



ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
FACULTY OF LAW



**THE ROLE OF THE ETHIOPIAN HUMAN RIGHTS COMMISSION
IN THE PROTECTION OF THE RIGHTS OF VULNERABLE
GROUPS**

The case of children, women and persons with disabilities

BY: - ARON DEGOL

**A THESIS SUBMITTED FOR THE FULFILMENT OF THE
DEGREE OF MASTER OF LAWS (LLM) IN HUMAN RIGHTS
ADDIS ABABA UNIVERSITY, FACULTY OF LAW**

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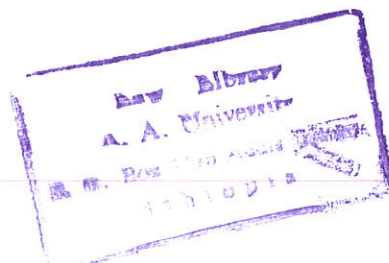
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Declaration

I, ARON DEGOL HABTU, do here by declare that this research is my own original work and that to the best of my knowledge and belief; it has not been previously, in its entirety or in part, been submitted to any other University for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: Aron Degol 

Date: March / 2009

This dissertation has been submitted for examination with my approval as University supervisor.

Signed: Khushal

Prof. Khushal Vibhute

Addis Ababa University, Faculty of Law

Date: March 2009



Chapter One

Introduction

1.1. Background of the study

The significance of National Human right institutions in general and National Human right commissions in particular seems to be out of question. It goes without saying that these institutions, along side with the traditional so called democratic institutions like courts, presumed to make the protection and enforcement of human rights and fundamental freedoms recognized both internationally as well as domestically a living reality. National Human rights institutions are but one component of a complex and multi-level system, which has been developed for the promotion and protection of human rights. In the preamble of the charter of the United Nations (UN), the people of the United Nations, *inter alia*, declare their determination “*to save succeeding generations from the scourge of war.....to reaffirm faith in fundamental human rights.....and to promote social progress and better standards of life in larger freedom.*” [Emphasis mine]. Accordingly, article 1 of the charter proclaims that one of the purposes of the United Nations is to achieve international co-operations in promoting and encouraging the respect for human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion. In the 45 years since the adoption of the Universal Declaration of Human Rights (UDHR) have developed a comprehensive strategy aimed at achieving the human rights objective set out in the charter. The basis of this strategy is the body of international rules and standards, which now cover virtually every sphere of human activity. One of these strategies is the design and establishment of institutional mechanisms that promotes and protects human rights and freedoms among which national human right institutions are one. The question of National Human right institutions was first discussed by the ECOSOC in 1946 and since then a number of conferences, symposia and international meetings were held to reach at the consensus in the importance of having National Human Rights institutions and at last, a set of guidelines were endorsed in 1991 in Paris France in the workshop called by the commission on Human Rights, and these guidelines are those, which we call them today THE PRINCIPLES RELATING TO THE STATUS OF NATIONAL HUMAN RIGHT INSTITUTIONS OR *THE PARIS PRINCIPLES*. This guideline is, thus, the legal

foundations of national human right institutions in general and national human right commissions in particular. The role of these institutional mechanisms to enforce human rights at the national level even becomes much more important when it comes to protecting and enforcing the human rights of the vulnerable groups of the society. These groups, especially, in a third world country like Ethiopia, suffers from various types of violations of their human rights and fundamental freedoms. Vulnerable groups differ from country to country, but the most common problem affecting them all is discrimination, and for such purposes, according to the Paris principles, along side with the common national human right commission and office of the ombudsman, there are specialized human right institutions. These are generally established to promote government and social policy, which has been developed for the protection of one or more of these groups.

Coming to the case of our country, only the human right commission and the institution of the ombudsman are officially recognized and become operational recently.¹ The relevance of specialized institutions doesn't seem to bother the policy and lawmakers of the government yet. The next question worth asking here is that as to what is the status of these groups in the institutional protection and enforcement framework? Actually, some of the vulnerable groups of the society like the disabled have got the international legal recognition and protection recently let alone in Ethiopia. From this, there fore, what we can understand clearly is that the Ethiopian Human Right Commission seems to be burdened with the task of protecting and enforcing the rights of these special (vulnerable) groups of the society. But is it functioning effectively in protecting and enforcing the rights of these groups? Are there any obstacles, which hindered its operation? Are the main areas of discussion of this paper.

1.2. Statement of the problem

In most part of our country, the view that the society has for vulnerable groups especially women, children and persons with disabilities is the main cause of the problem, which hindered the promotion and protection of their civil and socio-economic rights. One may argue that, however, since all most all the rights, which are attributable

¹. The Ethiopian Human Rights Commission and the institution of the Ombudsman were established by virtue of Procl. # 210/2000 on 4th July 2000 and Procl. # 211/2000 respectively on the same day and both became operational in late 2005 (1997 E.C).

to the above mentioned vulnerable groups of the society, are clearly recognized and accepted at the international, regional and domestic legal and justice system, they can be easily enforced by taking the violation as simple cases to the regular courts. However, the practical reality of our courts regarding accessibility, requirement of special skill and expertise as to the existence, nature and how to handle cases involving violations of rights of these groups and other factors proved that there should be another institutional framework, which must specifically deal with such an issue.

The problems of the vulnerable groups of the society in terms promotion, protection and enforcement of their rights and freedoms are various in types. Especially in Ethiopia, where there is no adequate number of facilities, which may be of a great help to enforce the rights of these groups, the problem gets even from worse to the worst. For instance, children in many areas are not going to school as needed, they can't get adequate health care; child abuse, neglect and exploitation still exists directly or indirectly. For instance, according to (United Nations Children's Fund) UNICEF, globally, 12 million children under the age of five die every year; 130 million children in developing countries are not in primary schools; 160 million children are reported to be malnourished; approximately 1.4 billion children lack access to safe water and 2.7 billion children lack access to adequate sanitation.² Women, as well, are being victims of various types of violations related with their sex like sexual violence or harassment at the work place, schools and the like. In country sides, early marriage and abduction are very rampant, for instance, according to a report by Walta information center in the year 2000 on cases of violence committed against women, in Oromia regional state only, 1,303 women and young girls had been victims, out of which 991 were raped and 312 were reported to be abducted.³ In the remaining regional states including Addis Ababa and Dire Dawa, which are Federal Chartered Cities, 1,467 women and girls were reported to be raped or/and abducted.⁴ Another data gathered from 27 police stations in Addis Ababa in the year 1988-1994 Eth. Cal. 560 police files were reviewed, and out of this, 280 files were on rape and the remaining 280 files were on assault, battery, bodily injury, attempted murder and

² Icelandic Human Right Center, *infra note 258*, pp. 2

³ Original W/Giorgis, Mellese Damte and Emebet Kebede, *Violence against women in Addis Ababa*, Berchi (an annual journal of the Ethiopian Women's Lawyer's Association (EWLA)), # 5/ 2004, pp. 137.

