

The Human Rights Commission of Ethiopia and Issues of Forced Evictions- A Case-oriented Study of its Practice

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Introduction

In addition to the past endeavour to meet the MDGs, the Ethiopian government launched an ambitious program, ‘Growth and Transformative Plan (2011-2015)’ in 2011 to transform the country’s economic growth and development. As core part of the Plan, the economic and infrastructure sections envisage massive investment and infrastructure development. While the ultimate target is to improve socio-economic conditions and fulfil basic needs, the Plan will likely heighten massive eviction of people from their ancestral lands and thousands from their houses, and deprive many more of the traditional means of livelihood. In both the past as well as the present development endeavour, little attention has been given to a human rights-approach to development. The discourse on economic growth and development tends to focus more on mere economic improvement, implying needs-based approach. This will reinforce the notion that the fulfilment of economic, social and cultural rights is an aspiration realized by government program, with no obligation on the part of the government.

One of the core functions of national human rights institutions (NHRIs) is to investigate complaints. The Human Rights Commission of Ethiopia (Commission) has been receiving complaints on wide range of issues since it started rendering its quasi-judicial functions. Among them, many complaints relating to forced have been brought to its attention. The Commission has rejected the bulk of the complaints or referred them to either courts of law or and the Ombudsman Institute on the ground they do not involve human rights issues (i.e. they are mere administrative matters that do not qualify for its inquiry). By the same token, investigation of complaints on forced eviction is an exception rather than the norm. Disclaiming jurisdiction might shed light on the underlining issues-it might mark fear on the part of the Commission not to confront the economic and development policies of the government; or adoption of pre-conceived approach to issues of economic, social and cultural rights, or erroneous interpretation of its mandate or incapacity to deal with such issues. This paper will deal with the Commission’s handling of complaints pertaining to the right to housing in general and forced eviction in particular. Some of interesting complaints handled by the Commission will be reviewed to see the underlining reasons hampering the Commission from examining the essence of specific cases. Some measures to be adopted so that the Commission could probe complaints of all sorts and of forced evictions in particular are hinted.

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The source of information for the study is records of the Commission, legal instruments, both national and international, and literature.

1. Political Context of and Process in Setting up the Commission

NHRIs usually are set up following constitutional reform and/or chaotic situation ending with peace accord¹. Regarding mode of setting up, they can be established in three ways: by constitution (or amendment of constitution), by act of parliament, and by presidential decree². The setting up of NHRIs stipulated in constitutional text, which represents the most powerful option as it guarantees the permanence of the institutions, is found in countries that have recently undergone constitutional reforms and marked by grave human rights violations in the past³.

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, at the time that coincided with the fall of the Socialist Camp and the resulting wave of democratization. Issues of democratic governance, human rights, rule of laws, and decentralization emerged as central ones after the demise of the military regime⁴. 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 new era⁵.

Faced with the lofty task of creating a foundation for 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 explicates the due regard the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) bestows to fundamental rights and freedoms⁶.

¹ 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, pp. 14-15; see Rachel Murray, 'The Role of NHRIs at the International and Regional Levels: The Experience of Africa', *Human Rights Law in Perspective*, Vol. 11, Oxford and Portland, Hart Publishing, 2007, p. 3; see also International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions*, Versoix, Switzerland, 2000, pp. 58-62 (hereinafter referred to as 'International Council on Human Rights Policy')

² Lindsnaes and Lindholt, *op.cit.*

³ *Ibid*, pp. 14-15

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

⁵ The measures undertaken include, *inter alia*, political pluralism as opposed to one party system, the framing of new *constitution* with liberal features, inception of federal arrangement and decentralization based on ethno-linguistic factors, structural adjustment, and adoption of market-oriented economic policy.

⁶ 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 right and fundamental freedoms is a key to achieve this commitment. At least a third of 106

Appreciating 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 would advance democratic governance⁷. 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 carnage⁸. Its root in the Constitution lends it public legitimacy as the Constitution was drafted and adopted following wider public participation. Subject only to the Constitution and the law, it acts as a safeguard against the abuse of state power and to ensure that human rights are upheld. While a constitutional foundation does not *ipso facto* guarantee its better functioning, it provides a more secure basis than an executive decree or order, which is prone to change easily.

It was largely domestic impulse that sparked off the need for democratic institutions during the transition period. Increased international factors also opened room for conditions favouring human rights regime in general and democratic institutions in particular in the new democratic process set in motion in the same period. Arguably, the global upsurge in the number of NHRIs, dating back to the early 1990s, has thus affected Ethiopia as well⁹. Because issues of human rights entered Ethiopian political vocabulary in part through external influences at the time of transition¹⁰. It is suffice to mention the policy impact of the USA, which emerged as a major supporter and donor of the incumbent party following the collapse of the former regime. In the mid 1991, the Bush (Sr.) Administration adopted a new policy toward Africa, which judges governments by their stability and effective governance in order to secure U.S.A.'s economic assistance¹¹. This American policy, which centred on democracy and human rights, found one of its first applications in Ethiopia¹².

A myriad of international factors propelling the wave of establishment of NHRIs in the early 1990s is not unique to Ethiopia. Koo and Ramier have offered an insightful

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.

⁷ 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.

⁸ 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, p. 1

⁹ Abdo, supra note 4, *op. cit.*, p. 24

¹⁰ The post Cold-War attachment of provision of financial and technical support of donor governments to human rights issues, the active role of the UN in promoting the idea of establishment NHRIs and the wave of democratization engulfing countries in transition following the collapse of the former USSR in early 1990s have also contributed, to some extent, towards considering the establishment of the democratic institutions in the new political and constitutional order set in motion in Ethiopia in the early 1990s. See Claude E. Welch, *Protecting Human Rights in Africa: Strategies and Roles of Non-Governmental Organizations*, University of Pennsylvania Press, 1995, p. 11.

¹¹ *Ibid*, p. 12

¹² *Ibid*

theoretical perspective as to how international factors underpin the growing establishment of NHRIs in different parts of the world since 1990s¹³.

Compared to other legislation, the process of enacting the enabling statute of the Commission and the Ombudsman Institute is unprecedented considering a wide range of public and expert participation amid heightened public expectation¹⁴. 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 it¹⁵. Drawing on this, Parliament eventually enacted the enabling legislation of the Commission, Proclamation No. 210/2000, in 2000 (Proclamation). However, the nomination of 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 security¹⁶. On top of the war, the process was stalled by political and bureaucratic procedures¹⁷.

