observatory for the Protection of Human Rights, 'Ethiopia: Human Rights Defenders under Pressure: Report: International Fact-Finding Mission', 2005, 18.

Rights Institutions (ICC).<sup>22</sup> Its second application was scheduled for scrutiny by ICC in November 2012 but has been deferred for one year.<sup>23</sup>

### 3. Mandate and Power of the Commission

NHRIs are usually commissioned to carry out, among others, promotion, information, documentation, education, research on human rights, and protection.<sup>24</sup> As provided under Article 6 of the Proclamation, the Commission has a very broad mandate to promote and protect human rights.<sup>25</sup> It does not have the power to scrutinize alleged human rights violations pending before the House of People's Representatives, the House of Federation, or courts of law at any level.<sup>26</sup>

The Commission is empowered to investigate complaints, upon individual complaints or *suo moto*.<sup>27</sup> The rules on filing a complaint to the Commission make it easy for complainants to access it as the Commission can be moved to take action by a complainant in person or by someone on his/her behalf orally or in written form or other means.<sup>28</sup> A complaint may be lodged, free of charge, in the working language of the Commission, which is Amharic, or in any other language.<sup>29</sup> The simplicity of the rule to bring a complaint to the attention of the Commission is meant to mitigate the formality of procedures that could limit access to courts.

The Commission is given a range of powers to investigate a complaint submitted to it, including the investigative power of subpoena, giving it theoretically adequate powers necessary for the examination of a complaint.<sup>30</sup> Any person asked to appear for the purpose of furnishing information or production of document or record should cooperate with the

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<sup>22</sup> The Commission's application for accreditation was supposed to be reviewed by the Sub-Committee on the Accreditation in a schedule fixed for accreditation purpose, which was 11-15 October 2010. See the schedule of the Sub-Committee on Accreditation of the International Coordination Committee of National Human Rights Institutions, 2009, available at: <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>.

<sup>23</sup> Official date for considering the Commission's application for accreditation is set for 18-22 November 2013. See the website of the ICC sub-committee on Accreditation (SAC). See also [nhri.ohchr.org/EN/AboutUS/ICCAccreditation/Page/NextSession.aspx](http://nhri.ohchr.org/EN/AboutUS/ICCAccreditation/Page/NextSession.aspx) and [nhri.ohchr.org/EN/AboutAccreditation/Documents/SCA%20Report%20November%202012%20%28English%29.pdf](http://nhri.ohchr.org/EN/AboutAccreditation/Documents/SCA%20Report%20November%202012%20%28English%29.pdf).

<sup>24</sup> Lindsnaes and Lindholt, in *Working Papers and Articles*, supra note 1, *op. cit.*, 25.

<sup>25</sup> The Commission is mandated to educate the public about human rights with a view to raising awareness and fostering the tradition of respect for human rights, to provide consultancy service on human rights, and to provide opinion on Government reports submitted to international human rights bodies, sub-articles 3, 6 and 7 of Article 6 and Article 19(2)(d) of the Proclamation. It also is authorized to investigate, upon complaint or *suo moto*, human rights violations and to propose revision, enactment of laws and formulation of policies relating to human rights (Article 6(4 and 5) of the Proclamation). In addition, it is empowered to ensure that laws, decisions and practices of the government are in harmony with human rights enshrined under the Constitution and to also make sure that human rights are respected by government as well as other entities (Article 6 (1 and 2) of the Proclamation).

<sup>26</sup> Article 7 of the Proclamation.

<sup>27</sup> See Articles 6 and 24 of the Proclamation.

<sup>28</sup> A Complaint may be instituted by a person who alleges that his/her right is violated or by his/her spouse, or family member or representative or a third party (Article 22(1)). A complaint may be submitted orally or in written form or in any other manner (See Article 23(3)). The Commission may also receive anonymous complaints given the gravity of alleged human rights violation (Article 22(2)).

<sup>29</sup> See Articles 22(4) and 23(3) of the Proclamation.

<sup>30</sup> The Commission is empowered to compel the attendance of a witness to give testimony, or force the production of evidence by those in possession of them (Article 25 of the Proclamation).

Commission. Failure to act accordingly constitutes offence and punishable by sentence and/or fine.<sup>31</sup>

The Commission is, as a matter of general rule, supposed to settle complaints through amicable means, seeking an agreement between the parties (Article 26(1)). A limited number of cases may not be subject to such means<sup>32</sup>. Emphasis on amicable means of settlement reflects the reality regarding dispute resolution in the country. The fact that more than 84 % of the population lives in rural areas where the traditional system has a strong authority on individual as well as communal matters makes the reflection of such system in the Commission's power significant.

Made in an advisory capacity, the Commission's opinions and recommendations are not legally binding. It is not explicitly authorized to initiate court proceedings either in its own name or on behalf of an aggrieved party either.<sup>33</sup>

The enforcement mechanisms it uses to ensure compliance are to publicize, be it in its annual or special report as may be necessary, and to finally report to the parliament on its recommendations in particular and on its overall activities in general.<sup>34</sup> Another instrument of enforcement is a criminal sanction. Serving to strengthen its enforcement powers, a penalty prescribed by the enabling legislation may also serve as an incentive to the Commission's autonomy.<sup>35</sup> In addition, it may collaborate with other organs, for instance, media and NGOs, to mount pressure on government authorities to heed its opinions.

#### **4. NHRIs and Good Governance – Linking the Mandate of the Commission with Good Governance**

Governance is all about exercising government powers to manage a nation's economic, political and administrative affairs. It comprises mechanisms, processes, and institutions by which power and authority is exercised in a society by which the government, the private sector, citizens' groups articulate their interests, mediate their differences, and exercise their legal rights and obligations.<sup>36</sup> An essential attribute of democracy is good governance. The notion is coined by international financial institutions as a pre-condition to get loans in order to strengthen governance systems in developing countries.<sup>37</sup>

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<sup>31</sup> See Article 41(1) of the Proclamation.

<sup>32</sup> The Commission's Complaint Handling Manual is apparently silent on this matter. However, according to an expert of the Commission such cases include allegation of torture, forced disappearance, violence against women (Interview with Terefe Wondimu, Senior Investigator, Investigation Directorate, Human Rights Commission of Ethiopia, 15 September 2011, Addis Ababa).

<sup>33</sup> Ibid. The open-ended clause in the enabling statute may broadly be construed to entitle the Commission to assume such mandate (Article 6). However, most of the Commission members seem to rule out such power exercised by the Commission based on such interpretation.

<sup>34</sup> Article 39 of the Proclamation.

<sup>35</sup> If a person without good cause fails to comply with a recommendation issued by the Commission or fails to offer a reasoned justification for not doing so within three months from receipt of the recommendation, he/she commits a criminal offence and is liable to punishment if found guilty. The person could face imprisonment from three to five years or a fine from 6.000-10.000 Ethiopian Birr or both. See Article 41(2) of the Proclamation.

<sup>36</sup> Sakiko Fukuda-Parr and Richard Ponzio, 'Governance: Past, Present, Future - Setting the Governance Agenda for the Millennium Declaration', draft paper for Fourth Global Forum: Dialogue and Partnerships for the Promotion of Democracy and Development, Morocco, 2002, 2.

<sup>37</sup> Ibid., 3, see also S. De La Harpe, S. Rijken, C. Roos R., 'Good governance', *Potchefstroom Electronic Law Journal*, 2008, 5.

The notion is broad and capable of conveying different meanings. An expansive understanding of good governance helps to recognize the mandate of NHRIs and how they should function<sup>38</sup>. Good governance includes, as Reif lists down, numerous practices such as: elimination of corruption in government, a predictable, transparent and accountable administration, democratic decision-making, the supremacy of the rule of law, effective protection of human rights, an independent judiciary, a fair economic system, and appropriate devolution and decentralization of government.<sup>39</sup> Obviously, NHRIs play a vital role in developing good governance, at least, in checking the exercise of government authority and in protecting human rights. However, there is also another way of looking at the relationship between NHRIs and good governance. Although NHRIs play a crucial role in building good governance, they should also reflect the very elements of good governance in their overall activities. As they are meant serve as a ‘watchdog’ against government actions and thereby build good governance, they ought to adhere to the same principles of good governance in their overall undertakings.<sup>40</sup>

As part of the democratic institutions, the Commission checks, among others, the exercise of government authority and thereby safeguards fundamental rights. As such, it serves as an accountability mechanism to ensure that government powers are exercised in such a way that they respect and protect human rights.

Although framed in terms of human rights promotion and protection, the overall objective of the Commission is thus meant to limit arbitrary and open-ended discretionary actions and policy implementation by government authorities.

## **5. The Commission’s Modest Achievements**

The Commission went operational in full swing in 2005. Since then, it has been trying to promote and protect human rights by undertaking various activities. Its modest achievement lies in its bid to offer remedies in labour cases, addressing claims related to group rights, provision of legal counsel (particularly to vulnerable groups), monitoring of detention facilities, and sensitization of human rights. The success story of the Commission outlined here is not exhaustive but is meant to accentuate the major ones.

### **5.1. Investigation of Complaints and Provision of Remedies - Ensuring Accountability in the Private Sphere**

The Commission is empowered to deal with claims of human rights abuses perpetrated by government authorities and its agents (vertical application of human rights) as well as allegation of violations in the private sector (horizontal application of human rights). The Commission’s success lies in the latter and its limitation in the former is to be discussed in section 7.

While the Commission is said to be fully operational in 2005, it started exercising its quasi-judicial function of investigating complaints in 2006. There is a steady growth in the number

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<sup>38</sup> C. Raj Kumar, ‘National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights’, *American University International Law Review*, Vol. 19, No. 2, 2003, 286.

<sup>39</sup> Fakuda-Parr and Ponzio, *supra* note 36, *op. cit.*, 3, see also Linda C. Reif, ‘Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection’, *Harvard Human Rights Journal*, Vol. 13, No. 1, 2000 10.