⁴ *Id.*

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abduction.⁵ Persons with different forms of disabilities also suffer from deprivation and violation of their human rights. for instance, currently, at the global level, it has been reported that there are about 650,000,000 persons with specific disability problems and out of which 12.5% are found in Ethiopia.⁶ And out of this, only 41.2% are well aware of their fundamental rights of education, the legal and policy frameworks of the government on education.⁷

The Ethiopian human right commission is then expected to address these problems and violations of rights and freedoms of these vulnerable groups. However, the infancy of the institution that it was established and became functional recently compared with the strength and seriousness of the problem, makes the task of the institution much more difficult. In relation with its infancy, there is lack of public awareness even about its existence and the problem of having sufficient number of well qualified experts is also part of the problem and this may imperil the effectiveness of protective and enforcing function of the institution. Another problem is as to how the institution may enforce its powers by making use of the regular justice machineries.

Not only protecting and enforcing the rights of these groups, the institution has also got promotional functions that it is duty bound to raise public awareness by making use of different means of educating the society, training the various types of government organ officials, by giving professional consultancy services to various stake holders and the like. However, given the fact that the institution suffers from lack of expertise, it is not possible to carry out these responsibilities.

The above mentioned problems and types of violations may be summarized as educational, psychological, economic and social as well as institutional.

These and others are, then, the fundamental problems that makes the role and the activities of the Ethiopian human right commission very difficult in the process of protecting and enforcing the human rights of children, women and disabled persons.

⁵. *Id.* pp. 102

⁶. Eshetu Alene, *The protection of Human rights of persons with disabilities in higher educational institutions in Ethiopia.* (Unpublished) LLM thesis, March/2008, pp. 22

⁷. *Id.* pp. 94

1.3. Objective of the study

The study attempts to assess and evaluate first as to what the role of the Ethiopian Human Rights commission is in protecting the rights of vulnerable groups of the society in particular women, children and persons with disabilities and secondly, how is it addressing the above mentioned and other problems of these vulnerable groups from the perspective of the promotion and protection of human rights and freedoms and play its role effectively. In addition, it tries to see the experience of other countries systems and tries to pinch out as to what the Ethiopian human rights commission lacks and where the systems of other countries fits in and may be of a help in order to improve the functions of the Ethiopian system to the extent possible.

1.4. Research questions

The research tries to investigate the problems of enforcement by the Ethiopian human right commission with regard to the above mentioned types of violations of rights and attempts to forward recommendations through the following research questions.

1. What are the activities and functions already undertook and currently being undertaken by the commission to alleviate the problems and to enforce the rights?
2. What legal and practical problems encountered by the commission in the process of enforcing these rights? And how did it try to solve them?
3. Does it have its own procedures and systems to make the enforcement process smooth?
4. How does it receive and entertain complaints of alleged human right violations from individuals?
5. What is the current position of the commission concerning the promotion the over all human right ideas and human rights of the vulnerable groups of the society in particular?

1.5. Research methodology

In this research, literature review by way of referring books, legal materials, articles in scholarly journals, laws and other unpublished as well as official documents will be employed. Apart from these, different individuals and institutions that are connected to the issue will be interviewed. More over, online/internet sources will also be employed to know and gather recent and current information.

1.6. Scope of the study

The area of the research, as can be understood easily from the nature of the problem and the issue it involves, is very wide. However, this study will try to focus only on the issue of the institutional mechanism designed to protect and enforce these rights and the practical problem it encounters by taking the Ethiopian Human Rights Commission and its role in the promotion and protection the rights of vulnerable groups as the case in point.

1.7. Limitation of the study

The main challenge faced by the writer of this research paper while undertaking the study was lack of adequate materials/information about the promotion and protection of the rights of those marginalized/ vulnerable groups in Ethiopia and the role of the Ethiopian Human Rights Commission in this regard. Secondly, in the field research activity, most of the informants, due to the non-existence of the information at all or for any reason, were very much reluctant to give the necessary information during interviews.

1.8. Survey of the relevant literatures

The *Paris Principles* stand out as the most influential inspiration for the establishment of human rights bodies in domestic jurisdictions. These guidelines prescribe the role, composition and structure of National Human Rights Institutions (NHRIs), and are only meant to serve as ideals to which state constitutions ought to aspire.⁸ The Paris Principles are the principal source of normative standards for national human rights institutions. They marked the beginning of serious international co-operation and standardization of NHRIs. Both the United Nations Commission on Human Rights and the General Assembly later endorsed them. The Paris Principles are broad and general. They apply to all NHRIs, regardless of structure or type. They provide that a national institution should be established in the national Constitution or by a law that clearly sets out its role and powers and that its mandate should be as broad as possible. They state that national institutions should be pluralist and should co-operate with a range of social and political groups and institutions, including Non-Governmental

⁸. Ambani John Osogo. *Oval slides in triangular spaces? Anchoring national human rights institutions in 'tripartite' Commonwealth Africa*. LLM thesis (Human Rights and Democratization in Africa)2006, University of Pretoria, Center for Human Rights, pp. 5

Organizations (NGOs), judicial institutions, professional bodies and government departments.⁹ The Principles state that NHRIs should have an infrastructure that allows them to carry out their functions. Particular importance is attached to the need for adequate funding to allow the institution “to be independent of the government and not be subject to financial control which might affect this independence”. The various functions of national institutions are described in the Principles as “responsibilities”, suggesting that these are things that institutions are obliged to do.¹⁰

The Principles provide that NHRIs should make recommendations and proposals to governments on various matters relating to human rights, including existing and proposed laws, human rights violations, and the national human rights situation in general.¹¹ And since the early 90s, many states have attempted to establish and organize national human right institutions such as the human right commission and the institution of the ombudsman.

Coming to the African human right regime, at the time of the African charter was drafted, this idea was not that much popularized.¹² However, the charter pre-empted this development by imposing obligations on states consistent with the international trend, to “allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter” (Article 26 of the ACHPR). This Article 26 should be read together with article 25, which imposes a duty on states to “promote and ensure through teaching, education and publication, the respect of the rights contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.” Article 45 states it as a function of the African Commission to “encourage national and local institutions concerned with human and peoples’ rights.”¹³ The World Conference on Human Rights called upon governments to establish and strengthen national institutions and encouraged cooperation between national institutions especially

⁹. International Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions*, OHCHR, 2005, pp. 6

¹⁰. *Id.*

¹¹. *Id.*

¹². Frans Viljoen, *International Human Rights Law in Africa*, Oxford University Press, New York, U.S.A., 2007, pp. 412

¹³. *National Human right Institutions for the promotion and protection of Human Rights in Africa*, www.chr.up.ac.za/hr, accessed on 12th of May/2008, 1:30 p.m.

through exchanges of information and experience as well as through cooperation with regional organizations like the African Commission. In particular, the Vienna Declaration reaffirmed:

*The important and constructive role played by national institutions for the promotion and protection of human rights, in particular, in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.*¹⁴

Nudged on and supported by donors and the UN, National Human Rights Institutions flourished in Africa during the 1990s though most of them were formed by governments with dismal human right records, weak state institutions, no history of autonomous state bodies and often appeared to serve the largely rhetorical role of deflecting international criticism of serious human right abuses.¹⁵

Having a brief background and review of the international as well as African human right system with regard to National Human Right Institutions, let us consider the literatures concerning the special types of rights and enforcement mechanisms accorded to the vulnerable groups of the society. Let us first define as to what does a vulnerable group refers to.