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 criticism¹⁸. Despite this, the setting up of the Commission was accepted as important development in attempts to promote and protect

¹³ See Jeong-Woo Koo and Francisco O, Ramirez, 'National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966-2004', *Social Forces*, Vol. 87, No. 3, 2009

¹⁴ 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 8, *op. cit.*, p. 1

¹⁵ 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 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 4, *op. cit.*, p. 27; See also Mohammed Abdo, 'Challenges Facing the New Ethiopian Ombudsman Institution', *International Ombudsman Yearbook*, Vol. 6, 2002, p. 78; see also supra note 8, *op. cit.*, pp. 1-2

¹⁶ 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, p. 47

¹⁷ World Bank, Ethiopia: *Legal and Judicial Sector Assessment*, 2004, p. 32

¹⁸ The 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, p. 60

human rights within the nation. It can thus be regarded as willingness on the part of the government to change complex human rights situation in the country¹⁹. Because an apparent lack of appropriate social and political action and determination to condemn and sanction social norms abusive of human rights have been of concern in the country for a long time²⁰.

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.

2. Structure and Composition 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 relatively a small Commission, 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 personnel²¹. Its small size would ensure, under normal assumption, a more efficient decision-making process but at the expense of pluralism of its composition in the face of ethnic and religious diversity in the country. A larger one would have promoted pluralism at the cost of resources and decision-making process. The drafters of the enabling legislation seem to have given much weight to the financial and human resource constraints and opted for a smaller one²². 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.

The Commission's head office, the only office that operated since establishment up to 2011, is 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 States²³. 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

¹⁹ Sarah Vaughan and Kjelit Tronvoll, *The Culture of Power in Contemporary Ethiopian Political Life*, SIDA Studies No. 10, 2005, p. 57

²⁰ Ibid

²¹ 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 by the Ghanaian Human Rights and Administrative Justice Commission has three Commissioners.

²² The Concept paper prepared by Parliament for discussion on the would-be content of draft legislation for the Commission as well as the Ombudsman, hints out this fact. See *Supra* note 8, *op. cit.*, pp. 1-4

²³ Hawassa, Bahr Dar, Mekele, Gambella and Jijiga another town, 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, p. 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.

respective activities²⁴. 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 officials²⁵. 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 legislation²⁶.

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 day²⁷. That apparently is why scepticism was raised, at the very inception of the Commission, as regards the independence of the first officials that assumed office²⁸. The closed and non-inclusive nature of the selection process, and concerns over the human rights competence of some of those appointed could be raised as grounds that would likely undermine the full independence of the institution from the very outset²⁹. The lack of transparency in the nomination process and doubt as regards the Commissioners' competence and independence partly stems from the enabling legislation itself and also from the political tradition in the country to some extent.

²⁴ 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, p. 18

²⁵ 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'(Article 11 of the Proclamation).

²⁶ 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 institution is entitled to hire its staff and come up with its operational rules and procedures.

²⁷ Abdo, *supra* note 4, *op. cit.*, p. 34

²⁸ The Observatory for the Protection of Human Rights, 'Ethiopia: Human Rights Defenders under Pressure: Report: International Fact-Finding Mission', 2005, p. 18

²⁹ The absence of clear set of procedures on short-listing candidates and lack of meaningful public consultation on nominees characterize the selection of the first batch of Commissioners. It was not clear as to how they were selected from among the proposed candidates. The first and former Chief Commissioner, Dr. Kassa Gebrehiwhot, was a diplomat with a background in literature studies. The former Deputy Commissioner, Demoze Mame, was a lawyer by profession who once served as President of the Supreme Court of Oromia National Regional State and also assumed senior post within the executive body in the same State. The Commissioner for Women and Children, Yeshareg Damte, also assumed senior post within the South Nations, Nationalities and Peoples' Regional State and educated in sociology.

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 proper³⁰. In fact, the enabling law does not stipulate any fundamental procedure on 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 actual process of recruiting officials is not 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.

Unlike in other jurisdictions, the enabling state does not require proposed commissioners to have legal training or human rights expertise as a compulsory precondition to assume office. It makes legal background an optional prerequisite and leaves out human rights expertise altogether although a would-be nominee is supposed to defend human rights³¹.

Taking the existing procedure and practice as backdrop, the appointment of party members or affiliates is inevitable in a country where the government of the day controls all the institutions. Especially, the appointment of the Chief Commissioner, who usually leads the Commission, may ultimately depend on the will of the political party in power³². Be that as it may, the most important thing is whether they are independent in their actual work. It is important to note that although all the Commissioners are appointed by Parliament, it is only the Chief Commissioner who is directly accountable to Parliament³³.

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

³⁰ 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).

³¹ Article 12(3) of the Proclamation. Article 12(2) indicates that a proposed candidate must be one who upholds human rights (Article 12(2). The Amharic version seems to suggest that he/she must be one who is concerned for human rights causes but whether this incorporates human rights expertise is not clear.

³² Two of the incumbent officials were actually members of the ruling party made of a coalition of four parties- one is from Tigray People’s Liberation Front(Berhane Woldekiros, Deputy Chief Commissioner), and the other from Amhara People’s Democratic Party(Asmaru Berhanu, Commissioner for Women and Children), enough to doubt the true independence of the Commission. Once they assume office, they are normally supposed to resign from party. No information is available on their relation with the Party since they assumed office. Although not clearly identified as party member, the Chief Commissioner, Tiruneh Zena, is thought to be affiliated to the ruling party. Interview with many experts of the Commission underscores this fact.

³³ The other Commissioners are accountable to the Chief Commissioner. See Article 13(2) of the Proclamation. All commissioners are to be appointed for a fixed term of five years of office, with the possibility of one reappointment. See Article 14(2) of the Proclamation

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 Rights Institutions (ICC)³⁴. Its second application was scheduled for scrutiny by ICC in November 2012 but has been deferred for one year³⁵.

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 protection³⁶. As provided under Article 6 of the Proclamation, the Commission has broad mandate to promote and protect human rights. It 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 bodies³⁷. 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 rights³⁸. 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 entities³⁹.