<sup>40</sup> *Ibid.*, 18-19.

of cases submitted to the Commission over the years following the Commission's promotion campaigns to raise awareness about itself and human rights.<sup>41</sup> However, the total number of files of complaints submitted to the Commission since its inception which until April 2013 exceeds a little over 6.000 is rather small given the sheer size of the country and its poor human rights records.<sup>42</sup> At the outset, it is important to note that the exact number of complaints submitted to the Commission in general is difficult to come by. This is largely attributable to the poor file management and recording of cases prior to 2010, before the Commission reformed its business process. The reform resulted in, among others, rearranging the original departments and also created new sections and posts, one of which is the Registrar at the Investigation Directorate.<sup>43</sup> One can observe an improvement in the delivery of services in general and file management in particular after the Registrar went operational.<sup>44</sup>

The recent statistics indicates a marked increase in the number of cases submitted to the Commission. More than 1.427 complaints submitted to the Commission in 2012/2013, even before the end of the Ethiopian fiscal year, represent an even greater increase over the 65 cases received in its first year of operation.<sup>45</sup>

Broadly catalogued, the types of cases submitted to the Commission since it commenced discharging its functions are over issues of employment-related matters, interpersonal land disputes, property, security of person, freedom of movement, equality and non-discrimination, conditions of detention in prisons and police stations, inter-ethnic conflicts, election-related issues, and forced eviction from land and house.<sup>46</sup>

Employment-related complaints account for the bulk of complaints filed to the Commission annually. A substantial proportion of these complaints involve complaints against employers such as NGOs, church, state-owned enterprises, and individual citizens. The contents of these complaints relate primarily to employees' complaints against their respective employers of unfairness in promotions, transfers, benefits and privileges, dismissal, and release.

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<sup>41</sup> The Ethiopian Human Rights Commission, *Inaugural Report*, 2011, 91 (hereinafter referred to as 'Inaugural Report'); see also the Ethiopian Human Rights Commission, *Annual Report 2009/2010*, 14-15 (hereinafter referred to as 'Annual Report 2009/2010').

<sup>42</sup> Ethiopia is a vast country with over 85 million people. The poor human rights records of the country is well-documented by human rights NGOs, both local and international. Reports issued by, among others, the US State Department, Amnesty International, Human Rights Watch and the Ethiopian Human Rights Council attest to this fact. Based on its own documents, the Commission received about 4.563 complaints since its inception. The rather low number of complaints has to do with the sheer size of the country accompanied by a lack of branch offices until recently or the inadequacy of promotion works by the Commission and/or a lack of awareness regarding the Commission's function or lack of interest in the Commission as it lacks executive powers. Among others, a sustained promotion by the Commission about itself and the newly opened branches offices and the likely increase in the number of such offices in the near future will possibly increase the number of complaints coming to the Commission.

<sup>43</sup> Owing to the lack of Registrar prior to April 2010 cases ended up in the hands of individual investigators as there was no practice of a centralized system of recording and admitting cases. See *Inaugural Report*, supra note 41, *op. cit.*, 55-56.

<sup>44</sup> See the Ethiopian Human Rights Commission, *Annual Report 2010/2011*, 8 (hereinafter referred to as 'Annual Report 2010/2011').

<sup>45</sup> See the Ethiopian Human Rights Commission, *Annual Report 2012/2013*, 18 (hereinafter referred to as 'Annual Report 2012/2013').

<sup>46</sup> *Inaugural Report*, supra note 41, *op. cit.*, 89-96; Ethiopian Human Rights Commission, *Annual Report 2011/2012*, 22 (hereinafter referred to as 'Annual Report 2011/2012'); see also Ethiopian Human Rights Commission, *A Consolidated Five Year Report*, 20011, 36 (hereinafter referred to as 'Consolidated Five Year Report').



Coming to the object of complaints, it is interesting to note that a significant number of labour-related complaints involved state - owned enterprises. Although the government has gradually been privatizing them following the adoption of a market-oriented economic policy, State - owned enterprises still employ a considerable number of workers. It is thus not surprising to see a substantial portion of employment-related complaints coming from such enterprises.

It also is important to note that the Orthodox Church features high in employment-related complaints that keep on coming to the attention of the Commission time and again. In fact, judicial and quasi-judicial bodies are competent to deal with employment-related matters against the Church as the employees of religious faith that are engaged in non-spiritual activities are covered by the Labour Code.<sup>47</sup> A ruling made by the Cassation Division of the Federal Supreme Court confirmed this in a landmark decision that would serve as a precedent to all other similar cases in the lower courts.<sup>48</sup>

Complaints involving the Orthodox Church keep on steady rise before the Commission as a result of the Church's increased business stakes. The Church has been engaged in commercial activities, notably massive construction of buildings to rent out to customers, which generate considerable revenue. The revenue from its stake in commercial ventures has frequently been cited as the main source of pervasive corruption and rivalry in the Church, eroding its spiritual aspect.<sup>49</sup>

Cognisant of the gravity of complaints involving the Church, the Commission held discussions with the *Synodos*, the highest decision-making body within the Orthodox Church, on the way to handle such matters in the future and also managed to get some employees reinstated.<sup>50</sup>

Marking its success story, remedies indicated in the Commission's recommendations on labour matter have at times been quickly executed. The rationale for this has partly to do with the Commission's stance towards private entities. When complaints are lodged against private entities, the Commission tends to be aggressive and toils hard to ensure compliance.

Also, socio-political tradition partly offers broader explanation as to why private entities on their part heed the Commission's recommendation. Government authorities are considered to have an absolute power and whim to make decisions that the subjects have to abide by. Fear of governmental agencies and the perceived implication of not observing the outcome of the exercise of their powers might have forced private respondents to obey the Commission's opinions although they may not agree with them.

The fact that the Commission has been providing redress, particularly in labour cases, to claimants appearing before it means that the institution is contributing its part in ensuring the accountability of private entities to the laws of the land.

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<sup>47</sup> See Article 3 of the new Labor Code, Proclamation No. 377/2003.

<sup>48</sup> The Federal Supreme Court of Ethiopia decided this in the case, *'Hamerework St. Mary Church v. Meheret Birhan et al*, Cassation Division, File No. 18419, 2007; see the contribution of . . . , in this volume.

<sup>49</sup> The Church has realized this problem and the new Patriarch promised to fight corruption in the Church after he was sworn in following the passing away of his predecessor.

<sup>50</sup> Annual Report 20011/2012, supra note 46, *op. cit.*, 22.

## 5.2. Monitoring Prison and Detention Facilities

One of the Commission's most laudable performances lies in the improvement of prison conditions in the country. Through monitoring mission, the Commission helped in introducing improvements to sub-standard prison and detention facilities in the country.

As they are prone to abuses, it is the duty of States to provide both independent inspection of places of detention and imprisonment, and effective complaints procedures for victims of human rights violations that occurred in such places.<sup>51</sup> The monitoring of detention facilities is thus made with a view to making recommendations to change conditions in order to help prevent the incidence of torture, and other cruel, inhuman and degrading treatment or punishment, and ensure humane treatment of detainees.<sup>52</sup> The inspection provides NHRIs early warning signals of human rights challenges in such places as well as opportunity to assess the extent to which human rights are being respected in them.

The Ethiopian Constitution guarantees the rights of prisoners and persons under detention.<sup>53</sup> Although the Commission is not explicitly authorized to monitor detention facilities unlike in other jurisdictions, it, at least, falls under its broad mandate.<sup>54</sup>

The Commission has been carrying out nation-wide monitoring of prisons and detention centres to assess the human rights conditions of prisoners and detainees and to ensure that the conditions therein meet minimum international standards. It carried out successful visits to most places of detention and prisons in the country. In doing so, it was provided with the resources and help needed for effective coverage and assessment of these facilities, and finally released its reports, one at the Federal and nine at State levels.<sup>55</sup> The Commission has, by conducting the inspection, considerably assisted in improving the prisoners' and detainees' human rights in detention and protective facilities.<sup>56</sup> Even prior to the release of a final report,

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<sup>51</sup> United Nations Office of the High Commissioner for Human Rights, 'Human Rights in the Administration of Justice: A Facilitator's Guide on Human Rights for Judges, Prosecutors and Lawyers', Professional Training Series No. 9/Add.1, 2011, 74; see also 'Irish Penal Reform Trust, Complaints, Monitoring and Inspection in Prisons', Position Paper 7, 2009, 3-4.

<sup>52</sup> Amnesty International, *Amnesty International's Recommendations on Effective Protection and Promotion of Human Rights*, 2001, 19

<sup>53</sup> Article 17 of the Constitution prohibits inhumane treatment; Article 18 is on the rights of persons under arrest and Article 21 is on the rights of persons held in custody and convicted prisoners. They all call for the decent and humane treatment of detainees and convicted persons.

<sup>54</sup> NHRIs in countries such as Ghana and India, Philippines are specifically authorized to monitor prisons and places of detention. However, one can draw the monitoring of prisons and detention facilities from the definition given to the human rights under Article 2 and also from the general objective of the Commission set out under Article 5 and from an open-ended mandate of the Commission to undertake any activity it deems necessary to achieve its objective (Article 6(11) of the Proclamation).

<sup>55</sup> The Commission carried out on-site visits to 119 prisons in the country, inspected prison conditions and the handling of prisoners and held discussion with prisoners and prison officers. Prison officials in different parts of the country offered the Commission the necessary information and assistance and were keen to disclose problems in each facility and did not attempt to frustrate its inspection. The Commission released one report at the federal level on facilities under its jurisdiction and nine reports on the facilities in the Regional States. It has also visited the Rehabilitation Centre for Juvenile Delinquents, as a follow up to assess progress made based on the recommendations given during the previous monitoring conducted during this year. For details see Ethiopian Human Rights Commission, 'Human Rights Protection: Monitoring in Ethiopian Prisons-Primary Report', 2012(hereinafter referred to as 'Prison Report').