In its literal dictionary sense, the term vulnerable refers to something/someone that can be hurt, harmed or attacked easily especially because of being small or weak.¹⁶ In a human rights sense, certain population groups often encounter discriminatory treatment or need special attention to avoid potential exploitation. These populations make up what can be referred to as vulnerable groups. For example, consider the following:¹⁷

- Child abuse by parents and others is a major problem throughout much of the world, with special departments having been created to investigate complaints of child abuse (United Nations, 1989);

¹⁴. Vienna Declaration and Program of Action (The world conference on Human Rights from 14-25 of June, 1993) Sec. 1 art. 36

¹⁵. The NHRI in Ghana, South Africa, Uganda, and to some extent Malawi and Senegal, however, seem to be exceptions that they have got legitimacy and proved to function independently and effectively. (See Frans Viljoen, *Cited above*, pp. 413)

¹⁶. Jonathan Crowther (Ed.), *Oxford Advanced Learner's Dictionary of current English*, 5th ed., Oxford University Press, London, 1995, pp. 1334.

¹⁷. Wolfgang Benedek and Minna Nikolova (Ed.), *Understanding Human Rights*, Manual on Human Rights education, Human security network, Austria, Vienna, 2003, pp. 126

- Elderly persons frequently find themselves victims of scams and other schemes that cost them dearly financially and otherwise (United Nations, 1999);
- Ethnic cleansing or even genocide continues to occur in some parts of the world, with milder forms of discrimination on the basis of national or ethnic origin occurring elsewhere;
- Persons with disabilities often have no recourse to decent employment or adequate treatment; and HIV-AIDS afflicts large numbers of populations in many countries (United Nations, 2004).

There fore, these special/vulnerable groups of the society needs special protection and care, and this can be done by way of designing favorable economic and social policies, creating a legal framework by amending the existing laws and enacting new ones and most importantly organizing institutional machineries so that the laws will be properly enforced. Since this paper will only focus on the case of children, women and persons with disabilities, let me try to review some literatures on the rights and problems of women, children and persons with disabilities.

Human rights of women

According to De Rover, equality is the very foundation of every democratic society, which is committed to justice and human rights.¹⁸ In most societies and all spheres of activity, women are subject to inequalities in law and in fact. This situation is both caused and aggravated by the existence of discrimination in the family, in the community and in the work places. This is due to the stereotyped concepts and of traditional cultures and beliefs detrimental to women. The social and economic gap between women and men in almost all parts of the world is still enormous.¹⁹ Women constitute the majority of the world's poor and the number of women in rural poverty has increased by 50% since 1975.²⁰

In order to understand the different impact of poverty on women and men, it is necessary to look at the division of most of the world's labor market on the basis of gender.²¹ The division of labor based on gender is one of the structural dimensions of

¹⁸. C. De Rover, *To Serve and To Protect*, ICRC, 1998, pp. 293

¹⁹. *Id.*

²⁰. *Id.*

²¹. Wolfgang Benedek and Minna Nikolova (Ed.), *Op. Cit.*, pp. 126

poverty that affects women. The biological function of maternity is another structural dimension, which is understood as a social function of parenthood and social responsibility. Poverty is also created through unequal payment for equal work and denial and restricted access to education or public or social service or to inheritance rights and to ownership of land.²² De Rover puts this reality by making statistical evidences that women, world wide, earn 30% to 40% less than men for equal work. They hold between 10% to 20% of managerial and administrative jobs and less than 20% of jobs in manufacturing.²³

In most cases, women are much more vulnerable than men to assault in times of detention or imprisonment-especially gender based forms of abuse such as sexual assault. They make up most of the world's refugees and displaced persons, they are left to rear families on their own and they are raped and sexually abused with impunity.²⁴

According to the Convention on the Elimination of All Kinds of Discrimination (CEDAW) of 1979, state parties are required to recognize the important economic and social contribution of women to the family and to the society as a whole. It emphasizes that discrimination will hamper economic growth and prosperity. It also recognizes the need for a change in attitude through education of both men and women to accept equality of rights and to overcome prejudices and practices based on stereotyped roles. The CEDAW also emphasizes on the need for temporary special measures to achieve the goal of ensuring actual equality such as imposing on states the obligation to tackle discrimination in the private lives and relationship of their citizens.

The other problem of women is the problem of violence. This is not a new phenomenon, rather has continued to appear through out history unchallenged. In this area, human right ideas are powerful precisely because they offer a radical break from the view that violence is natural and inevitable in an intimate relationship between men and women. Defined as a human right violation, gender violence becomes a crime against the state that the state must punish.²⁵ The CEDAW committee clearly stipulated that violence against women constitutes a violation of their internationally recognized human rights-

²². *Id.*

²³. C. De Rover, *Op. Cit.*, pp. 294

²⁴. *Id.*

²⁵. Sally Engel Merry, *Human Rights and Gender Violence, translating international law in to local justice*, Chicago series in law and society, USA, 2006, pp. 180.

irrespective of the fact that the perpetrator is a public official or a private person. State responsibility for violence against women may be invoked when a government is failed to act with due diligence. Due diligence may be defined as the commitment of the government to prevent any violence, conduct investigate if there is an alleged violation and identify the perpetrators of same and punish them and provide compensation to the victim/s. These rulings of [the committee] have been reinforced by the DEVAW (Declaration for the Elimination of Violence Against Women) adopted by the General Assembly of the UN in 1993, which, for instance, defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm done towards women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.²⁶ Furthermore, the declaration refutes the distinction between violence committed against women in public and private spheres declaring for the first time that women must be protected from violence committed against them both in the privacy of their home as well as in public.²⁷ It also recognizes discrimination against women in public and private life, and a means by which male-dominated institutions constrain women's rights.²⁸ In the same fashion, the Inter-American Convention on women and violence adopted within the framework of the Inter-American Human Right system in 1994 as well as specific provisions of the Vienna Declaration and Program of Action adopted at the 1993 world conference on Human Rights and the Beijing Declaration and Platform for Action adopted at the 4th world conference on women in 1995 clearly affirmed and reaffirmed the importance of women's fundamental human rights protection. For instance, the Vienna Declaration and Program of Action, under Sec. II., B/3, urges the full and equal enjoyment by women of all human rights and that this be a priority for governments and for the UN. Nevertheless, it also underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process and reiterates the objectives established on global action for women towards sustainable and equitable development. More over, it stresses the importance of working towards the elimination of violence and all kinds of sexual harassment against women, exploitation

²⁶ Original W/Giorgis *et. al. Op. Cit.*, pp. 108

²⁷ *Id.*

²⁸ *Id.*

and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts, which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.²⁹ The Beijing plat form for Action, in a similar manner, reaffirms that violence against women violates, impairs and nullifies the enjoyment by women of their human rights and fundamental freedoms.³⁰ It further calls for the elimination of gender-based violence, as it is incompatible with the worth of the human person.³¹