Although bestowed broad mandate, the Commission's reach is not without limitation. 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

³⁴ The ICC was set by NHRIs themselves for the accreditation purpose. To facilitate accreditation it set up a sub-committee entirely devoted to accreditation. The ICC is not a UN agency; it is rather a global association of NHRIs that coordinates the relationship between NHRIs and the UN human rights system. It is composed of 16 members from each of four regions, American, Africa, Asia Pacific, and Europe in order to ensure fair representation of each region. The ICC liaisons with the UN human rights bodies and encourage coordination among institutions. The National Institution Unit under the Office of the UN Office of the High Commissioner for Human Rights acts as a permanent secretariat to the ICC and assist it in, among others, organizing its meetings and its accreditation process. The ICC generally meets during the annual sessions of the Human Rights Council and holds biennial international conferences. The accreditation status is reviewed at least every five years. Accreditation increases NHRI's national and international legitimacy and also entitles participation rights in diverse UN forums depending on their ranking.

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>)

³⁵ 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). nhri.ohchr.org/EN/AboutUS/ICCAccreditation/Page/NextSession.aspx. See also nhri.ohchr.org/EN/AboutAccreditation/Documents/SCA%20Report%20November%202012%20%28English%29.pdf.

³⁶ Lindsnaes and Lindholt, in *Working Papers and Articles*, supra note 1, *op. cit.*, p. 25

³⁷ Sub-articles 3, 6 and 7 of Article 6 and Article 19(2)(d) of the Proclamation

³⁸ Article 6(4 and 5) of the Proclamation

³⁹ Article 6(1 and 2) of the Proclamation

level⁴⁰. Hence, all other government institutions other than the exceptions are not off-limit to the Commission's investigation. It is remarkable that the statute subjected the military, security, and police forces that are closely associated with human rights abuses in the past to its power⁴¹. In this respect, the Commission is different from the Ombudsman in that the latter does not have the power to investigate matters related to national security and defence forces⁴².

Apart from government authorities, the Commission's reach extends to individuals and non-state entities. Accompanied by an umbrella clause, which entitles it to perform such other functions as it may consider necessary for achieving its functions, the Commission thus not only has all the functions the Paris Principles prescribe but also a potentially wider mandate⁴³. It is an all inclusive institution unlike the case of, for instance, the Human Rights Commission of South Africa where some human rights issues are given to other entities⁴⁴. The fact that the Ombudsman's mandate is confined to maladministration issues only, making it a prototype of a classical ombudsman, signifies the inclusiveness of the Commission's mandate on human rights issues⁴⁵.

Such inclusive mandate is advantageous. On top of scarcity of resources, it allows for the application of an integrated and consistent human rights approach to different human rights issues. In other words, it is cost-effective than dispersing the fiscal resources across several new human rights bodies, especially for a poor country like Ethiopia.

4. Investigation and Enforcement Power

NHRIs should be given ample powers in their legal framework at investigatory process, at the implementation stage, and in the other roles that the institutions undertake⁴⁶. The Commission is empowered to investigate complaints, upon individual complaints or *suo moto*⁴⁷. 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 in any language and format⁴⁸. The simplicity of a rule to

⁴⁰ Article 7 of the Proclamation

⁴¹ Abdo, *supra* note 4, *op. cit.*, p. 37

⁴² See Article 7 of the Proclamation that set up the Ombudsman Institute, Proclamation No. 211/2000. However, in reporting on matters related to national security, the Commission is obliged to take caution with a view to not endangering national security and the same applies to secret matters related to the well-being or to protecting individual lives (Article 39(3)).

⁴³ Article 6(11) of the Proclamation

⁴⁴ The South African Human Rights Commission's actual mandate is not as broad as it appears at first sight. It is competent to deal with human rights issues as far as they do not fall within the remit of other independent democratic institutions. For instance, it is not empowered to deal with issues of gender equality and the rights of minorities as these powers are given to two separate democratic institutions set up exclusively for each of such issue.

⁴⁵ It is implicit from Article 6 of the enabling legislation of the Ombudsman Institute that it is a classical Ombudsman. See The Ombudsman Institute Establishment Proclamation No. 211/2000.

⁴⁶ UN Professional Training Series No 4, *supra* note 29, *op. cit.*, p. 13

⁴⁷ See Articles 6 and 24 of the Proclamation

⁴⁸ 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)). The Commission may also receive anonymous complaint (Article 22(3)). A complaint may be lodged, free of charge, in writing, orally or in

bring a complaint to the attention of the Commission is meant to supplement 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 complaint⁴⁹. Any person asked to appear for the purpose of furnishing information or production of document or record should cooperate with the Commission. Failure to act accordingly constitutes offence and punishable by sentence and/or fine⁵⁰.

The Commission is, a matter of general rule, supposed to settle complaints through an amicable means, seeking an agreement between the parties (Article 26(1)). A limited number of cases may not be subject to such means⁵¹. 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.

As is the case with most NHRIs, the Commission is not authorized to set aside, revoke or modify decisions of agencies. Made in an advisor capacity, its 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 either⁵². However, it is under obligation to notify the concerned organs of the crimes or administrative faults committed, if it believes that such occurred in due course of or after its investigation⁵³.

The enforcement mechanisms it uses to ensure compliance are to publicize, be it in 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 general⁵⁴. Another instrument of enforcement is a criminal sanction. A penalty is prescribed if there is failure to apply the recommendations issued by the Commission or if there is failure to provide reasons within three months for not applying the recommendation, placing person(s) subject to the recommendation of the Commission to behave in some way⁵⁵.

any other means and may be in the working language of the Commission, which is Amharic, or in any other language. See Articles 23(1 and 3).

⁴⁹ The Commission is empowered to compel the attendance of witness to give testimony, or force the production of evidence by those in possession of them (Article 25 of the Proclamation)

⁵⁰ See Article 41 of the establishment Proclamation.

⁵¹The Commission's Complaint Handling Manual is apparently silent on this matter. According to the interview with one of the experts in the investigation department 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).

⁵² Ibid

⁵³ Article 28 of the Proclamation

⁵⁴ Article 39 of the Proclamation

⁵⁵ 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

Serving to strengthen its enforcement powers, such sanction is an incentive to the Commission's autonomy. In addition, it may collaborate with other organs, for instance, media and NGOs, to mount pressure on government authorities to heed its opinions.