<sup>56</sup> Ahmed Hussen, expert, Human Rights Enforcement and Monitoring Directorate, said that this is the case with prisons in Somali National Regional State (Interview on 18 September 2011, Addis Ababa, Ethiopia); see the Inaugural Report, *supra* note 44, *op. cit.*, 98; see also the Ethiopian Human Rights Commission, Annual Report 2007/2008, 7 (hereinafter referred to as 'Annual Report 2007/2008').

some prisons have, for instance, increased budget allocated for meal to a prisoner per day, facilitating the provision of better food to prisoners, following the inspection and discussion with other government officials on the need to improve the conditions of prisoners.<sup>57</sup> Eventually, the Commission organized a consultation round-table over the reports where representatives from various prison centres and other officials participated on ways to implement the recommendations incorporated in the report.<sup>58</sup>

It is remarkable that the Commission carried out the monitoring based on the international human rights principles relevant to prison conditions and the human rights of prisoners and detainees.<sup>59</sup> The utilization of international standards by the Commission in conducting the monitoring has injected the relevant international principles and practice into the domestic law.

Although the impact of prison inspection and monitoring is positive, it has not resolved all problems facing detainees, which evidently requires a major overhaul in the justice sector.

### **5.3. Endeavour to Rectify Constraints in the Application of International Human Rights Instruments**

In their role as promoter of human rights, NHRIs are responsible for spreading awareness of human rights with a view to inculcating a culture of human rights and to bring about social change in this respect.

The most preventive strategy for human rights violations would comprise the introduction of human rights education in primary and secondary education as well as targeted education for professional groups, including lawyers, judges, police and civil servants in key positions.<sup>60</sup>

Within government, a particularly important target for training is the judiciary. A campaign of education and awareness for judges is one of the most important steps an NHRI can take to enhance its own effectiveness.<sup>61</sup> The judiciary is instrumental in the enforcement of human rights and judges need to be made fully aware of their responsibilities in this regard. This is particularly important in Ethiopia where there remains little concern for and/or limited application of international human rights standards by the judiciary, even of treaties which the nation has ratified. Lawyers and judges tend to avoid invoking and applying human rights provisions of the Constitution and international human rights norms.

One of the workshops organised by the Commission on the role of the judiciary is related to the application of international human rights at the domestic level. The Commission

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<sup>57</sup> Ibid.

<sup>58</sup> The forum was held on the report in each State in the presence of members of Regional Councils and President of each Region and Mayors of city administration on ways to implement the recommendations incorporated in the report. See Annual Report of 2010/2011, *supra* note, 44, *op. cit.*, 20.

<sup>59</sup> Prison Report, *supra* note 60, *op. cit.*, XII; Annual Report 2007/2008, *supra* note 61, *op. cit.*, 6; see also Annual Report 2010/2011, *supra* note 44, *op. cit.*, 18. Standards such as the UN Standard Minimum Rules for the Treatment of Prisoners and the International Covenant on Civil and Political Rights have provisions governing the treatment of prisoners. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child also safeguard the rights of women and children, and in many cases, are applicable to women and children in prison.

<sup>60</sup> Morten Kjaerum, 'The Experience of European National Human Rights Institutions', in B. Lindsnaes, L. Lindholt and K. Yigen eds., *Articles and Working Paper*, *supra* note 1, *op. cit.*, 120.

<sup>61</sup> International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions*, Versoix, Switzerland, 2000, 81; see also the 'Nairobi Declaration' adopted at the end of the 9<sup>th</sup> Conference of NHRIs for the Promotion and Protection of Human Rights, Nairobi, Kenya, 2008, 5.

conducted a consultation workshop on the status of international human rights treaties under the Ethiopian legal system and the role of the judiciary in enforcing international human rights treaties ratified by the country.<sup>62</sup> The aim of the consultation was to sort out loopholes and find out ways for the application of human rights instruments in the administration of justice sector in general and the judiciary in particular.<sup>63</sup> It was a remarkable meeting as it was attended by those directly concerned with the enforcement of human rights and others who play a crucial role in this regards - the attendees included the President of the High Court and other senior judges, public prosecutors, legal experts drawn from government agencies, academic institutions and civil society organizations.<sup>64</sup>

Following the workshop, the Commission took a concrete step to facilitate the actual implementation of treaties by the judiciary. It teamed up with a local NGO, Action Professionals' Association for the People (APAP), to help parliament ratify international treaties in such a way that they could easily be applied by the judiciary and thereby rectified a longstanding obstacle in law-making procedure that has impeded their application by the judiciary.<sup>65</sup> All international human rights instruments ratified by the country are supposed to go through a proper national law-making procedure to overcome such constraints in implementing them at the national level. This will assist in the invoking of international treaties by courts as it helps to rectify constraints in domesticating international human rights instruments and to tone down institutional resistance to their application.<sup>66</sup>

#### **5.4. Attempt to Integrate Human Rights in School Curricula**

Human rights education may take the form of non-formal trainings and also encompass integrating human rights into the formal curricula of schools and higher academic institutions. In relation to education, the Commission has been striving to make human rights education part of the school system with the aim introducing pupils of primary schools to fundamental rights values very early in their lives.

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<sup>62</sup> The Workshop was on 'The Implementation of International and Regional Human Rights in Ethiopian Courts'. See the Ethiopian Human Rights Commission, Bulletin, 1, No. 05/03, 2011, 5-6 (hereinafter referred to as 'Bulletin 05/03').

<sup>63</sup> Ibid.

<sup>64</sup> 76 participants representing Judges from Federal and Regional Courts, Prime Minister Office, Heads of Justice Bureau and Prosecutors from Federal and Regional Offices, Ministry of Foreign Affairs, Justice Sector Training Institute, Justice and Legal Sector Research Institutes, Civil Society and participants from Law Schools of Universities.

<sup>65</sup> See Annual Report 2007/2008, *supra* note 56, *op. cit.*, 10-11; Ethiopian Human Rights Commission, Annual Report 2006/2007, 5 (hereinafter referred to as 'Annual Report 2006/2007'); see also Inaugural Report, *supra* note 41, *op. cit.*, 77. Non-publication of the full text of ratified international treaties in the local language in the national law reporter is frequently raised as one of the obstacles hampering the application of international treaties by the judiciary. See Ethiopia's Report submitted to the Human Rights Committee on 28 July 2009, which was considered by the Committee on 22 October 2009, UN, CCPR/C/ETH/1, 2009, 6; Canadian International Development Agency, 'Independence, Transparency and Accountability in the Judiciary of Ethiopia', National Judicial Institute, Canada, 2008, 120-122; see also Rakeb Messele, 'Enforcement of Human Rights in Ethiopia', Research Report, APAP, Addis Ababa, 2003, 38-41.

<sup>66</sup> The invocation of the provisions of international human rights treaties in general to settle disputes is rare, although there are some signs that there is a change in this regard. On the few cases in which international human rights are invoked, see UN International Human Rights Instruments, Core Document Forming the Initial Part of the Report of States Parties: Ethiopia, HRI/CORE/ETH/2008, 2009, 40; see also Takele Seboka, 'The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia', *Journal of Ethiopian Laws*, Vol. 23, No. 1, 2009, 149; see also Canadian International Development Agency, *op. cit.*

The Vienna World Conference on Human Rights called upon states to have human rights as subjects in the curricula of all learning institutions in formal as well as non-formal settings.<sup>67</sup> NHRIs may provide assistance to states in implementing this objective.<sup>68</sup> A significant education work undertaken by the Commission, in collaboration with donor agencies, is its bid to incorporate the notion of human rights into the primary school curriculum. To this end, it has engaged expert consultants, who carried out a detailed study of the status of and gaps in the incorporation of human rights into the primary school curriculum.<sup>69</sup> After a series of discussions on the findings of the study, the Commission forged an agreement with the Ministry of Education to implement a project to adequately reflect human rights in primary education.<sup>70</sup> A pilot project was, as a result, implemented at more than 90 primary schools.<sup>71</sup> The evaluation and monitoring of the pilot project was carried so that the project would be implemented across all primary schools in the Country.<sup>72</sup>

Furthermore, to reinforce its work in education system, the Commission has recently embarked on examining the human rights situation in high schools. It has launched an inquiry into high schools to determine whether conditions in schools are human rights-friendly. It selected some high schools as samples for the inquiry, concluded the collection of data and did an analysis of the information gathered.<sup>73</sup> The objective of the inquiry is to provide advice to the government to address loopholes and problems hampering a human rights-friendly atmosphere in high schools.<sup>74</sup>

To strengthen the incorporation of human rights in the school system, the Commission plans to incorporate human rights in all schools, from Kindergarten up to University, that will be completed in 2015/2016.<sup>75</sup>

The attempt to integrate human rights into schools will create a significant headway to inculcating human rights in the minds of children and adults and to endeavour to build a human rights culture.

## **5.5. Promotion of the Rights of Vulnerable Groups and Provision of Legal Counsel**

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<sup>67</sup> See Paragraph 79 and 80, Section 2 of the Vienna Declaration and Program of Action.

<sup>68</sup> Kjaerum, *supra* note 60, *op. cit.*

<sup>69</sup> Annual Report 2006/2007, *supra* note 65, *op. cit.*, 9. The Project was supported by UNICEF's financial assistance; see Consolidated Five Year Report, *supra* note 46, *op. cit.*, 29; see also Inaugural Report, *supra* note 41, *op. cit.*, 82-83

<sup>70</sup> Annual Report 2006/2007, *op. cit.*, 9-10; see Consolidated Five Year Report, *op. cit.*, 29-30; see also Inaugural Report, *op. cit.*, 84.

<sup>71</sup> The pilot project includes measures to promote human rights at selected schools, develop an environment friendly to child rights in schools through forming clubs promoting human rights, and distributing materials and brochures that supplement teaching and training materials on civics and ethics. See Consolidated Five Year Report, *op. cit.*, 30; Annual Report, 2010/2011, *supra* note 44, *op. cit.*, 5-6; see also Inaugural Report, *supra* note 41, *op. cit.*, 85.

<sup>72</sup> Annual Report 2010/2011, *op. cit.*, 5-6; see also Consolidated Five Year Report, *op. cit.*, 30-31.

<sup>73</sup> The Inquiry is meant to determine whether the teaching and learning process and the education policy of the government are in line with the human rights enshrined in the Constitution and international human rights ratified by the country. Out of 1528 high schools in the country, 76 were selected for the inquiry and 2063 students, teachers, directors, parents, education bureau heads filled out the format already prepared by the Commission. As part of the inquiry the Commission also held group discussion with 13 women groups. See Annual Report 2011/2012, *supra* note 46, *op. cit.*, 21.