Human Rights of Children

Children need special care and protection and dependent upon the aid and assistance of Adults especially, in the early years of their existence. It is not enough that children are granted the same Human Rights and freedoms as Adults. In many parts of the world, the situation of children is critical as a result of inadequate social conditions, natural disasters, armed conflicts, exploitations, illiteracy, hunger and disability. Children, on their own, are not capable of effectively fighting such conditions or changing them for the better.³² The concept of children's rights has evolved on the one hand from the broader human rights movement, but also derived from other developments in the social, educational and psychological field over the last 300 years. This includes the impact of state sponsored institutionalized compulsory educations in schools, the negative effect of industrialization on children for instance child exploitation in factories or mines and the consequences of war. A new understanding of child-upbringing to "children liberation movements" in the 70s helped to shift the focus from the child's vulnerability and protection needs to a new discourse of child autonomy, competence, self-determination and child participation, rejecting traditional paternalistic views of children as mere objects of parental/adult control.³³ Here, it can be argued that this so called paradigm shift of making children autonomous might not be plausible that children are being held irresponsible for what ever they have done and that is why they are declared incapable under the law and needs special protection let alone making them

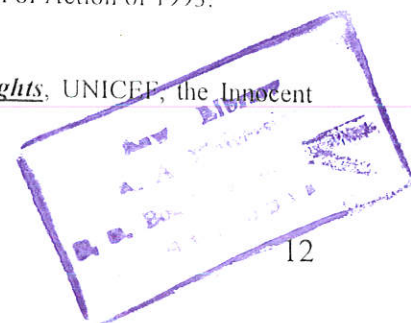
²⁹. Look at Sec. II. B/3 Sub Sec. 36-38 of the Vienna Declaration and Program of Action of 1993.

³⁰. Original W/Giorgis *et. al. Op. Cit.*, pp. 113

³¹. *Id.*

³². Nigel Cantwell (Ed.), *Independent institutions protecting children's rights*, UNICEF, the Innocent digest, June/2000, pp. 4.

³³. Wolfgang Benedek and Minna Nikolova (Ed.), *Op.Cit.*, pp. 198



autonomous, competent and self-determined agents for their own, it would be plausible to argue that to teach them how to be autonomous and active participants when they grow up by way of educating, fulfilling all their needs and protecting them from being violated. Eventually, all these developments ultimately culminated in the drafting of a new and first legally binding document on the human rights of children-the Convention on the Rights of the Child (the UNCRC) in 1989.³⁴ The convention seems to adopt a holistic approach by focusing not only the traditional protective needs during child development but also on guaranteeing respect for the child's identity, self-determination and participation.

Moreover, the convention expressly recognizes the responsibilities, rights and duties of parents to provide appropriate directions and guidance for the child. However, as has sometimes been claimed by critics calling the CRC "Anti-family" and fearing the breaking up of families by granting human rights to the child, this parental responsibility is qualified by being "consistent with the evolving capacities of the child", meaning that this responsibility doesn't grant any absolute power over the child, but is constantly dynamic and relative.³⁴ Moreover, *vis-à-vis* the state, parents bear educational responsibility, but if they are not able or willing to fulfill their obligations, it is legitimate for the state/society to intervene.³⁵

The other focus area concerning child right protection is non-discrimination. The convention states a clear prohibition of discrimination among children under art. 2; however, there is no explicit provision about non-discrimination of children in relation to Adults (discrimination based on age). However, from the reading of art. 2 and considering the broad catalogue of rights in the CRC, any measure limiting those guaranties only on grounds of age would also be difficult to sustain in light of art. 1 and art. 3(1) of the convention. Coming to the implementation and monitoring mechanism, it becomes a global problem that not only in child rights protection scheme but also in the field of human rights in general, a gap always exists between principles and practices, between commitments and their actual implementations, but one could argue that the gap is no where greater than in the field of children's rights. Various reasons may be

³⁴. *Id.*

³⁵. *Id.*

forwarded for such a problem like priority to family values, cultural/religious traditions, lack of child focused infrastructure, lack of political initiatives, etc.....³⁶[L]et alone at the national level, even in the international human rights regime, some strongly argue that the CRC treaty monitoring system is very weak as the convention provides for only one mechanism for monitoring compliance with its provision namely *State Reporting* to the Committee of the CRC unlike other human right instruments that provide alternative mechanisms like individual complaint procedure, inquiry procedure, and state complaint procedure.³⁷

However, the growing number of standards, instruments and institutions poses new challenges for monitoring by requiring closer coordination among all actors like NGOs, CBOs, CSOs, etc...involved. For this reason, the United Nation special session on children in 2002 constitutes one major task for implementation and monitoring and the outcome document of this session calls on states to submit national plans of action as the basis for child-focused policies and measures no later than the end of 2003, if possible. This summit outcome document also contains the commitment by states to establish and strengthen national child-focused support and monitoring bodies such as independent ombudspersons and commissions for children that may provide complaint and redress mechanisms, counseling for children and parents, information and lobbying as well as monitoring.³⁸

Human rights of Persons with disabilities

Discrimination against persons with disabilities has a long history and persons with disabilities are regularly excluded from participation in society and denied their Human Rights. Discrimination against persons with disabilities can take many forms, ranging from limited educational opportunities to more subtle forms, such as segregation and isolation because of physical and social barriers. The effects of discrimination are most clearly felt in the sphere of economic, social and cultural rights, in the fields of, for instance, housing, employment, transport, cultural life and access to public services. The obstacles persons with disabilities face in enjoying their Human Rights are often the result

³⁶. *Id.* pp. 199

³⁷. *Id.*

³⁸. Nigel Cantwell (Ed.), *Op. Cit.*, pp. 5

of exclusion, restriction, or preference, and, for instance, when persons with disabilities do not have access to reasonable accommodation on the basis of their limitations, their enjoyment or exercise of Human Rights may be severely restricted. In order for persons with disabilities to freely enjoy their fundamental Human Rights, numerous cultural and social barriers have to be overcome; changes in values and increased understanding at all levels of society has to be promoted, and those social and cultural norms that perpetuate myths about disability have to be put to rest.³⁹ At the national level, disability legislation and policies are often based on the assumption that persons with disabilities are not able to exercise the same rights as non-disabled persons, thus often focusing on rehabilitation and social security. It is increasingly recognised that domestic legislation must address all aspects of the Human Rights of persons with disabilities, ensuring their participation in society on an equal footing with people without disabilities, creating opportunities for people with disabilities and eliminating discrimination. Although domestic legislation has the prime role in generating social change and promoting the rights of persons with disabilities, international standards concerning disability can also be very useful for setting common norms for disability legislation.⁴⁰ Violations of the Human Rights of persons with disabilities have not been systematically addressed in the sphere of international legal bodies, but in recent years the rights of these groups have come to be discussed in various international fora. One of these areas of discussions is about the establishment of National Human Rights Institutions in general and National Human Rights Commissions in particular.