Actually, all the aforementioned mechanisms are not remedies for recommendation but constitute means towards securing the provision of remedies.

The Commission possesses only persuasive powers to issue recommendation or initiate negotiation or mediation in order to resolve grievances. While this may, at first glance, appear to relegate the Commission to a back-seat role in promoting and protecting human rights abuses and also access to it, it might bring with it freedom of movement and action in investigation of complaints and promotion of human rights. Particularly, promotional work may not be considered, from government point of view, biting and spur them, at least, not to interfere with, or to support the work of the Commission's efforts at best.

5. NHRIs and Forced Evictions

Before reviewing the practice of the Commission in handling forced evictions, it is good to make quick remarks on forced evictions under international human rights law.

Forced evictions can be broadly defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection⁵⁶. Forced evictions occur in both urban and rural areas, each with varying justifications. Renewal, demolition of slums, preparation for mega-events (such as major sport events) and other 'for public interest' reasons are often used to justify forced eviction in urban areas⁵⁷. In rural and remote areas, forced evictions could take place owing to, among others, large scale development projects (infrastructures, dams, and roads), mining, extractive and other industrial activities⁵⁸. Forced eviction can also happen in connection with forced population transfers, internal displacement, and forced relocations in the context of armed conflict⁵⁹. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to state parties⁶⁰.

imprisonment from three to five years or a fine from 6000-10000 Ethiopian Birr or both. See Article 41(2) of the Proclamation.

⁵⁶See UN, 'Basic Principles and Guidelines on Development-based Evictions and Displacement', presented in the report of the UN Special Rapporteur on adequate housing as a component of the right to adequate standard of living, 2007, paragraph 4(hereinafter referred to as 'UN Basic Principles and Guidelines'); see also Office of the High Commissioner for Human Rights, 'The right to adequate housing (Art.11.1): forced evictions-General Comment 7, 05/20/1997', Committee on Economic, Social and Cultural Rights,1997, paragraph 3(hereinafter referred to as 'General Comment 7').

⁵⁷ General Comment 7, *op. cit.*, paragraph 7

⁵⁸ Ibid

⁵⁹ Ibid, paragraph 5

⁶⁰ Ibid

In unequivocal terms, the Committee on Economic, Social and Cultural Rights made it clear that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats⁶¹. It has argued that forced evictions are prima facie incompatible with the requirements of the ICESCR⁶². Not all evictions are prohibited under international human rights law, however. They can be justified in the most exceptional circumstances, and in accordance with the relevant principles.

Given the interdependence of all human rights, forced evictions frequently violate other human rights, including both civil and political rights⁶³. The violations may occur when two conditions, one substantive and the other procedural, are met. They may occur because of the absence of justification/legality for the eviction, and the way the eviction is carried out (i.e., the way the evictions are carried out is not compatible with the relevant human rights standards⁶⁴.

Forced evictions of individuals and communities from their homes and habitats destroy lives and livelihoods. Groups of people that suffer disproportionately from the practice of forced evictions include women, children, youth, older persons, and indigenous people, ethnic and other minorities⁶⁵.

Quasi and judicial bodies are competent to deal with complaints arising from forced evictions. However, a preventive approach to forced evictions is more efficient than trying to resolve cases once the process commences. In other words, addressing the legal and structural problems that could prevent the recurrence of forced evictions in the first place is more important than handling individual complaints. Endowed with power to launch investigation by their own initiative and to conduct public inquiry, NHRIs are ideally best-positioned to recommend legal and policy measures to be adopted in the medium and long run to avert forced evictions. Their opinions could serve as a basis for a dialogue with various stakeholders. Furthermore, using their promotional mandate NHRIs could sensitize the general public and government authorities of the need to

⁶¹ Office of the High Commissioner for Human Rights, 'The Right to Adequate Housing (Art. 11 (1) of the Covenant-, General Comment 4, E/1992/23', Committee on Economic, Social and Cultural Rights, 1991, paragraph 8

⁶² Ibid, paragraph 18

⁶³ While manifestly breaching the rights enshrined in the ICESCR, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. See UN Basic Principles and Guidelines', supra note 56, *op. cit.*, Paragraph 6; see also General Comment 7, supra note 56, *op. cit.*, paragraph 4

⁶⁴ See General Comment 7, *op. cit.*, paragraphs 13-15. The UN Basic Principles and Guidelines provide basic principles governing forced evictions and only sanction them under "exceptional circumstances. Some basic principles include: Some basic principles that need to be met include: i) valid justification for the project and no other possible alternatives to the eviction; ii) consultation and participation of affected people and communities; iii) adequate notification, due process, effective and legal recourse; iv) prohibition of actions resulting in homelessness or deterioration of the housing and living conditions, and v) provisions of adequate relocation and/or adequate compensation before evictions are carried out. See the UN Basic Principles and Guidelines', supra note, *op. cit.*, paragraph 6

⁶⁵ See General Comment 7, *op. cit.*, paragraph 10

attend to the right to adequate housing in general and the protection against forced evictions specifically.

6. The Commission and Forced Evictions

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 of cases submitted to the Commission over the years following the Commission's promotion campaigns to raise awareness about itself and human rights⁶⁶. However, the total number of files of complaints submitted to the Commission since its inception, which exceeds a little over 4500, is rather small given the sheer size of the country and its poor human rights records⁶⁷. 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, launched in 2009 and completed in 2010, culminated in changing its organizational structure. It resulted in, among others, rearranging the original departments and also created new sections and posts, one of which is the Registrar at the Investigation Directorate⁶⁸. One can observe an improvement in the delivery of services in general and file management in particular after the Registrar went operational⁶⁹.

The recent statistics indicates a marked increase in the number of cases submitted to the Commission. More than 1427 complaints submitted to the Commission in 2012/2013 represent an even greater increase over the 65 cases received in its first year of operation⁷⁰.

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-

⁶⁶ The Ethiopian Human Rights Commission, *Inaugural Report*, 2011, p. 91(hereinafter referred to as 'Inaugural Report Inaugural Report'); see also the Ethiopian Human Rights Commission, Annual Report 2009/2010, pp. 14-15(hereinafter referred to as 'Annual Report 2009/2010').