<sup>74</sup> *Ibid.*

<sup>75</sup> See the Ethiopian Human Rights Commission, Strategic Plan 2011-2016, 54 (hereinafter referred to as 'Strategic Plan 2011-2016').

Another success story of the Commission lies in its promotion of rights, particularly of vulnerable groups. It has given due emphasis to efforts to promote the notion of human rights in general and those of women in particular, keeping them in public discourse gradually. This is a commendable move given the widespread ignorance of human rights and of gender equity in the country. Such endeavour to enhance knowledge and awareness of human rights has a positive effect not only on the better protection of human rights but also on the process of political liberalisation in the medium to long term.<sup>76</sup>

Access to justice is a human right in and of itself with a far-reaching impact on claiming other rights. Without access to justice, the poor are unable to claim and realize a whole range of human rights, or challenge abuses or violations committed against them.<sup>77</sup> Perpetuating their disadvantage, financial, social and physical barriers are among the major factors hindrances facing the poor to accessing the justice system.<sup>78</sup>

Provision of free legal assistance by NHRIs helps the poor to access justice, removing financial and information obstacles hampering them from doing so. NHRIs should thus promote and facilitate complainant's access to their rights and remedies, including the ones offered by themselves and remedies that exist elsewhere. They have a duty not only to inform complainants of their rights and potential remedies but also to help them through the process as they are meant to serve the interest of those who may have experienced human rights abuses.<sup>79</sup> Such service is particularly important for vulnerable groups who are likely to live in poverty. After all one of the effectiveness parameters of NHRIs is their ability to meet the needs of groups in society who are at risk of human rights violations.<sup>80</sup>

The Commission has been providing legal counsel and aid to poor litigants despite lack of explicit reference to it by the enabling statute.<sup>81</sup> In order to realize the provision of *pro bono* services, the Commission has teamed up with local NGOs and universities in different parts of the country and provided financial support to more than 111 centres established in different parts of the country for such purpose.<sup>82</sup>

Apart from expanding accessibility, the major objective of establishing these centres is to help, particularly, the vulnerable groups of the society - women, children, persons with

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<sup>76</sup> Vaughan and Tronvoll, *supra* note 13, *op. cit.*, 70.

<sup>77</sup> The Special Rapporteur's (Magdalena Sepulveda) report to the General Assembly (2012) examines the obstacles that persons living in poverty face in accessing justice. UN General Assembly, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights, United Nations, A/67/278, 9 August 2012, 7-8, available at <http://www.ohchr.org/Documents/Issues/Poverty/A-67-278.pdf>.

<sup>78</sup> *Ibid.*

<sup>79</sup> Office of the United Nations High Commissioner for Human Rights, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities', Professional Training Series No. 4 (Rev. 1), 2011, 82 (hereinafter referred to as 'Professional Training Series', No. 4 (Rev.1)).

<sup>80</sup> Mohammad-Mahamoud Mohamedou, 'The Effectiveness of National Human Rights Institutions', in B. Lindsnaes, L. Lindholt and K. Yigen (eds.), *Articles and Working Paper*, *supra* note 1, *op. cit.*, 50.

<sup>81</sup> However, such power is implied from its general mandate and the definition given to 'human rights' under the establishment legislation. The enabling Proclamation of the Commission defines human rights as those guaranteed by the Constitution and international human rights instruments. Thus, assisting the needy to access justice falls within the mandate of the Commission as the FDRE constitution guarantees access to justice as human rights in itself (see Article 37).

<sup>82</sup> The Commission has increased the legal aid centres from 60 in 2010 to 111 in 2011. 67 centers in collaboration with 16 Universities, and 45 in collaboration with Civil Society Organizations, including Ethiopian Women Lawyers Association, and Ethiopian Christian Lawyers Fellowships, See Ethiopian Human Rights Commission, Annual Report 2011/2012, *supra* note 46, *op. cit.*, 4; Annual Report 2010/2011, *supra* note 44, *op. cit.*, 2, 15, and 70.

disability, the destitute, the elderly, and people living with HIV/AIDS gain access to free legal aid services.<sup>83</sup> With the help of such Centres the Commission has provided information on legal and institutional solutions to complainants and also actually assisted the victims in receiving effective remedies from courts. In 2012, a total of 7.872 indigent people (60 % women and 40 % men) and in 2013, a total of 13.867 of them (of which 6.208 were women) have benefited from the services of the legal aid centres across the country.<sup>84</sup> Most of the cases submitted to the legal aid centres relate to family (maintenance and divorce cases), labour and land use issues and the services provided include writing of statement of claim, defence and appeal, legal counselling and representation in courts.<sup>85</sup>

Aside from providing legal counsel, the Centres also serve as points for funnelling complaints to the Commission, improving its accessibility. The Centres enhance not only the access to justice for the most disadvantaged strata in society but also simultaneously develop the capacities of future legal practitioners who are studying law and serve in the Centres.<sup>86</sup>

The launching of legal aid centres, in collaboration with universities, NGOs and donor agencies, for vulnerable groups is one of the main milestones of the Commission. The Centres have been benefiting increasing number of indigent complainants to access justice and thereby defend their rights. Given the fact that many Ethiopians could not seek justice owing to financial impediments, complex legal procedures of formal courts and illiteracy, the move to set up such centres is significant in helping to overcome the problem.

Although a commendable initiative, the fate of those centres is at stake as they are wholly dependent on donors' funding that ended last year. The DIP program under the auspices of the UNDP that has been crucial in capacity building of the Commission ended in 2012. Given its meagre resources, the Commission is not likely to retain most of them.

## **5.6. Initiative to Formulate a National Human Rights Action Plan**

As the name itself implies, a National Human Rights Action Plan maps out a set of practical goals designed to guide the national human rights policies of a country. Its aim is to enable states to comprehensively address any shortcomings regarding the promotion and protection of human rights in a nation. Underscoring its importance, the concept of the national action plan was recommended and adopted by participating states at the Vienna World Conference.<sup>87</sup>

The Commission has spearheaded attempts to come up with the Plan, the first of its kind in the nation's history. In close collaboration with other government agencies, the first draft of the Action Plan was completed and presented for discussion. Following endorsement by the Council of Ministers, it finally was adopted by Parliament.<sup>88</sup> The Commission's engagement starts from the very initiation of the idea of formulating it to the actual work in finalizing its text.<sup>89</sup> Its role is not limited to the formulation of the Plan. The Chief Commissioner of the

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<sup>83</sup> Annual Report 2011/2012, *op. cit.*, see also Annual Report 2010/2011, *op. cit.*, 15.

<sup>84</sup> Annual Report 2011/2012, *op. cit.*, see also Annual Report 2012/2013, *supra* note 45, *op. cit.*, 8.

<sup>85</sup> *Ibid.*, see also Annual Report, 2010/2011, *supra* note 44, *op. cit.*, 16-17.

<sup>86</sup> Most of the Centers are run by law school students at different universities in the Country, who voluntarily offer legal services.

<sup>87</sup> See Section 71 of the Vienna Declaration and Program of Action.

<sup>88</sup> Annual Report 2011/2012, *supra* note 46, *op. cit.*, 27. See the Ethiopian Reporter Newspaper issue of 14 July 2013.

<sup>89</sup> Annual Report 2011/2012, *op. cit.*, 26-29.

Commission is appointed as a member of the national committee to follow-up the implementation of the Plan.<sup>90</sup>

The Plan does not refer to nor contain any recommendation as regards the role of the Commission in implementing it unlike, for instance, Sri Lanka.<sup>91</sup> Normally, monitoring its implementation falls within the competence of the Commission. Notwithstanding explicit reference to it, the Commission really took a pragmatic step in providing leadership for such Plan that would offer a more holistic and concerted approach in the implementation of human rights and building a culture of respect for human rights. It provides a framework by which government authorities will be measured with respect to the observance and fulfilment of human rights. Its implementation thus provides an opportunity for alignment of state behaviour with human rights norms and standards, contributing to the endeavour to build good governance in the nation.

### **5.7. Assistance in Submission of Periodic State Reports**

The Commission was involved in attempts to submit Ethiopia's country reports due under international and regional human rights ratified by the Country. The record of Ethiopia in submitting such periodic reports is not good. The country was overdue on several of its reporting obligations to treaty bodies while others have been submitted late (CRC and CEDAW). The Commission, in collaboration with stakeholders, commissioned the task to submit all outstanding periodic reports, solicited funding for the project, organized necessary training on treaty reporting, developed term of reference for reporting, and employed staff and consultants supervising the project, and finally completed the project.<sup>92</sup> All the 19 reports due were finalized and submitted to the respective monitoring bodies, including the Committee on Economic, Social and Cultural Rights.<sup>93</sup>

While there is nothing inherently wrong in rendering such assistance, the Commission may risk being too closely identified with the government. Its role as an independent monitoring body may also be affected as it has actively taken part in work on government reports rather than issuing its own independent report or offering opinion on such report, negating its mandate in this respect. Normally, the responsibility for preparing national reports to the UN treaty bodies lies with the executive organ (particularly Ministry of Foreign Affairs). Encouraging the government to hand in delayed reports, which is worth credit, is one thing and taking part in the work is another matter.

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<sup>90</sup> A national committee composed of six high government officials that oversee the implementation of Plan was formed recently. The Minister of Justice was named Chairman of the Committee, State Minister of Foreign Ministry as Deputy Chairman and the Chief Commissioner of the Human Rights Commission as Secretary. The other three members are also high government officials drawn from Ministry of Federal Affairs, Office of Government Communication, and Ministry of Finance and Economic Development. See the Ethiopian Reporter Newspaper issue of 14 July 2013.

<sup>91</sup> B. Skanthakumar, 'Embedded in the State: The National Human Rights Commission of Sri Lanka in 2011', in ANNI (ed.), *2012 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, 2012, 194-195.

<sup>92</sup> See Annual Report 2007/2008, supra note 56, *op. cit.*, 7-10.