According to Gerard Quinn, the using of the UN Human Rights machinery should not be seen as an end in itself but rather as a means to an end. That end has to do with moving the process of domestic reform forward. National Human Rights Institutions have the potential to make a meaningful contribution to this process.⁴¹ In particular,

- They can raise levels of awareness of the rights of persons with disabilities through out the society and in the policy and law making apparatus,

³⁹. Giampiero Griffo and Francesca Ortali (Ed.), *Training Manual on the Human Rights of Persons with Disabilities*, Ulaanbaatar, 2007 (Internet Source)

⁴⁰. *Id.*

⁴¹. Gerard Quinn and Theresia Degener, *Human Right and disability*, OHCHR, Geneva, 2002, pp. 169

- They can impart authority to the disability rights movement by validating it as a Human Rights movement,
- They can help to build the Human Rights capacities of the disability NGO sector, and
- They can use their own resources to carry out researches and preventing the human abuses, conduct investigations and taking cases to courts if there occurred alleged violations of the rights of persons with disabilities.⁴²

Today, in the world, many countries have established or at least in the process of establishing these institutions and the writer has tried to select the National Human Rights Commissions of some thirteen countries and has attempted to assess their activity in the area of promoting and protecting the rights of persons with disabilities. Coming to the Ethiopian human right commission though, the establishment proclamation, pursuant to art. 8(2)c, expressly authorizes the organization of a commissioner of children and women affairs, under the same article sub sec. d, it also authorizes the organization of “*other commissioners*” [Emphasis added] and one may safely argue that one of these *other commissioners* might be commissioner for persons with disabilities.

1.9. Chapter break down

The current investigation will be completed in four distinct chapters. The current chapter serves well to introduce the study. The second chapter constitutes a comprehensive study of the conceptual foundations of NHRIs. The essence, structure, the need of having NHRIs in general and national Human rights commission in particular, nature of NHRIs, the ingredients for the successful establishment and the principal functions of a national human right commission and at last a cursory look at the Ethiopian Human Rights commission will be explored. The third chapter will discuss the concept of vulnerable groups, their types and their rights. The fourth chapter, shall allude to the actual role of the Ethiopian Human Right Commission in protecting the rights of vulnerable groups especially women, children and persons with disabilities.

⁴². *Id.*

Chapter Two

General conceptual overview

2.1. Historical and legal foundations of National Human Right Institutions (NHRI)

Before discussing about the concept and historical development of the National Human Rights Commission, which is one of the National Human Right Institutions recognized everywhere, we should have a clear understanding about the evolution of human rights protection in brief and the genesis of National Human Right Institutions in general. The history of human rights movement can be traced from 13th Century; i.e. the *Magna Carta* of 1215, the Petition of rights of 1628, Bill of rights of 1689, Virginia declaration of rights and the American declaration of independence of 1776, the French declaration of the rights of man and citizens of 1789, and the American bill of rights of 1791 were the documents that gave human rights their initial constitutional status.⁴³ Most of these documents were the result of long struggles of the people.⁴⁴ After the First World War, the international community started showing its concern for global mechanisms to protect human rights.⁴⁵ After the formation of the League of Nations, the first international effort was made for Human Rights on 25th September/1926 in the first conference against colonialism and serfdom and again on 28th June 1930, a conference was held on forced labor.⁴⁶ But it was only after the formation of United Nations that human rights movement got momentum, they were defined scientifically and concrete measures were taken for the protection and promotion of Human Rights.⁴⁷ On 10th December 1948 UN adopted the Universal Declaration of Human Rights and subsequently adopted two more covenants (one on Economic, Social and Cultural Rights and other on Civil and Political Rights) on 16th December 1966 and they came into force on 3rd January, 1976 and 23rd March 1976 respectively and both the covenants were binding on the ratifying states.⁴⁸

⁴³. Pawan Sinha, *National Human Rights Commission*, Department of Political Science, Motilal Nehru, University of Delhi, pp. 3

⁴⁴. *Id.*

⁴⁵. *Id.*

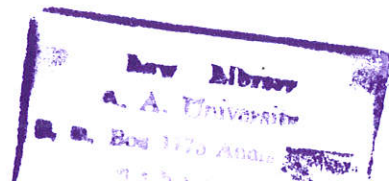
⁴⁶. *Id.*

⁴⁷. Manfred Nowak, *Introduction to the International Human Rights Regime*, (2003), pp. 16

⁴⁸. Pawan Sinha, *Op. Cit.*, pp. 4

The history of National Human Right Institutions (NHRI) dates back to 1946 when the issue was first addressed by the Economic and Social Council (ECOSOC),⁴⁹ just two years before the General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) as “a common standard of achievement for all peoples and all nations.”⁵⁰ At its second session, in 1946, the ECOSOC invited member states to consider the desirability of establishing information groups or local human right committees within their respective countries to collaborate with them in furthering the work of the commission on human rights.⁵¹ After fourteen years, the matter was raised again in a resolution that recognized the important role national institutions could play in the promotion and protection of human rights and which invited governments to encourage the formation and continuation of such bodies as well as to communicate all the relevant information on the subject to the Secretary-General of the United Nations.⁵² During the late 70’s, discussions on National Institutions became increasingly focused on the ways in which such bodies could assist in the effective implementation of the international human right standards and norms⁵³ and as discussed herein above, In 1978, the commission on Human Rights finally adopted a set of guidelines, which were endorsed by the UN General Assembly.⁵⁴ These guide lines suggested that the functions of national institutions should be:⁵⁵

- to act as a source of Human Rights information for the government and people of the country by providing an advise as to how to implement and make its policies and laws to comply with international standards;
- to assist in educating public opinion and promoting awareness of and respect for Human Rights;



⁴⁹. Office of the High Commissioner for Human Rights(OHCHR), National Institutions for the promotion and protection of Human Rights, UN Human Right Fact Sheet # 19, April/1993, pp. 3.

⁵⁰. Professional training series # 4, A hand book on the establishment and strengthening of national institutions for the promotion and protection of human rights, Center for Human Rights, Geneva, 1995, pp. 4

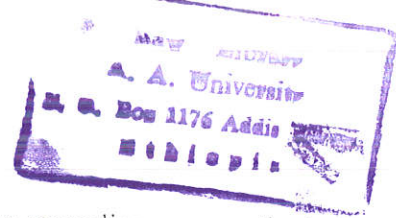
⁵¹. Economic and Social Council Resolution 2/9 of 21 June/1946, Sec. 5

⁵². Economic and Social Council Resolution 772 B (XXX) of 25 July/1960.

⁵³. Professional training series # 4, NHRI, hand book, Op. Cit., pp. 4

⁵⁴. *Id.*

⁵⁵. *Id.*



- to consider, deliberate upon and make recommendations regarding any particular state of affairs that may exist nationally and which the government may wish refer to them;
- to study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities and to publish official reports and reveal it to the public; and
- To perform any other function in connection with the duties of the state under those international instruments in the field of human rights to which it is a party.