⁶⁷ 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 a little over 4563 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.

⁶⁸ Owing to the lack of Registrar prior to April 2010 cases end 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 66, *op. cit.*, pp. 55-56

⁶⁹ See the Ethiopian Human Rights Commission, Annual Report 2010/2011, p. 8(hereinafter referred to as 'Annual Report 2010/2011').

⁷⁰ See the Ethiopian Human Rights Commission, Annual Report 2012/2013(hereinafter referred to as 'Annual Report 2012/2013').

discrimination, condition of detention in prisons and police stations, inter-ethnic conflicts, election-related issues, and forced eviction from land and house⁷¹.

In terms of their number, forced eviction-related complaints feature high among complaints that keep on appearing before the Commission annually. Broadly put, they relate to arbitrary eviction from house and/or land without prior notice and consultation, or without prior arrangement to relocate or provide them compensation. Most of the forced evictions were carried out for the purpose of making way to undertake infrastructure development (road construction and real estate) and for commercial farming. The complaints were mostly made against government authorities. In few cases, they were related to rental terms and conditions and complaints were lodged against private individuals or entities. For instance, a tenant who could not afford rent increment by landlord was forced out of house. He filed a complaint arguing that the action of the landlord leading to the loss of shelter constitutes violation of the right to housing. He was directed to the Ombudsman.

The investigation of complaints on forced eviction is an exception rather than the norm. The Commission managed to investigate few complaints on forced eviction, referring the greater part of them to the Ombudsman and a few to courts of law. Those investigated relate to the ones in the context of civil strife involving communal or ethnic violence.

6.1. Investigation of Individual and Group Complaints over Forced Evictions in Urban Areas

The Commission has been receiving complaints involving the right to adequate housing and issues of forced eviction. One important case filed to the Commission that could have given rise to important human rights issues in general and government policy on housing matters in particular is worth mentioning. The case is over forced eviction from and final demolition of houses built without permit. Sadly, the Commission rejected the case on the ground that it lacks jurisdiction over such matter. It is good to have some background on the case to shed light on how it could have given rise to human rights issue related to the right to housing in general and forced evictions particularly, and the obligation of the State in this regard.

Land is a scarce resource in urban areas, especially around Addis Ababa owing to rapid urbanization. Problems of land-management and bureaucratic hurdles making the provision of land to ordinary citizen difficult, the soaring cost of renting, the unbearable cost of the available land along with the failure of the successive governments to address the longstanding housing problems in urban areas have forced citizens to get a roof over their head by means of their choice⁷². It thus forced citizen to engage in the construction

⁷¹ Inaugural Report, *supra* note 66, *op. cit.*, 89-96; Ethiopian Human Rights Commission, Annual Report 2011/2012, p. 22(hereinafter referred to as 'Annual Report 2011/2012'); see also Ethiopian Human Rights Commission, A Consolidated Five Year Report, 20011, p. 36(hereinafter referred to as 'Consolidated Five Year Report').

⁷² Tegegne Gebre-Egziabher, *Livelihood and Urban Poverty Reduction in Ethiopia: Perspectives from Small and Big Towns*, Organization for Social Science Research in Eastern and Southern Africa (OSSREA), 2010, p. 14

of houses without permit, known locally as ‘Chereka Bet’, which has become a recurrent problem in big cities, especially Addis Ababa. The Government has been cracking down on such activities, which gained momentum following its ambitious quest to make land available for, *inter alia*, industries, real estate, and for construction of government-financed houses.

Mindful of the cause of construction without permit and housing problems in urban areas, the government has recently been trying to address the problem through, among others, engaging in massive construction of houses, especially for low-income citizens, to alleviate their chronic shortages. Despite this, the problem still persists.

Forced-eviction is aggravated following change in policy of the incumbent ruling party. Putting rural development as its core economic development policy, the party in power did not have urban development policy for more than a decade since it assumed power in 1991. The adoption of its Urban Policy in 2003 followed by sustained economic growth and expansion of business activities led to a face-lift of many big cities in the country, especially Addis Ababa. The expansion of different business activities lead to scramble for land acquisition, spurring massive increase in its price and exacerbating the pending availability problem.

One of the means to alleviate chronic shortage of housing is the introduction of urban renewal, which calls for demolition of slums in different parts of Addis Ababa, affecting many poor communities living in them. Of course many of the poor communities were relocated to low-cost houses (called locally ‘Condominium’). The transfer has not only affected their livelihood but also their social bonds. It affected the petty commerce they used to engage in, subjected them to transportation difficulties and their long-established social schemes such as Idir and Iqub. The eviction thus puts not only the right to housing at stake but also the right to property, livelihood, and cultural issues.

The Case could have given the chance to the Commission to see the obligation of the state in relation to housing rights and forced evictions, and policy and administrative measures undertaken by it to address the problem. The FDRE does not guarantee the right to housing *per se* in explicit terms. However, it is incumbent upon the government to allocate resources to give social services including education and health (Article 41(3)). The social service referred to here could include housing as the provision is not meant to be exhaustive. One of the ‘National Policy Principles’ obliges the state to adopt policies and measures so long as resources permit, to provide social service to citizens, including housing (Article 90(1)). Furthermore, as Ethiopia is a state party to the ICESCR, the Commission could have ample justifications to look at the case and its policy and administrative implications to the obligations of the state in this regard. At least, it would, as a face-saving measure, have been better for the Commission to refer the matter to the Ombudsman than to reject it since administrative decision was involved in carrying out the action.

Admittedly, while forced eviction from land occupied and constructed carried out without permit is justifiable, subject to conditions, the Commission failed to examine whether the case at hand falls under such instances.

In connection with forced eviction some complaints could also have provoked issues of adequate standard of living and the right to adequate housing. A complaint, filed by a group of 19 complainants, was over houses given to them as replacement for their demolished ones. They alleged that the new houses do not have basic amenities, such as toilet and water, falling short in standard to the ones they used to live in. In another more or less similar complaint, applicants alleged that new houses given to them do not meet necessary standard, are smaller in size than they used to live in and far from shopping areas, forcing them to incur unexpected and unbearable expenses. The Commission preferred to provide advice in both cases instead of investigating the matter while these cases were essentially on the right to adequate standard of living and to adequate housing.