<sup>93</sup> Ethiopia has submitted its combined initial, second and third periodic report to the Committee on Economic, Social and Cultural Rights in 2009. See UN Economic and Social Council, 'Combined Initial, First and Second Periodic Reports submitted by States Parties under Articles 16 & 17 of the Covenant-Ethiopia', E/C.12/ETH/1-3, 28 July 2009. On the reflection of the Committee on the report see: [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/58281808E29AC38BC12579FA003F5B58?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/58281808E29AC38BC12579FA003F5B58?OpenDocument) (accessed on 23 December 2012). See also Annual Report 2010/2011, supra note 44, *op. cit.*, 28, see also Consolidated Five Year Report, supra note 46, *op. cit.*, 41.



## **6. Worrying Actions and Set-backs**

The Commission's failures and worrying actions are the subject of scrutiny in this section. The discussion here reveals that the Commission failed to contribute its part to the good governance building initiative or that it failed to abide by some aspects of the same.

### **6.1. Failure to Investigate Allegations of Human Rights Abuses attributable to Government Authorities: Lack of Accountability of Public Authorities**

As a quasi-judicial body, the Commission serves to check the exercise of government and thereby hold the government to account. However, the practice, as discussed below, indicates that the Commission is far from meeting its accountability duties over public authorities.

The Commission investigates individual complaints by persons and entities in both the public and private sectors. Concerning the trend of investigation, the number of cases settled through full investigation and mediation processes is a fraction of cases declined. Investigation of complaints is thus an exception rather than the norm. The Commission declined to investigate cases for various reasons, among others, lack of mandate, accounting for the largest portion, triviality of matters, and court ruling on subject-matter of complaints. Most of the complaints declined were referred for resolution to appropriate bodies, including courts, the Ombudsman and the very agencies subject to complaints.

The Commission appears to be more comfortable with the protection of human rights where the issues involved do not have political overtones and are politically not sensitive. Instead of focusing on monitoring government entities and checking on government abuses, it, in other words, invested its energy in private complaints and violent conflict. This is the case where the objects of complaints relate to non-governmental entities, and where public authorities (officials) are not directly implicated in areas such as labour and conflict.

Indeed, the Commission investigated some cases it considers important and sensitive by dispatching *ad hoc* committees, especially when claims and counter-claims are made over some issues that grab headlines in the country. It has not managed to apply the same scheme consistently, however. It failed to investigate issues that equally raise serious questions of human rights and clutched the attention of the media, opposition parties, human rights NGOs, both national and international, and the public in general. Where issues involved in a complaint have political overtones, it seems to disclaim competence to handle them. Two cases signalling fear harboured by the Commission to examine such sensitive matter are informative.

#### **6.1.1. The Gambella Case**

In the last couple of years, Ethiopia has been handing out huge tracts of land to foreign investors drawn from different countries including India, Saudi Arabia, and Djibouti. As a result, Ethiopia has frequently been cited as one of the countries where 'land-grabbing' is occurring. In many instances, local communities were allegedly driven out of their ancestral land to give way to commercial farming allegedly without prior consultation with the affected communities and/or adequate compensation. One case over such allegations was brought to the attention of the Commission. Unfortunately, the institution failed to see its merit.

The Commission rejected, for want of jurisdiction, an interesting complaint filed by a representative of people living in a protected forest that could have given rise to important human rights issues, such as forced evictions from house and land, the right to work and means of livelihood, and environmental protection.<sup>94</sup> The Complaint was instituted by Tamiru Ambello, acting on behalf of the community living in the area, to challenge the decision of the *Gambella* National Regional State, which decided to hand the forest area over to an investor for the purpose of tea farming.<sup>95</sup> They alleged that they were not consulted before the decision was made and also that the clearing of the forest to give way to tea farming would have a devastating impact on the environment as well as their livelihood based on the forest. Their attempt to get the remedy of injunction from the local administration and regional government institutions was in vain.

Upon learning that the investor had already cleared a sizeable chunk of the forest, they submitted a written request to the President of the country to intervene in the matter and help them halt the clearing of the forest. Sympathetic with their case, the President asked the Commission to intervene and investigate their complaint. They submitted their complaint to the Commission along with the letter of the President and other supporting documents. The investigation team at the Commission accepted the case but needed, before launching investigation, a professional advice on environmental issues at stake in the case and put their request informally to some experts and local organizations working on environmental issues such as Pact Ethiopia and Forum for Environment. The experts and the organizations asked the investigators to make a formal request, i.e. to produce a written letter of the Commission. The leadership of the Commission refused to issue a formal letter on the ground that the case does not fall within the purview of the Commission and ordered a referral of the case to the Ombudsman Institute, which in its turn remanded the case back to the Commission. In the end, both institutions failed to deal with the case.

There is no provision that precludes the Commission, and the Ombudsman as well, from investigating such complaint as it is not considered by courts and other institutions.<sup>96</sup> The Commission's action contravenes its obligations under the enabling statute to investigate any complaint related to human rights violations so long as the matter is not pending before other organs. Perhaps, the leadership of the Commission, as well as that of the Ombudsman, feels that the issues involved in the case pits them against the policy of the government to transfer a large-scale land to investors on the one hand and allegations of the so called 'land-grabbing' for which the Ethiopian government has been criticized by experts and international organizations on the other.<sup>97</sup> The government appears to be very sensitive on matters of allocation of massive swathes of land to foreign investors, denying that 'land-grabbing' has taken place. It argues that its action is part of its long-term bid for economic development, to

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<sup>94</sup> The facts of the complaint and the informal decision to reject the case were narrated by the investigator, who wants to remain anonymous, involved in handling the case. I had the privilege to look at the file of the complaint, including the documents produced by the complainant and the correspondence between the investigator and others.

<sup>95</sup> The complaint was submitted to the Commission in May 2011.

<sup>96</sup> Although not detailed, there is a general procedural rule to avoid potential overlap of jurisdiction between the Commission and the Institute. Article 29 of the Proclamation provides that the two institutions should settle overlap of jurisdiction by mutual conflict and in case this does not work, the institution to which a complaint is lodged first shall have the power to see it.

<sup>97</sup> For instance, see the study funded by Oxfam International on land grabbing in Africa in which Ethiopia is indicated as one of the countries where 'land-grabbing' is taking place and its impact on small farmers and women and the violation of human rights involved in it. See Tinyade Kachika, *Land Grabbing in Africa: A Review of the Impacts and the Possible Policy Response*, 2011.

attract foreign investment and technology transfer, to spur employment opportunity, and to help eradicate hunger and thereby ensure food self-sufficiency.<sup>98</sup> The Commission seems to realize the sensitivities of the case and might have decided not to confront the government by investigating it, constituting a self-imposed restraint.

### 6.1.2. The Gura Farda Case

The Commission was tight-lipped over the recent forced eviction of thousands of people from the Gurafarda, situated in the Southern part of the country. The South Nations, Nationalities and Peoples' Regional State evicted thousands of people who were accused of illegally occupying land without permit, causing deforestation and damaging the ecosystem. As a result, many of the victims claimed to have been evicted without advance notice and time to even collect their personal belongings let alone agricultural produce. Some of them even alleged to have been forcibly loaded onto trucks and buses and dropped in Addis Ababa, from where they were finally sent to the place of their origin, situated in some part of the *Amhara* National Regional State. The action of the government caused furry among human rights NGOs, both local and international, and the opposition parties operating both locally and abroad, becoming a headline issue for some time.<sup>99</sup> Some people go so far as portraying the action as part of a 'systemic attack' singling out the *Amhara* people.<sup>100</sup> During Parliamentary session, the late Prime Minister Meles Zenawi angrily denied such accusation. He argued that it was a simple act to deter people from flocking to the area illegally and pointed out that settlement from one State to another had to be coordinated between the two States involved.<sup>101</sup> Bolstering the argument of the Federal government, the local administration pointed out that those evicted were the ones who settled in the area illegally after 2005 and the ones who arrived before that period had already been given permission to settle.<sup>102</sup>

Some of the victims of the eviction lodged a group complaint to the Commission, alleging that the eviction was arbitrary, that they were subjected to violence and lost their entire fortune. Apparently fearing the sensitivities involved in the matter, the Commission refrained from taking any action on the case. By the same token, the Commission also failed to act on individual complaints from some of the victims in the case at hand but opted to refer the matter to the Ombudsman, disclaiming jurisdiction over the case.

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<sup>98</sup> Dessalegn Rahmato, 'Land to Investors: Large-Scale Land Transfers in Ethiopia', Forum for Social Studies, 2011, 4-5 and 13.

See at [http://www.ethiolion.com/article/041312\\_Gura\\_Ferda\\_and\\_crimes\\_against\\_Humanity.html](http://www.ethiolion.com/article/041312_Gura_Ferda_and_crimes_against_Humanity.html); <http://www.ethiosun.com/2012/04/15/gura-ferda-and-crimes-opposite-humanitytesfay-atsbeha-and-kahsay-berhe/>; <http://www.ethiopianreview.com/content/tag/ethiopia-gura-ferda>; <http://ethsat.com/2012/04/06/mass-eviction-of-amahras-stirs-controversy/>; <http://www.zenaddis.com/2012/04/11/shiferaw-shigute-dismisses-report-of-eviction>.

<sup>100</sup> Assefa Negash, 'Why Have the Amaras Once Again Become Victims of Ethnic Cleansing by TPLF?' April 2012. See [http://tassew.files.wordpress.com/2012/04/amaras\\_ethnic\\_cleansing\\_by\\_tplf\\_dr\\_assefa\\_negash.pdf](http://tassew.files.wordpress.com/2012/04/amaras_ethnic_cleansing_by_tplf_dr_assefa_negash.pdf).

<sup>101</sup> The current government curbed settlement of people from one Region to another, in a sharp contrast to the past Ethiopian regimes. It limited settlement within a Region. This policy emanates from the very policy of the government which promotes ethnic groups to control matters in their respective Region and fear that inter-regional settlement or villagization will disturb the ethnic makeup of Regions, consistent with the foundation of the current federal arrangement based largely on ethno-linguistic factors. He reiterated the same during Parliamentary session held on 17 April 2012.