With regard to the structure of these institutions, the guideline recommended that they should:

- reflect in their composition wide cross-sections of the nation, there by bringing all parts of the population to the decision-making process in regard to human rights;
- function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

The assembly invited all member states to take appropriate steps for the establishment, where they didn't already exist, of national institutions for the promotion and protection of human rights, and requested the Secretary-General of the United Nation to submit a detailed report on existing national institutions.⁵⁶ Through out the 1980s, the United Nations continued to take an active interest in this topic, and a series of reports, prepared by the Secretary-General of the UN, was presented to the GA. It was during this time a considerable number of national institutions were established-often with the assistance of the advisory services program of the center for human rights.⁵⁷ In 1990, the commission on human rights called for a workshop to be convened with the participation of national and regional institutions involved in the protection and promotion of human rights. The work shop was to review patterns of cooperation of national institutions with international organizations such as the UN and other UN specialized agencies and to

⁵⁶ UN Human Right Fact Sheet # 19, *Op. Cit.*, pp. 5-

⁵⁷ *Id.*

explore ways of increasing their effectiveness.⁵⁸ Accordingly, the first international workshop on national institutions for the promotion and protection of human rights was held in Paris from 7 to 9 October 1991.⁵⁹ Its conclusions were endorsed by the commission and subsequently by the General Assembly as the principles relating to the status of national institutions, or what we call them commonly *THE PARIS PRINCIPLES*.⁶⁰ These principles give broad mandate to the institutions so that the protection and enforcement of international as well as regional human right instruments and norms so that the institutions will make human right protection and enforcement a living reality in the domestic context.

According to the Paris principles, which represent a refinement and extension of the guide lines developed in 1978, national institutions shall have the following responsibilities:⁶¹

- to submit to the government, parliament, any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear the matter without higher referral opinions, recommendations, proposals and reports on any matters concerning to the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution shall relate to the following areas:
 - Any legislative or administrative provisions, as well as provisions relating to judicial organization intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force as well as bill and proposals, and shall make such recommendations as it deems appropriate in order to insure that these provisions conform to the fundamental principles of human rights. it shall, if necessary,

⁵⁸ *Id.*

⁵⁹ Professional training series # 4, NHRI, hand book, *Op. Cit.*, pp. 5

⁶⁰ Resolution 1992/54 and GA Resolution 48/154 of 20 December /1993.

⁶¹ Principles relating to the status and function of national institutions for the promotion and protection of human rights of the UN G/A Res. A/48/134 of 20 December 1993 (herein after referred to as *the Paris principles*.)

recommend the adoption of new legislation, the amendment of legislations in force and the adoption or amendment of administrative measures;

- Any situation of violation of human rights, which it decides to take up;
- The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;
- To promote and ensure the harmonization of national legislation, regulations and practices with the international human right instruments to which a state is the party, and their effective implementation;
- To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- To contribute to the reports, which states are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- To cooperate with the UN and any other agency in the UN system, the regional institutions and the national institutions of other countries, which are competent in the areas of the protection and promotion of human rights;
- To assist in the formulation of programs for the teaching of, and research in to, human rights and to take part in their execution in schools, universities and professional circles;
- To publicize Human Rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

The national institutions in Africa, their role and contribution were never clearly defined at the early days of formation as they couldn't be differentiated from the states

themselves and NGOs clearly.⁶² Nowadays, most national institutions in Africa have an affiliate status as they conform to the Paris principles.⁶³ This status, yet doesn't define the role of the institutions in a clear and express manner, though they are required to assist the African commission in the promotion and protection of human rights at the national level according to the decision passed by the commission in its 24th session. Later on, in 2004, the African Union in collaboration with the Office of the High Commissioner of Human Rights (OHCHR) and the coordinating committee of African national human right institutions organized the first African Union conference of national human right institutions at the head quarters of the African Union in Addis Ababa, Ethiopia from the 18th -21st October. The objectives of the conference were:

1. to encourage some African states, which have not yet established national human right institutions to do so;
2. to exchange ideas between existing national human right institutions; and
3. To identify areas where national human right institutions could improve in their work as well as work out mechanisms for implementing existing African human right instruments.

At the end, the conference calls on all the existing institutions which might be established in the near future to continue to seek effectiveness in the delivery of their mandate through capacity building, professional staffing and self-funding. It also calls on the institutions to reinforce collaborations among them selves, to work on the issue of democratic governance, peace and security and the right to development, to work together closely with the African Union organs, the African commission on human and people's rights, non-governmental organizations and other institutions with human rights agenda and to introduce a right based approach in their operation and make effort to ensure that this concept is known by the various institutions and state organs.

To come to a conclusion, now-a-days, national human right institutions, unlike so many years when their relevance was not that much taking the mind of individuals and states, are mushrooming all over the world be it a developed, developing or under

⁶² Fans Viljoen, *Op. Cit.*, pp. 412

⁶³ Out of the national institutions established in 27 African countries until the year 2007, only 19 have got affiliate status by the African commission. The rest have only an observer status with human right NGOs. (See Fans Viljoen, *Op. Cit.*, pp. 413)

developing one. Though their importance and contribution in the international as well as domestic human right movement is now out of question, there is still an on going debate regarding their nature and practical role playing in the protection and enforcement of human rights in general and protecting the rights of special groups of the society in particular. The role of these institutions in the enforcement of the socio-economic rights of peoples in developing countries is also a challenging task not to mention the problem of conforming to the criterion of the Paris principles in terms of independence, impartiality, integrity, competence of staff, issues of jurisdiction, appointment procedure, accessibility, financial autonomy and relations with civil society. The case of the national human right institutions in Ethiopia in general and the Ethiopian Human Right commission in particular is not an exception to the rule of the reality of national human right institutions in Africa as will be discussed in the rest part of this paper.

Let us now have a general overview regarding the meaning of national human right institutions in general and national human right commission in particular and their importance.

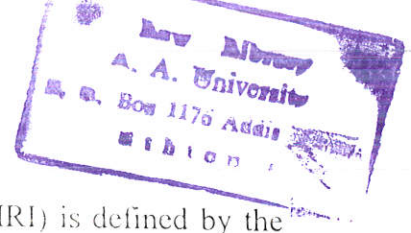
2.2. Meaning and types of National Human Rights Institutions (NHRIs)

A number of definitions are coined for the notion of National Human Right Institutions (NHRI) by different entities. According to Anna-Elina Pohjolainen, a National Human Right Institution (NHRI) can be defined as *an independent body established by a national government for the specific purpose of advancing/promoting and defending/protecting human rights at the domestic level*.⁶⁴ The human rights fact-sheet no. 19, issued by the center for human rights, on the National Institutions for the promotion and protection of human rights defined these institutions as *bodies whose functions are specifically defined in terms of promotion and protection of human rights*.⁶⁵ Pursuant to the professional training manual series no. 4, A National Human Rights Institution can be defined as *a body established in the constitution or by law to perform particular functions in the field of human rights*.⁶⁶

⁶⁴. Anna-Elina Pohjolainen (Dr.), *The Evolution of National Human Rights Institutions, The role of the United Nation* the Danish institute for human rights, 2006, pp. 1. (Source: <http://www.humanrights.dk> Internet Source/accessed on 12th of June/2008 at 10:30 p.m).