6.2. Investigation of Communal or Ethnic Violence Causing Forced Evictions

Many instances of forced evictions are associated with violence, such as evictions resulting international armed conflicts, internal strife and communal or ethnic violence⁷³. The Commission has investigated alleged human rights abuses arising from communal violence in different parts of the country. Investigation of such issues is the hallmark of the Commission's quasi-judicial function. The Commission is quick to dispatch its ad hoc Committee to deal with such matters and issue recommendations. This is probably because abuses arising from violent communal conflict may not directly implicate government authorities and its agents. The Commission has invested its energy in investigating private matters and non-state entities in areas such as labour and conflict rather than abuses attributable to government authorities and their agents⁷⁴.

To mention just one, a communal violence giving rise to multiple claims of human rights abuse, including forced evictions, occurred in the Southern part of the country.

In an ethnic conflict that flared up in the southern part of the Country, the Commission launched an investigation, following the submission to it of a complaint, to determine whether human rights violations had actually occurred and to recommend an appropriate legal and professional advice to resolve the problem⁷⁵. The complaint submitted by a group of people purporting to act on behalf of *Guji* ethnic groups alleged that fellow members of their ethnic group were subject to a consistent torture, forced disappearance, death, detention, eviction from their house and land, and destruction of their livelihood since referendum was held in the area to decide whether to put the area within the South

⁷³ See General Comment 7, *supra* note 56, *op. cit.*, paragraph 6

⁷⁴ Mohammed Abdo, 'National Human Rights Institution and Economic, Social and Cultural Rights: An Examination of the Mandate and Practice of the Ethiopian Human Rights Commission', in Eva Brems, Gauthier de Beco and Wouter Vandenhole eds., *National Human Rights Institutions and Economic, Social and Cultural Rights*, Intersentia, 2013, p. 144

⁷⁵ See the Ethiopian Human Rights Commission, 'Report on the Investigation of Human Rights Violation Complaints in Wondogenet Area, Sidam Zone, South Regional State', March 211, pp 1 - 2

Nations, Nationalities and Peoples' Regional State or Oromia National Regional State⁷⁶. They alleged that in the latest violent attacks against them by the *Sidama* ethnic group, some people were killed and others disappeared, many houses were set ablaze, some household animals were looted and killed, and farms were set on fire for the sole reason that they happen to be ethnic *Guji* living among the *Sidamas*. They added that the local administration dominated by the *Sidamas* was complicit in the attacks targeting them.

The Commission did not however find that there was a deliberate and systemic policy to discriminate and attack the *Guji* community that was put in place by the local administration dominated by the *Sidamas*⁷⁷. However, it found out that security forces failed to take adequate measures before a full-fledged violence erupted, which could have averted the crisis⁷⁸. It finally recommended measures to be adopted to solve inter-ethnic conflicts in the area⁷⁹.

To bring down forced evictions in the area, the Commission, in its specific recommendation, said that a combination of administrative, political and traditional mechanisms had to be deployed to address the root cause of the conflict so that lasting peace may prevail in the area⁸⁰. It also called upon the local administration to reinforce its endeavour to repair damaged houses and/ or to rebuild houses burnt down⁸¹.

The recommendation is remarkable in that it used strong words against the police and security forces, blaming them for not acting prudently to avert the crisis in the first place and also in calling for the usage of traditional means in conjunction with formal laws in dealing with the root cause of the problem.

6.3. Monitoring and Investigating Complaints in the Context of Development Policy-Grand Failure of the Commission

Before examining complaints indicating the fiasco of the Commission to face up to challenging government policies impinging on human rights, it is important to offer a hasty view of the recent economic and development policies in force.

Despite making impressive economic growth in the last couple of years, Ethiopia remains one of the poorest nations in the world. Food insecurity, hunger and malnutrition are traits associated Ethiopia, continuing to plague the lives of a considerable portion of its population. Ensuring food security in order to tackle deaths stemming from hunger as well as malnourishment should inevitably be the key development and economic policies

⁷⁶ Some areas inhabited by *Guji* were put in within *Oromia* National Regional State and some areas where *Guji* are the minority were put under the administration of the *South* Regional State.

⁷⁷ See the report on the investigation, supra note 104, *op. cit.*, p. 21

⁷⁸ *Ibid*

⁷⁹ It called upon the two States to bring the two communities together to resolve the longstanding grievances through traditional means to be led by independent elders; and to bring to justice individuals who mobilize the community and incite violence between the two communities, and to distribute aid to the displaced fairly. The report on the investigation, *op. cit.*, pp. 22-23

⁸⁰ *Ibid*, p. 18

⁸¹ *Ibid*, pp. 22

of the government. Safety-net program, promotion of small-scale irrigation scheme by local farmers and attracting foreign direct investment in commercial farming, and resettlement of population are some of the major long-term development policies adopted by the incumbent government to ensure food security and food productivity.

To reinforce its development endeavour aimed at, among others, economic growth in general and to securing food security in particular, the government has given an ideological clout to it. The notion of ‘developmental state’ has thus gained a growing traction in the political discourse and vernacular of the ruling party, particularly since the debacle of the 2005 general election, which plunged the country in political turmoil⁸². To put the notion in concrete economic policy and plan, the government came up with the ‘Growth and Transformation Plan’ in 2011. No matter it mentions public participation, transparency and good governance, the Plan seems to favour needs-based approach to development issues rather than a rights-based approach⁸³. Because the term development is linked almost exclusively to economic targets (i.e., the growth of GDP), it glosses over critical issues such as human rights, democratic participation by civil society and groups, and the protection of local populations.

Among the government development policies, foreign investment in agriculture and resettlement program account for the bulk of forced evictions in rural areas.

Regarding foreign investment, Ethiopia is often cited as one of the countries where ‘land-grabbing’ is occurring. It has been handing out huge tracts of land to foreign investors drawn from different countries, including India, Saudi Arabia, and Djibouti. The bulk of fertile land transferred to investors is situated in less populated areas in low-land part, including *Gambella* and *Benishangul Gumuz*. Regions where much of the remaining intact forest in the country is situated. In many instances, local communities were driven out of their ancestral land to give way to commercial farming allegedly without prior consultation with the affected communities and/or inadequate compensation.