<sup>102</sup> People who settle there were given certificate proving possession of land for farming and house. See Ethiopian Reporter, issue of 1 April 2012; see also: <http://www.zenaddis.com/2012/04/11/shiferaw-shigute-dismisses-report-of-eviction>.

The rejection of Gambella and Gurafarda cases begs the question of whose interest the Commission is serving. Actually, it negates the very underpinning for the establishment of the institution.

Respect for and protection of human rights is the cornerstone of the FDRE constitution. The Commission is one of the institutional means to realize this. The basic rationale for its establishment is to achieve a permanent shift from the autocratic polities of the past to a just and democratic political arrangement in which the supremacy of law and good governance flourishes.<sup>103</sup> The institution is thus meant to serve as the frontline mainstay for ensuring that the new status quo does not slide back to the human rights abuses of the past by seeing to it that the fundamental human rights and freedoms of citizens remain the constant centre of all developmental endeavours being made.<sup>104</sup> Quite contrary to its inherent objective, the failure of the Commission to investigate the cases means that it failed to test whether the development policy of the government is in line with human rights ethos espoused by the Constitution.

## **6.2. Failure to Advise the Government on Legislation Pertaining to Human Rights Issues**

The Commission is authorized to provide recommendation to the government on existing and proposed legislation, and formulation of policies as well as advice on government reports to international human rights monitoring bodies.<sup>105</sup> Such tasks could contribute to attempts to build democratic governance.

The Commission has not done much work in the area of advising the government on legislation and policies on human rights issues.<sup>106</sup> Recognizing its shortcoming in this respect, the Commission made a guideline on how to go about carrying such function and intend to engage in carrying it out.<sup>107</sup> Although not specified, the Commission intends, as per its new strategic plan, to make a total of 55 recommendations on different human rights issues over the coming five years.<sup>108</sup>

The Commission's silence relating to two piece of legislation is likely to baffle an observer. The promulgation of the Charities and Societies Proclamation and the anti-terrorism legislation involved much controversy and engendered heated-debate, with some accusing the government of using legislation to stifle dissent while others allege that they contradict the human rights norms of the Constitution and international human rights instruments ratified by the country.<sup>109</sup> Despite such allegation, the Commission failed to probe the compatibility of

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<sup>103</sup> Inaugural Report, supra note 41, *op. cit.*, 27.

<sup>104</sup> Ibid.

<sup>105</sup> See sub-Articles 5, 6 and 7 of Article 6, and Article 19(2) of the Proclamation.

<sup>106</sup> Annual Report 2011/2012, supra note 46, *op. cit.*, 30; see also Annual Report 2010/2011, supra note 44, *op. cit.*, 12-13.

<sup>107</sup> Ibid.

<sup>108</sup> Strategic Plan 2011-2016, supra note 75, *op. cit.*, 56.

<sup>109</sup> Actually, the anti-terrorism law employs broad definition of terrorism, placing the burden of proof on the suspects and prescribing high sentences. Some accuse the government of using it to crack down on dissent. The fact that they appear to negate international human rights commitments was even raised during discussion on the periodic report submitted to the Committee on Economic, Social and Cultural Rights. Ethiopia submitted a combined initial, second and third periodic report in 2009. See UN Economic and Social Council, 'Combined Initial, First and Second Periodic Reports submitted by States Parties under Articles 16 & and 17 of the Covenant-Ethiopia', E/C.12/ETH/1-3, 28 July 2009. On reflection of the Committee on the report see

these laws with both national and international human rights standards. Its failure to advise the government on these laws marks its inability to fulfil one of its key functions. Most importantly, it denotes failure to advise the government on important issues confronting human rights, highlighting its fear to confront the government on sensitive matters. Actually, it embarked on reviewing one of them (the anti-terrorism law) in order to advise the government to determine whether it complies with national and international human rights commitments, but backed off for unknown reason.<sup>110</sup>

### **6.3. Frosty and Testy Relationships with NGOs**

The ability of the Commission to get the trust and confidence of the public and civil society and other bodies is important to foster its work as well as societal legitimacy. As its mandate is broad and its accessibility is limited it is imperative to develop partnership with civil society organizations. Realizing this, the Commission has attempted to establish relationships with civil society organizations, academic institutions, and faith-based organizations. To cement its links with civil society organizations, the Commission put in place procedures regulating cooperation with NGOs.

Cooperation with NGOs involves aspects of participation by civil society in government undertakings. The shortcoming of the Commission in this respect means that the institution has not been able to implement the principle of good governance in its own operation.

At the outset, its engagement with NGOs was selective, involving few NGOs regarded as non-confrontational, and the subject of cooperation was also limited to legal aid issues. Nonetheless, the Commission's collaboration with Ethiopian Human Rights Council (EHRC) and Ethiopian Women's Lawyers Association (EWLA), two of the prominent human rights defenders that have perennially estranged relation with the government is remarkable.<sup>111</sup> Such partnership helps to mitigate the rancour between the government and NGOs and facilitate rapprochement between them.

Following the adoption of a comprehensive memorandum of understanding with the help of some civil society organizations, the partnership will extend to projects involving campaigns to promote human rights and to conduct research on human rights.<sup>112</sup>

Despite the fact that its relationship with civil society is increasing, it is, at times, pathetic. For instance, a cash-strapped Ethiopian Human Rights Council, a veteran human rights NGOs critical of the government, was forced to scale back its operation by closing down its branch offices and reducing its staff following the entry into force of the new legislation on civil society organizations. In dire financial need, it reached an agreement, in 2011, with the Commission with a view to getting 1.2 Million Birr financial support to revive its work. Unfortunately, the agreement has not been honoured. Despite making repeated plea for its release, the Council's attempt fell on deaf ears. Finally, it publicly released the non-

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[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/58281808E29AC38BC12579FA003F5B58?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/58281808E29AC38BC12579FA003F5B58?OpenDocument) (accessed on 23 December 2012).

<sup>110</sup> One of the researchers who started reviewing the Charities and Societies proclamation narrated that the Commission instructed its researchers to carry research on the right to development. He suggested that the reason for the shift might have to do with the sensitivities involved in the Proclamation and expressed his displeasure with the decision of the Commission (Interview on 1 October 2011, Addis Ababa, Ethiopia).

<sup>111</sup> Apparently, their financial source squeezed as a result of entry into force of the charities and civil society organization legislation, which has forced them to partner with the Commission.

<sup>112</sup> UNDP, Democratic Institutions Program, Annual Report, 2011, 25.

implementation of the agreement to the media. The two institutions could not sit together to sort out the problem and their narratives over the bickering are conflicting.<sup>113</sup> The controversy highlights its shaky relation with NGOs critical of the government.

#### **6.4. Open defence of the Human Rights Record of the Government: Acting as a Mouth-piece of the Government?**

The Commission does not have smooth relations with international human rights NGOs. It appears to be driven by the perception of the government to them, immersing itself into strident anti-NGO rhetoric of the government. It is not receptive to human rights abuses documented and released by them as the recent spat with Human Rights Watch reveals. Reports issued by the Human Rights Watch entitled ‘Hundred Ways of Putting Pressure’ and ‘Development without Freedom’ relating to Ethiopia incensed not only the government but also the Commission. They prompted the Commission to release a fierce criticism of both reports and to even question the commitment of the organization for the very ideals of human rights.<sup>114</sup>

This is not the first time the Commission engaged itself in media campaign to defend the government human rights record. Recently, the Commission the Chief Commissioner tried to amplify the human rights record of the government upon the country’s selection as member of the Human Rights Council. The Chief Commissioner gave an interview on the matter arguing that the selection is a sign of improvement in human rights conditions in the country.<sup>115</sup> Marking a consistent pattern, the Chief Commissioner, while admitting some human rights problems, once again engaged himself in a passionate defence of the track record of the government in protecting human rights. This is evident from the recent discussion hosted by DW Radio Amharic Service over the current human rights problems in the country.<sup>116</sup> As the institution is not a mouthpiece of the government it was supposed to monitor, criticize and offer independent assessment and opinion for the enhancement of human rights conditions in the country rather than defending the record of the government per se.

#### **6.5. Lack of Transparency**

In order to be truly independent, NHRIs have to be transparent in all its overall activities. Doing so or otherwise indicates the extent to which the Commission is enforcing good governance in its own operation.

Publication of the findings and recommendations of NHRIs in annual reports and/or special reports forms part of promotional work in itself and thereby spurs potential complainants to lodge their complaints. Let alone in annual reports, the Commission does usually not provide

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<sup>113</sup> The Commission invokes shortage of resources for not releasing the money. The Council is of the opinion that the source of the agreed money were donors and not the Commission itself and that the Commission was meant only to serve as channel to transfer the money. The Commission disputes this and argues instead that it is not supposed to serve as a conduit for transfer of money from donors to the Council as the money was given to it to run its own project. See Ethiopian Reporter newspaper, issue of 8 July 2012.

<sup>114</sup> See Ethiopian Human Rights Commission, ‘EHRC Response on Human Rights Watch Reporting on Ethiopia’, 2010, 3. The Commission directly addressed its response to Human Rights Watch.

<sup>115</sup> He stated this in his interview to VOA Amharic service on 16 November 2012.

<sup>116</sup> See DW Amharic Radio debate on current human rights problems in Ethiopia, held on 18 August 2013. The other participants include Girma Seif, member of House of Peoples’ Representatives, and Yared Hailemariam, former expert of the Ethiopian Human Rights Council who fled the country.

the victims with a copy of the outcome of investigation, which includes a summary of its findings on the case and the remedies it recommends.

Contrary to the Federal Constitution and the enabling statute of the Commission promoting publicity, confidentiality is the norm in the practice of the Commission, mirroring the reality vexing all public institutions. The Commission seems to have absorbed the nation's culture of concealment, non-disclosure and introversion. It tends to consider all cases under its review to be strictly confidential and is not, as a result, required to provide such information to third parties. Some vibes that reinforces the Commission's stance in this regard is found in the enabling statute, which talks of observance of secrecy.<sup>117</sup> Given the wide-spread culture of secrecy and non-disclosure in the country, such provision would absolve non-transparency, spoiling a culture of openness from emerging.