⁶⁵. UN Human Right Fact Sheet # 19, *Op. Cit.*, pp. 6

⁶⁶. Professional training series # 4, NHRI, hand book, *Op. Cit.*, pp. 6



All in all, the way a National Human Rights Institution (NHRI) is defined by the three authorities is all the same. The common denominators of all the three definitions of these institutions are:

- They are established by the government domestically as independent bodies;
- They are established by a law, no matter what the status of the law is; i.e. be it the constitution or any other subordinate statute;
- They are established specifically to deal with the issue of human right promotion and protection at the domestic legal, social and political context.

Coming to the points of the types of national human right institutions, in the world today, there are three approaches/systems of establishing such institutions; namely the single system/approach, the dual system/approach and the multi-organ system/approach.⁶⁷ A single system/approach is a system in which either there is only a human rights commission, which can deal with complaints concerning the infringement of human rights, or an ombudsman institute with a general competence to investigate claims of maladministration from citizens.⁶⁸ A dual system/approach, on the other hand, is a system in which there is both a national human right commission as well as an ombudsman institute.⁶⁹ The office of the ombudsman is now established in a number of countries today since its creation by some of the Nordic/Scandinavian countries in the 1940's and 50's. The institution is believed to serve two important purposes. These are;

- A. Redressal of individual grievances arising out of maladministration, and
- B. Making more effective legislative supervisions of the administrations.⁷⁰

The ombudsman (who may be an individual or group of persons) is generally appointed by the parliament acting on constitutional authority or through special legislations. In England, for instance, we do have various types of ombudsmen addressing different fields of maladministration, like the pension ombudsman, courts and legal service ombudsman, prison ombudsman, the Northern Ireland ombudsman, etc...⁷¹ coming to the legal context of our country, the office was established on the same day

⁶⁷. L.F.M. Besselink and H/Selassie G/Selassie *et al.*(Ed.), Human Rights Commissions and Ombudsman Offices. Kluwer Law International, Dordrecht, the Netherlands, 2000, pp. 157.

⁶⁸. *Id.*

⁶⁹. *Id.*

⁷⁰. N.K. Jayakumar (Dr.), Administrative Law, (2005), pp. 150

⁷¹. Alex Carroll, Constitutional and Administrative Law, (1998), pp. 447

with that of the Human Right Commission by proclamation 211/2000 and most of its powers, functions, structures and organizations is similar with that of the Human Right Commission except in its scope of power and limitations on its power. As we can easily see from art. 5, art. 6 and the preamble of the proclamation, the main reason of adopting this institution in the Ethiopian constitutional order is to alleviate/combat maladministration and bring good governance in public administration, accordingly, the institution only addresses one aspect of human right violation, i.e. maladministration and recommend there to. More over, like its counterpart commission, the power of the institution is very restricted as it has no power to investigate political decisions given by councils, cases pending in courts, matters under investigation of the federal auditor general, decisions given by security forces in respect of matters of national security or defense.⁷²

The last system/approach is the multiple organ system/approach, which is a legal system in which there are various human right and ombudsman institutions, like child rights commissions/ombudsman, women's rights commissions/ombudsman, commissions/ombudsman for the rights of persons with disabilities, commissions/ombudsman for the protection of minorities, refugee rights commissions/ombudsman, and so on.⁷³

The last type of institutions are also known as specialized institution and members of the community who are most often regarded by governments as vulnerable groups and needing specialized human right enforcement mechanism to protect their interests, as stated above, are persons belonging to ethnic, linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees, children, women, and persons with disabilities.⁷⁴ In general terms, such specialized institutions are established to promote government and social policy that has been developed for the protection of the rights of that particular group.

2.3. International standards for the effective functions of National Human Rights Institutions

The role of national human rights institutions is complementary to governments at domestic level and regional instruments to the extent that states have a responsibility to

⁷². Art. 7 of Proclamation # 211/2000

⁷³. L.F.M. Besselink and H/Selassie G/Selassie *et al.* (Ed.), *Op.Cit.*, pp. 158

⁷⁴. UN Human Right Fact Sheet # 19, *Op. Cit.*, pp. 9

implement regional and international instruments.⁷⁵ National institutions affirm the principle that while government bears the primary responsibility for the promotion and protection of human rights, all sectors of society must see it as their function to ensure that human rights are observed.⁷⁶ Therefore, national institutions are important mechanisms for ensuring accountability of government and civil society for the maintenance of human rights. For this purpose, it has become necessary to set out clear guidelines for the proper and effective functioning of national institutions. This is necessary if national institutions are to serve a useful purpose and not simply become either an instrument of opposition to duly and democratically instituted government or, even worse, becoming a tool in the hand of the government.⁷⁷ Either way, the national institution will be compromised and discredited. Another fundamental principle is that national institutions function at their best within an enabling environment. Where democratic institutions like the courts have been set aside, a national institution will have no basis in which to operate.

Where a government is undemocratic, like a military regime, it is impossible to imagine how a national institution can operate on the basis of military decrees.⁷⁸ On the other hand, a national institution may have a role in challenging the undemocratic and unconstitutional actions of the regime by drawing inspiration from regional and international instruments to which the state is a party.⁷⁹ It can use international forums like the human rights committees established under the various treaty bodies as well as the African Commission to challenge violations of human rights.⁸⁰ The basic elements set forth by the Paris principles are competence and responsibilities, independence and impartiality, financial autonomy, powers, accessibility, cooperation, operational efficiency and capacity and accountability. Let us discuss each of these elements briefly as follows.

⁷⁵. National Human right Institutions for the promotion and protection of Human Rights in Africa, *supra* note 13.

⁷⁶. *Id.*

⁷⁷. *Id.*, pp. 4

⁷⁸. *Id.*

⁷⁹. *Id.*

⁸⁰. The Durban Declaration, which was adopted during the second conference of African National Institutions in July 1998 in Durban South Africa, states that “the effectiveness of national institutions is enhanced when they function within the framework of an enabling environment that includes, amongst other things, a working democracy, good governance and independent judiciary.”

- A. *Competence and Responsibilities*: The mandate of a national institution should be provided by law. A national institution can best be entrenched if it is mandated by the Constitution although a statutory provision or any other law may suffice.⁸¹ The essential matter is that the institution should be established in such a manner that its existence will not be affected by a change of government.⁸² The mandate of the national institution should be broad and comprehensive. This is to ensure that the national institution should not be hampered in its legitimate activities by having to operate within too narrow a mandate.⁸³ The Paris Principles have set out in detail some of the elements of the functions of a national institution.
- B. *Independence and Impartiality*: the other cardinal element is the structural and functional independence and impartiality of national human rights institutions. A national institution should have its independence, impartiality and pluralism guaranteed.⁸⁴ This can be done by ensuring that in its composition and membership of the national institutions is drawn from as wide a cross-section of the social, cultural, genders and professional spectrum of society. Members are appointed or preferably elected in their personal capacities and not to represent any particular sector of society or constituency from which they receive a mandate.⁸⁵ This principle of pluralism is intended to ensure that all sectors of society can be reflected in the composition of the institution. The national institution should be guaranteed independence and should at all times act with impartiality. Independence should be such that the institution and its members will not be influenced in the conduct of their business by government or any pressure or interest group.⁸⁶

⁸¹ Professional training series # 12, *Economic, Social and Cultural Rights: Handbook for National Human rights Institutions*, Center for Human Rights, Geneva, 2005, pp. 34. See also C. Raj Kumar, *infra note* 154 of this work and see also International Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions*, OHCHR, 2005, pp. 12.