The recent resentment program has focused on four Regional States, namely *Somali*, *Afar*, *Benishangul-Gumuz*, and *Gambella*. As the heart of the program is to settle people in selected core areas so that better education, health, water and other facilities can be made available to a sizeable population. It entails the eviction of people from the area they inhabit and restrict them to newly formed villages. Admittedly, it is largely a voluntary and participatory exercise. However, some suggest that these conditions were undermined by requirements to fulfil quotas for the program⁸⁴.

⁸² Asnake Kefale, ‘Narratives of Developmentalism and Development in Ethiopia: Some preliminary explorations’, 2011, p. 8 Available at: <http://www.nai.uu.se/ecas-4/panels/41-60/panel-57/Asnake-Kefale-Full-paper.pdf> (accessed on 13 June 2013)

⁸³ The ambitious five-year growth Plan aims to achieve Gross Domestic Product (GDP) growth of 11-15% per annum from 2010 through 2015. The emphasis from the first page of the Plan is economic progress and the overall objective is to achieve GDP growth. It mentions the need to consider public participation, transparency and good governance while attaining economic aspirations. See Ministry of Finance and Economic Development, ‘Growth and Transformation Plan 2011-2015’, 2010, pp. 57-60

⁸⁴ UN Economic Council, Report of the Special Rapporteur on the right to food, Jean Ziegler, Mission to Ethiopia

Looked at from a human rights perspective, issues of participation, transparency, accountability and effective access to remedies are to be given attention in the implementation of any government development policies in general and during forced evictions in particular. Investigating and monitoring whether the transfer of land to foreign investors and resettlement programs are implemented in ways not trampling on human rights of citizens are within the ambit of the Commission. Unfortunately the Commission, as an independent institution, could not discharge its functions in this regard. It failed to examine individual complaints arising from development policies let alone launch inquiry by its own initiative to probe such important human rights issues.

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 sensitive⁸⁵. Where issues involved in a complaint have political overtones, the Commission tends to avoid them by disclaiming competence to handle them⁸⁶. Two cases marking the Commission's inability to entertain politically sensitive matters confronting human rights deserve attention here.

The *Gambella* Case

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 participation, transparency, and provision of effective remedies with specific human rights issues including the right to housing, the right to work and protection of the environment⁸⁷. 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 farming⁸⁸. 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 remedy of injunction from the local administration and Regional government institutions resulted in vain.

Upon learning that the investor has 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

Mission to Ethiopia, E/CN.4/2005/47/Add.1, 8 February 2005, p. 15

⁸⁵ Abdo, *supra* note 74, *op. cit.*, p. 144

⁸⁶ *Ibid*

⁸⁷ 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.

⁸⁸ The complaint was submitted to the Commission in May 2011.

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 institutions⁸⁹. 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 other⁹⁰. The government appears to very sensitive on matters of allocation of massive swathes of land to foreign investors. It has always been denying allegation that 'land-grabbing' has taken place and argues that its action is part of its long-term bid for economic development , to attract foreign investment and technology transfer, to spur employment opportunity, and to help eradicate hunger and thereby ensure food self-sufficiency⁹¹. The Commission seems to realize the sensitivities involved in the case and decided not to confront the government by investigating the matter, constituting a self-imposed restraint.

The Gura Farda Case

The Commission was tight-lipped over the recent forced eviction of thousands of people from the Gurafarda, situated in Southern part of the country. The South Nations, Nationalities and Peoples' Regional State decided to evict 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

⁸⁹ 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.

⁹⁰ For instance, see the study funded by the Oxfam International on land grabbing in Africa in which Ethiopia is indicated as one of the counties 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.

⁹¹ Dessalegn Rahmato, 'Land to Investors: Large-Scale Land Transfers in Ethiopia', Forum for Social Studies, 2011, pp. 4-5 & p. 13

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 time⁹². Some people go so far as saying the action was part of a systemic attack singling out the *Amhara* people⁹³.

During Parliamentary session, the late Prime Minister Meles Zenawi angrily denied accusation that it was a systemic action targeting the Amharas. 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 involved⁹⁴. 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 settle⁹⁵.

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. It opted to refer the matter to the Ombudsman, disclaiming jurisdiction over the case.

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

⁹²See http://www.ethiotion.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>

⁹³ 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

⁹⁴ 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.

⁹⁵ People who settle there were given certificate proving possession of land for farming and house. See Ethiopian Reporter, 1 April 2012; see also: <http://www.zenaddis.com/2012/04/11/shiferaw-shigute-dismisses-report-of-eviction/>

a just and democratic political arrangement in which the supremacy of law and good governance flourishes⁹⁶. 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 made⁹⁷. Quite contrary to its inherent objective, the failure of the Commission to investigate the case means that it failed to test whether the development policy of the government is in line with human rights ethos espoused by the Constitution.

Whenever the Commission dares to investigate politically sensitive matters, it relies on a behind-the-scene approach than its formal powers in the form of naming and shaming. Actually, a clandestine mode of engagement with government authorities is the hallmark of the Commission's enforcement mechanism⁹⁸. Using informal means of communication, the Commission has been able to secure remedies for claimants in some instances. For instance, concerning forced eviction, the Commission's intervention, for instance, helped to secure remedy to people who were forcibly removed from their houses⁹⁹. In another case, the Commission's intervention helped victims to resettle in the land from where they were removed to give way to hydropower and irrigation project in Tana Beles area¹⁰⁰.

Actually, such informal engagement is inevitable in authoritarian tradition. Formal enforcement mechanisms in the form of naming and shaming does not, as argued by commentators, in authoritarian countries with a controlled media and a frail judiciary¹⁰¹. In such system, informal communication produces far better results than usage of formal enforcement powers granted to NHRIs¹⁰². While informal means help offer remedy in individual cases and keep the channel of communication with government open, it undermines inherent powers and thereby put the Commission's credibility at risk.