Lack of transparency shields the Commission internal workings from the public, individuals, media and others who want to assess its performance, undermining public accountability of the institution.

## **6.6. Informal Mode of Enforcement**

The *modus operandi* of the Commission is more informal in nature, especially in relation to enforcing recommendation. It has been using a non-confrontational and informal mode of enforcement. The Commission has not opted to use naming and shaming, particularly in its annual report. Actually, formal enforcement powers in the form of 'name and shame' through publicity may not, as argued by commentators, work in an authoritarian state with a controlled media and a frail judiciary.<sup>118</sup> In authoritarian tradition, an approach grounded in quiet diplomacy helps to keep the channels of communication open.<sup>119</sup>

As the Commission is a formal institution and human rights protection is meant to challenge governmental powers, reliance on informal *modus operandi* has thwarted it from exercising formal institutional muscle to confront government agents. Heavy reliance on informal means puts the Commission's credibility at risk. It increases a perception that the institution lacks ability to even deploy its inherent enforcement instruments notwithstanding that it has actually been assisting the victims.

## **7. Challenges**

Some of the challenges impeding the effective and independent functioning of the Commission in achieving its overall objectives are outlined in this section. The lists of challenges are not exhaustive but are indicative of the key and major ones.

### **7.1. Independent Functioning Challenges: Appointment Procedure Shortcoming and Dubious Public Attitude**

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<sup>117</sup> Article 34 of the Proclamation setting up the Commission reads: "Unless ordered by a court or otherwise permitted by the Chief Commissioner, any appointee or staff of the Commission or any professional employed pursuant to Article 33 of the Proclamation, shall have the obligation not to disclose, at all times, any secret known to him in connection with his duty."

<sup>118</sup> Li-Ann Thio, 'Pacacea, Placebo, or Pawns? The Teething Problems of the Human Rights Commission of Malaysia (Suhakam)', *George Washington International Law Review*, Vol. 40, 2009, 1298; see also Catherine Renshaw and Kieren Fitzpatrick, 'NHRIs in the Asia Pacific Region', 2011, 28.

<sup>119</sup> Ibid.

There is a low level of commitment on the part of governments in transition for the protection of human rights. This is the case, for instance, in African countries.<sup>120</sup> The officials in power are even the ones at forefront when it comes to supporting human rights violations.<sup>121</sup> The politicians are therefore in most cases the spoilers of many initiatives to promote and protect human rights on the continent.<sup>122</sup> Those in power may find a throng of ways to impede the functioning of NHRIs.<sup>123</sup> This makes NHRIs endeavour to build a culture of respect for human rights an uphill struggle against entrenched practice and mind-set.

To better discharge their functions, NHRIs need to develop a good linkage with government agencies, NGOs and others while maintaining their independence. Maintaining independence and fending off meddling particularly from the government, which set up and fund NHRIs, is one of the key challenges for the effectiveness of the institutions.<sup>124</sup> To foster their independence, NHRIs should be given requisite resources, autonomy and power to discharge their supposedly broad mandate optimally. This is a challenging task in developing countries, especially in Africa, firstly, the supposedly independent institutions are actually likely to be subject to the influence of government in power, and secondly where resources are scarce.<sup>125</sup>

Tampering with appointment procedure is one of the means used by governments in transition to democracy to influence the operation of NHRIs. To ensure the independent appointment of officials, the law sets up an independent Committee, the 'Nomination Committee', the composition of which does not, strictly speaking, include NGOs or civil society proper.<sup>126</sup> In fact, the enabling law does not stipulate any fundamental procedure or working method of the 'Nominating Committee', making it an obscure body. In practice, it invites the general public to submit suitable candidates they think qualify to run the institution. However, the process is not truly open and participatory. Put it differently, the Committee does not allow the public in general and the civil society in particular to debate on the list of nominees either, carrying out the nomination behind closed doors. Moreover, no interview is conducted with the would-be officials of the institution. The absence of such procedures opens room for potential manipulation of the appointment process in favour of candidates affiliated to the government of the day, posing the biggest challenge to the overall operation and thereby the independent standing of the Commission right from the very beginning. That is why there is a degree of suspicion regarding the independence of the first and existing batch of Commissioners from the government and party politics. The Commission is perceived to be weak and not truly independent of the government upon its establishment as well as in its operation.<sup>127</sup> Major

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<sup>120</sup> Chris Maina Peter, 'Human Rights Commissions in Africa: Lessons and Challenges', in Anton Bösl and Joseph Diescho (eds.), *Human Rights in Africa: Legal Perspectives on their Protection and Promotion*, Macmillan Education Namibia Publ., 2009.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Anne Smith, 'The Unique Position of National Human Rights Institutions', *Human Rights Quarterly*, Vol. 28, 2006, 911 and 944.

<sup>125</sup> Peter, supra note 120, *op. cit.*, 370.

<sup>126</sup> It includes four members from each faith group (Islam, Orthodox, Protestant and Catholic), Speakers of the two Chambers of Parliament (the House of Federation and the House of People's Representatives), seven members from the House of People's Representatives, the President of the Federal Supreme Court, and two members from among opposition parties that have seats in Parliament. It is not clear how the opposition group is represented in the last nomination of the Commissioners as there is only one seat of the opposition party in Parliament. The ruling party won 99.6 of the seats, losing only two seats of a 547 - member House (one seat went to the opposition party and the other to an independent candidate who openly affiliates himself to the policies of the ruling party).

<sup>127</sup> See UNDP, *Strengthening of the Ethiopian Human Rights Commission 2008-2012*, 2008, 9.



civil society organizations, opposition groups, private media and international human rights NGOs have little faith in the organization, perceiving it as the lackey of the government.<sup>128</sup> For instance, critical of its hitherto performance, Human Rights Watch dubs the Commission a ‘government-affiliated’ body, lacking independence.<sup>129</sup> Deputation of senior officials to the Commission from the executive agencies or council from the very inception further reinforces the concern of independence. Most heads of departments were not directly recruited through a merits-based process.<sup>130</sup>

If partial, not competent and politically-affiliated officials assume office of NHRIs, it will damage the credibility and legitimacy of the institution and thereby blight the enthusiasm of the public to have recourse to the institution unless they prove their real independence in practice<sup>131</sup> This was the case in Indonesia at its infant stage where people close to the regime were appointed to run the commission in the country but the Commission managed to win back the credibility of the public because of its outspoken criticism of the government and independent investigation.<sup>132</sup>

Apart from the perception of institutions lacking enforcement powers, there is a general cynicism to public institutions in general and the ones dealing with human rights in particular. One of the key factors complicating its work is, according to the Commission’s own words, the existence among the public of a degree of cynicism or lack of faith in the initiatives of public authorities in relation to the promotion and protection of human rights in general and the tendency to distrust the investigation carried by such bodies.<sup>133</sup> One case putting the independence as well as public cynicism towards investigations by public institutions, including the Commission, is the Aregawi Yohannes Case, a case involving the murder of an opposition party member prior to the general election in 2010.

The opposition parties allegedly attributed the death to the government security forces, claiming that the killing was part of an intimidation campaign by the government against opposition parties. The Commission visited the site of death and conducted interviews with the police handling the case, witnesses, local administrative officials, and members of the party of the deceased.<sup>134</sup> After investigation, it concluded that the death was a result of a bar brawl that broke out between the deceased and the perpetrator and was not a politically-motivated incident. The report was in favour of the prior repeated statement made by the government regarding the incident. It was out rightly rejected by the opposition group, accusing the Commission of not being independent of the government.<sup>135</sup>

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<sup>128</sup> Hugo Stoke, ‘Taking the Paris Principles to Asia- A Study of Three Human Rights Commissions in Southeast Asia: Indonesia, Malaysia, and Philippines’, CMI Report 3, 2007, 12.

<sup>129</sup> Human Rights Watch, World Report-Ethiopia, 2012, 3.

<sup>130</sup> The head of the vulnerability (?) section, the head of investigation, and the head of the monitoring directorate were seconded from government authorities and were not employed through a competitive job placement process.

<sup>131</sup> Ibid.

<sup>132</sup> Monika Talwar, ‘Indonesia’s National Human Rights Commission: A Step in the Right Direction?’, *Human Rights Brief*, Vol. 4, No. 2, 1997, see at <http://www.wcl.american.edu/hrbrief/v4i2/index42.htm>.

<sup>133</sup> Inaugural Report, supra note 41, *op. cit.*, 2011, 115; see also Strategic Plan 2006-2011, supra note 75, *op. cit.*, 30.

<sup>134</sup> See the Report of the Commission on the Investigation of the Killing (in Amharic), 2010, 2.

<sup>135</sup> The leading figures of opposition parties aired their anger against the Commission in many media outlets and accused the Commission of covering up the misdeeds of the Government-, For instance, Ethio-Media, 22 April 2010.

At this juncture, it is however important to make some remark regarding the handling by the Commission of the aforementioned case. The Commission decided to investigate the incident on the basis of its own motion. It seized the matter following claims and counter-claims made by the government and opposition groups regarding the incident. Its objective was to give an independent account of the case to the general public.<sup>136</sup> Though its stated objective was a good one, one could raise doubts as regards to its jurisdiction to investigate the matter in the first place. By the time it commenced investigation, the case had already been resolved by a court ruling - the perpetrator was charged, convicted and sentenced to a 15-year imprisonment. As per the enabling legislation, the Commission may not investigate matters pending before a court. It may not, *a fortiori*, investigate a matter that has already been settled by court. Opening room for speculation, it is not clear as to why the Commission investigated the matter in the first place.<sup>137</sup>

While the independence as well as motive of the Commission in the case at hand may be questioned, an indiscriminate statement to discredit the Commission altogether might affect the appetite of people who may seek its service. To avoid a sweeping statement that rejects the Commission's work, one should put its contribution in perspective by putting its undertakings in promotional and protection activities. The source of the doubt in relation to its independent functioning and drive in this particular case partly emanates from the cynicism and tendency to distrust investigation by government entities in general, extending even to courts.<sup>138</sup> Reinforcing the cynicism, there is a traditional perception held by the public that courts of law are an extension of state power rather than a law-enforcement body to protect citizens.<sup>139</sup> Probably, the pervasive atrocities perpetrated by the successive regimes against citizens and the lack of effective independent accountability mechanisms for long might justify such scepticism to public institutions meant to protect individuals and groups against government authorities.