⁹⁶ Inaugural Report, supra note 66, *op. cit.*, p. 27

⁹⁷ Ibid

⁹⁸ Mohammed, supra note 74, *op. cit.*, pp. 140-141

⁹⁹ The Commission has relied on informal method of conveying information to government officials through means such as informal contact person instead of written letter or publication of information through the media or other means. One case where such method proved successful is worth mentioning here. Many people were arrested following clashes between security forces of the government and the *Ogaden* National Liberation Front (ONLF), an insurgent group claiming to fight for the self-determination of the *Ogaden* people in the Somali National Regional State of Ethiopia. Following the clashes, the Somali National Regional State launched a campaign to arrest people without warrant and refused to bring them before court and also disregarded bail issued by court. It also carried out arbitrary search of house and seizure of property by forcefully evicting occupants. The campaign was part of the initiative to dislodge the alleged members of the ONLF, which was locked up in fierce clashes with the government in 2007 and 2008. The intervention of the Commission managed to help provide remedies to some families who were forcibly evicted from their houses. See Consolidated Five Year Report, supra note 45, *op. cit.*, p. 36; see also Annual Report 2006/2007, supra note 44, *op. cit.*, p. 22

¹⁰⁰ Annual Report 2011/2012, supra note 71, *op. cit.*, p. 17

¹⁰¹ 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, p.1298; see also Catherine Renshaw and Kieren Fitzpatrick ' NHRIs in the Asia Pacific Region', 2011, p.28

¹⁰² Ibid

6.4. Systemic Inquiry

The power to initiate *suo moto* and/or systemic investigation can help NHRIs meet the needs of individuals or communities who may not otherwise be heard¹⁰³. Because disadvantaged and vulnerable sections of society that are not likely in a position to access judicial and quasi judicial bodies. It gives such groups a public voice, making human rights violations to become a matter of general knowledge and concern, which is a requisite step towards dealing with them¹⁰⁴.

The Commission is not active in the area of conducting both *suo moto* investigation and systemic inquiry into legal, policy, administrative and institutional issues that give rise to recurring human rights problems in the country. The failure to do so is attributed predominantly to the Commission's inability to confront government policies and to lack of capacity to some degree. Be that as it may, the Commission conducted limited *suo moto* investigation, most of which relate to the alleged killings of individuals in conflict situations and/or in an isolated incident, and orphanage facilities in different parties of the country¹⁰⁵.

Potentially reversing its lack of pro-activism, the Commission plans to conduct inquiry into some issues, including issues of large-scale land transfer to investors as well as religious conflicts¹⁰⁶. It appears that a torrent of criticism against the government decision to allocate a whopping portion of land to investors has spurred the Commission to plan this. In addition, the Commission intends to do so apparently to off-set its failure to investigate such matters in a group complaint submitted to it in 2011, for which it was fiercely denigrated. Such proposed *suo moto* investigation is akin to public inquiry, although the details of how to go about conducting it is not yet available. Be that as it may 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.

The Commission has not dared to sensitize issues of the right to adequate standard of living in general and of forced eviction to the specific despite the practice of forced eviction is has become a widespread and recurrent problem, both in urban and rural areas.

Concluding Remarks

¹⁰³ Office of the UN High Commissioner for Human Rights, 'Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions', Professional Training Series No. 12, UN, New York and Geneva, 2005, p. 49(hereinafter referred to as 'Professional Training Series No. 12')Ibid; see also Professional Training Series No. 4(Rev.1), supra note ????, *op. cit.*, 32, p. 79

¹⁰⁴ Ibid

¹⁰⁵ Some relate to the investigation of violent conflict between religious groups, and inter-ethnic clashes between *Sidama* and *Oromo* in around *Wondogenet*, and riots in some part of the Country. See Annual Report 2010/2011 supra note 69, *op. cit.*, p. 71. On inquiry into orphanage facilities see Annual Report 20011/2012, supra note, 71, *op. cit.*, pp. 24-25; Inaugural Report, supra note, 66, *op. cit.*, pp. 77-78; see also Consolidated Five Year Report, supra note 71, *op. cit.*, p. 39

¹⁰⁶ Annual Report 2011/2012, *op. cit.*, p. 20

The NHRIs are institutions whose role is to realign State behaviour by constantly criticizing the government's wrongful acts that trample on human rights, offering inside perspective to it. By the very nature of their mandate, it is inevitable for NHRIs to be on collision course with the government. If there is no more friction between the institutions and their respective governments, such institution is not part of NHRI anymore¹⁰⁷. It is thus vital for the legitimacy of particular NHRI not to yield to pressure, direct or indirectly, from a government agency in carrying out its role even if it pits it against the government¹⁰⁸. Indeed, tackling controversial issues even if it brings the institution on collision course with the government or its agencies is the public legitimacy litmus test for a NHRI¹⁰⁹.

Avoiding confrontation with the government, the Commission refused to act on complaints alleging important questions of human rights violations, notably on politically sensitive issues, by disclaiming jurisdiction. Its failure to handle such matters has seriously undermined its standing, giving rise to perception of lack of independence.

The failure of the Commission to hold the government to account is rooted partly in authoritarian political tradition that tightly controls all government institutions and the rampant culture of impunity. When authoritarianism is deeply-embedded, the accountability mechanisms such tribunals and NHRIs have a limited role in constraining government powers.

Be that as it may, the Commission, as an independent institution, was set up for the purpose of protecting human rights. The real test of its independence lies in its ability to challenge the government by investigating human rights violations appearing before it. The Commission should not thus shy away from probing politically sensitive matters.

NHRIs need to have clear legal criteria and procedures in place when operating with a controversial case, especially in a delicate political and legal environment¹¹⁰. In its operational procedure, the Commission needs to enunciate clear procedure on considering sensitive and high profile cases in order to avoid selectivity in launching investigation on matters. No matter crucial policies are involved in government development ventures, the obligation to protect implies an active role on the part of the state and its institutions to ensure that policies and actions taken to effect government programs are carried out in conformity with human rights norms and relevant principles.

As Ethiopia is still at an early stage in the transition towards democracy, there is a need for democratic institutions to hold the government accountable. This is significant given the fact that human rights abuses, particularly forced evictions, are a recurring problem in

¹⁰⁷ Buhm-Suk Baek, 'Do We Need National Human Rights Institutions? The Experience of Korea', Doctoral Student Paper, Law School, Cornell University, 2010, p. 9

¹⁰⁸ Anne Smith, 'The Unique Position of National Human Rights Institutions', *Human Rights Quarterly*, Vol. 28, 2006, p. 936

¹⁰⁹ Ibid

¹¹⁰ Ibid

the country. It is thus incumbent upon the Commission to challenge the government when instances for doing so materialize.