Although gradually increasing, the low number of cases handled by the Commission is, on top of ignorance of human rights, partly attributed to, among others, such perception and cynicism. It makes consistent promotion of human rights and independent investigation by the Commission of complaints important.

### **7.3. Financial and Human Resource Constraints**

Democratic institutions in Ethiopia are not at the top of budget earmarked annually for different spending, with the huge chunk going to infrastructure development, education and military and security sectors. While these sectors are undoubtedly important for the stability and peace and development of the country, democratic institutions that hold the government to account and also cater for the dignity of citizens do not feature high in the spending list. The scarcity of and orientation to resource allocation could affect the operations of the democratic institutions in the country. It has a repercussion to the bid of the institutions,

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<sup>136</sup> See the Report of the Commission, *supra* note 130, *op. cit.*, 2.

<sup>137</sup> One of the investigators narrated that the investigation team learnt of the case's adjudication by a court while they were heading to the place where the incident occurred, just before they made it to the city. Upon learning that the matter was settled by the court, argument as to whether they could probe the case was raised by one of the team members but the head of the team insisted on investigating the matter. Interview with anonymous investigator, 12 September 2011, Addis Ababa, Ethiopia.

<sup>138</sup> Inaugural Report, *supra* note 41, *op. cit.*, 115; see also the Commission's Strategic Plan, *supra* note 75, *op. cit.*, 30.

<sup>139</sup> Ethiopian Human Rights Council, 'The Administration of Justice in Ethiopia', Special Report No. 9, 1996, 28-29.

including the Commission, in operating optimally to promote and protect human rights given their wide mandate.

Although the budget of the Commission has seen progressive increase over the years, it is not adequate enough in the face of the wide mandate bestowed to it. The problem is acute as a multi-donor funding project, under the rubric of 'Democratic Institution Program' administered by the UNDP, has ceased, putting some of its encouraging endeavours at risk of downgrading at best and closure in the worst scenario.

Regarding human resources, the recruitment of competent staff is a major area of concern, which greatly impacted the effectiveness of the Commission.<sup>140</sup> Maintaining a serious program of staff development is challenging owing to shortage of funding. Realizing this problem right from the start, donor agencies and international organizations have rushed financial and technical support to the Commission, enhancing its capacity. Although staff capacity has gradually been improving over the years, the Commission still faces shortage of competent staff in analysis of, among others, laws and policies, and allocation and spending of government budget.<sup>141</sup> A stumbling-block affecting the hiring of competent staff is the salary scale, which is not attractive enough.<sup>142</sup>

#### **7.4. Accessibility Challenge**

Widespread poverty and inequality contribute to entrenching systemic discrimination, posing greatest challenge for NHRIs to contribute to creating a culture of respect for human rights and tackling discrimination.<sup>143</sup> Militating against access to NHRIs, the majority of African people live in rural area under abject poverty, ignorance and lack of awareness about human rights, making the activities of the institutions an epic task.<sup>144</sup> In such settings, making the presence of the institutions felt to the public and encouraging people to resort to the institutions is a colossal activity that needs huge resources, which may not be at the disposal of the institutions in the developing world, limiting their work and achievement.

Although the Commission has over the years been improving its accessibility, through a combination of decentralization, sustained promotional works and provision of legal aid service, access to the largest segment of the population is undercut by financial constraints, and by its inability to open planned additional branch offices as well as its limited interaction with civil society working at a grass-root level.

The website of the Commission is not regularly updated with reports and activities and not reviewed for recommendations. This has inhibited access to information on what the institution is undertaking and plans to carry out. In fact, this problem is closely related to the lack of transparency marking the Commission's operation.

#### **7.5. Failure to Adhere to Strategic Operational Procedure**

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<sup>140</sup> Inaugural Report, *supra* note 41, *op. cit.*, 112I; Annual Report 2009/2010, *supra* note 41, *op. cit.*, 31; see also Annual Report 2007/2008, *supra* note 56, *op. cit.*, 32.

<sup>141</sup> *Ibid.*

<sup>142</sup> Inaugural Report, *op. cit.*, 46 and 112-113.

<sup>143</sup> Brian Burdekin, *National Human Rights Institutions in the Asia Pacific Region*, the RWI Human Rights Library, Vol. 27, Martinus Nijhoff Publishers, 2007, 103.

<sup>144</sup> Peter, *supra* note 121, *op. cit.*, 369.

Another notable problem affecting the operation of the Commission is its failure to adhere to its own strategic plan. It seems to be driven by events instead of planned activities. At times, it drops planned activities for the sake of pursuing new activities not envisaged in the list of activities supposed to be undertaken. In some cases, it abandons planned activities so that it could focus on monitoring elections.<sup>145</sup> In other cases, the lack of capacity prevents it from undertaking planned activities.<sup>146</sup> As a result, the Commission frequently carries forward promotional works and complaint investigation supposed to be completed in one fiscal year to another. This is against the very purpose of the strategic plan, which is meant for proper functioning and to avoid unplanned and uncoordinated actions.

## **7.6. Credibility Challenge-the Status of the Commission**

The notion of NHRIs is a new phenomenon in Ethiopia. The Commission was set up as part of a constitutional reform venture to usher in a new era of democratic governance based on the rule of law and respect for human rights. It is likely that its work is caught between two sets of expectations. From the public side, there could be unrealistic expectations that the Commission would address human rights problems in a short period of time. From a human rights defenders perspective, the Commission is expected to assume an active role in defending human rights. While meeting these expectations is inevitably difficult for it, the Commission's experience is rather not impressive.

Investigating sensitive matters and transparency are among important elements helping NHRIs to assert their independent status and bolster their credibility. The limitation in this regard has eroded the Commission's legitimacy in the eyes of the public, hindering it from being seen as an independent protector of human rights.

The Commission is far from where it is supposed to be. Cramped by internal and external factors, the Commission has not been able to define its place and status in the legal and political system. It suffers from loss of authority in relation to government authorities. By, *inter alia*, probing challenging government actions and opening itself up to the public (i.e., by reporting its results publicly), it may improve its credibility in the eyes of the general public.

## **8. Prospect of Favourable Condition for the Operation of the Commission**

Potentially reversing its lack of proactivism, the Commission has been engaged in investigating the impact of large-scale land transfer to investors. Also, the Commission intends to launch systemic studies into religious conflicts with a view to advising the government on tackling such problem and deadly violence that arise therefrom.<sup>147</sup> If the outcome of the study is going to be presented for public discussion, it could reshape public view regarding such matter, which in the long-run might shape policy on it.

In a recent blunt discussion aired on TV with the Parliament and senior officials of the government, democratic institutions accused the government officials and institutions of letting them down by not heeding their plea for cooperation and not acting on their recommendations. The Speaker of the House of People's Representatives suggested that Parliament will, for the first time, push for the removal of government officials who fail to

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<sup>145</sup> See Ethiopian Human Rights Commission, Annual Report 2008/2009, 31.

<sup>146</sup> See Annual Report 2009/2010, *supra* note 41, *op. cit.*, 31; see also Annual Report 2007/2008, *supra* note 56, *op. cit.*, 32.

<sup>147</sup> Annual Report 2011/2012, *supra* note 41, *op. cit.*, 5.

deliver their functions effectively and who ignore accountability to democratic institutions.<sup>148</sup> As Parliament is dominated by one party, such open discussion could help facilitate the enforcement of their opinions if the government follows through with its statements.

Also, Parliament has recently been active in monitoring government institutions. It has been putting serious questions challenging government officials presenting their annual performance reports. While it did a watershed move in blocking the government proposal to withdraw the immunity of one of its members, it faced a setback. The proposal was once again tabled before it in its next session where the original decision was reversed in an unprecedented manner.<sup>149</sup> Despite this, the emerging proactive role of Parliament helps to provide a prospect to facilitate the work of the Commission if Parliament manages to keep the pace.

### **Concluding Remarks**

The Commission is currently not fulfilling its mandate in a variety of crucial ways. While it undoubtedly makes important contributions in promoting human rights and in addressing some specific human rights cases, it routinely fails to provide remedies for alleged human rights abuses attributable to government authorities. To skip investigation and provision of remedies in politically sensitive matters, it disclaims jurisdiction in instances. Also, it fails to launch systemic investigation into important human rights issues and recommended reforms required to curb policies and practices that trample on human rights. In addition, it could not effectively collaborate with key human rights advocates in the government, civil society, and international community. On the whole, the Commission has failed to live up to the degree expected of it in defending human rights.

While the difficult political environment with a slow transition to a democratic dispensation and a considerable legacy of authoritarianism and a strong government to contend with poses challenges to its works, it equally makes its promotional and protection functions more demanding.

The Commission should not shy away from taking on sensitive matters. In that regard, it has to adopt a set of procedural rules on such matters. Also, the Commission needs to be forthcoming in becoming more transparent and open to the public. It has to provide parties with copies of final opinions made by the Commission and remedies suggested. In addition, it ought to rely more on formal powers and less on informal ways of getting things done. More reliance on informal mode of engagement further erodes its credibility.

It is yet to witness the independent functioning and commitment of the Commission as regards important human rights issues. The Commission has built staff and almost all operational manuals, rules and procedures are put in place. Starting from scratch, it has now taken the shape of a full-fledged institution and also acquired some experience in the promotional and protection activities. If independent-minded, competent and courageous leadership assume office, it may re-orient itself and turn into truly defending human rights. This can be achieved by revisiting and introducing amendment to the selection and appointment procedure to ensure that such officials hold office.

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<sup>148</sup> The theme of the meeting was ‘The Role of Democratic Institutions and the Responsibility of Executive Agencies’, and took place on 2 October 2012.

<sup>149</sup> See the Case of Kassim Fite in Chapter Seven (?). Ethiopia Reporter Newspaper issue of 21 July 2013.