⁸² *Id.*

⁸³ *Id.* See also Sec. 3 of the Paris principles.

⁸⁴ C. Raj Kumar, *infra note* 154.

⁸⁵ *Id.* See also Professional training series # 4, *Op Cit.*, pp. 10. See also Sec. 3(B) of the Paris principles.

⁸⁶ *Id.*

The institution can be trusted to act with integrity and impartiality in the conduct of their business. An institution, which fails to act with independence and impartiality and is seen to be doing so, will only discredit itself and the principles it stands for.⁸⁷ Independence is also secured by guaranteeing members of the institution security of tenure and guaranteed funding for the operations of the institution. The institution should be seen as an important institution in society whose dignity and high esteem must be secured.⁸⁸ The salary and allowances of members of the institution should ensure the maintenance of that high degree of public esteem. The institution should also be guaranteed independence in the conduct of its operations. The institution should at all times act within the law and the constitution but should not receive instructions from government or any other source.⁸⁹ The institution must set its own priorities and strategies in order to fulfill its mandate.

- C. *Financial autonomy*: The national institution must be guaranteed an adequate budget from the national budget should be allocated. It shall be the responsibility of government to ensure that the institution has a sufficient budget to undertake its activities.⁹⁰ The budget of the institution should not be arbitrarily cut or its activities curtailed by the instrumentality of budget constraints. In this regard, the Paris Principles states that:

*The national institution shall have an infrastructure, which is suited to the smooth conduct of its activities, in particular, adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control, which might affect its independence.*⁹¹

- D. *Powers*: the power of national human right institutions is the other significant point for their effective functioning. Any national institution should have adequate powers to carry out its functions. That means that the institution has powers in law to enter premises, call witnesses, compel, and gather evidences

⁸⁷. *Id.*

⁸⁸. *Id.*

⁸⁹. *Id.*

⁹⁰. Professional training series # 4, *Op Cit.*, 11.

⁹¹. Sec. B (2) of the Paris principles.

necessary for the conduct of its investigations.⁹² The national institution, however, is not a judicial body but a quasi-judicial and administrative institution.⁹³ Therefore, the institution does not need to have powers to make binding judgments or to substitute the courts' access, which should be guaranteed to all citizens. The institution has powers to recommend measures of redress, make declarations, publications and recommendations to ensure that the nuisance does not continue.⁹⁴ The decisions and findings of the national institution should be persuasive and its authority substantial but it falls short of being a binding judgment.⁹⁵ Cooperation with a national institution is essential and the statute must ensure that the national institution can be assured the cooperation of all organs of state.⁹⁶

E. *Accessibility*: an effective national human rights institution should be readily accessible to the individuals and groups whose rights it is established to protect and promote.⁹⁷ Accessibility requires that people know the national institution and its role, that they are able physically to make contact with it and that they are treated appropriately when they are in contact with its officers.⁹⁸ A national human right institution can't be accessible to a constituency that is ignorant of or ill-informed about its existence or functions.⁹⁹ It should consider creative means of making itself visible, including out reach to those most vulnerable groups who are often difficult to reach and reluctant to voice their concerns to an official body. Like any other public or private body offering a service, the institution should be especially careful to make it self known to those who are most likely to benefit from what it can offer; i.e. the institution must be aware that the individuals or groups who are most vulnerable to human rights violations will quite often be difficult to reach through standard channels of communications.¹⁰⁰

⁹² . Professional training series # 12, *Economic, Social and Cultural Rights: Handbook for National Human rights Institutions*, Center for Human Rights, Geneva, 2005, pp. 36.

⁹³ . *Id.* See also Sec. 3 (C) of the Paris principles.

⁹⁴ . *Id.*

⁹⁵ . *Id.*

⁹⁶ . *Id.*

⁹⁷ . *Id.*, pp. 37

⁹⁸ . *Id.*

⁹⁹ . *Id.* See also Professional training series # 4, *Op Cit.*, 13

¹⁰⁰ . *Id.*

In addition to promoting wide spread knowledge and raising awareness about the institution, efforts should be made to ensure that a national institution is physically accessible to its constituency.¹⁰¹ Many institutions maintain only one office in a major population center and while often, this paves the way for unavoidable financial and resource constraints as it necessarily obstruct accessibility for those living in remote areas or those who are other wise unable to travel.¹⁰² For instance, accessible facilities like services and information for persons with disabilities are critical and must not be overlooked.¹⁰³ Appropriate treatment can be considered as the other element of accessibility. A national human right institution can't be accessible if those whose rights are violated find it unapproachable, unfriendly and difficult to deal with. Working methods and procedures must be appropriate for victims and potential victims of violations.¹⁰⁴ Services and documents should be provided in a range of relevant languages. Members and staff of the institution should include persons drawn from historically marginalized groups, such as women, ethnic and racial minority groups, persons with disabilities and groups whose rights are violated or at risk.¹⁰⁵

F. *Cooperation*: the other cardinal element of national institutions is its cooperation with other entities. The Paris principles recognize that an effective national human rights institution will not function alone but will establish and strengthen cooperative relationships with a wide range of organizations and groups.¹⁰⁶ National human right institutions have unique mandates and functions and these should be exercised in collaboration with other democratic mechanisms with responsibility for the promotion and protection of human rights including the executive, the legislature and the judiciary and more importantly, with Non-Governmental Organizations (NGOs) and with Civil Society Organizations.¹⁰⁷ Especially working in association with NGOs and Civil Society Organizations

¹⁰¹. *Id.*

¹⁰². *Id.*

¹⁰³. Professional training series # 12, *Op. Cit.*, pp. 37

¹⁰⁴. *Id.* pp. 38

¹⁰⁵. *Id.*

¹⁰⁶. Sec. C (7) of the Paris principles. See also Professional training series # 12, *Op. Cit.*, pp. 38

¹⁰⁷. *Id.*

necessitates establishing a partnership approach with same and Community-Based groups working in the human rights field, allowing them to be involved in drawing up and implementing programs and activities.¹⁰⁸ Some strongly argue that national human rights institutions have to work with the civil society especially with the NGO community to get popular/public legitimacy.¹⁰⁹ It has been found that commissions that cooperated with NGO communities were inevitably those with the strongest record.¹¹⁰ For instance, the national human rights commission of Togo, which was set up in 1987, included an elected representative of the Togolese Red Cross, elected representatives of women, youth, workers and traditional chiefs and two lawyers elected by the Bar association.¹¹¹ Similarly, in other African countries like Benin, Morocco, Ghana, Uganda and Senegal, representatives from the NGO community are mandated members of the Human rights commissions.¹¹² In Mexico, on the other hand, the national commission on human rights has a council composed of human right experts, who conducts studies and makes recommendations to the commission and in a similar fashion, the Australian national commission's charter mandates the commission to work with NGOs on different issues such as policy, projects and inquiries.¹¹³ This, however, doesn't cover the fact that just like national institutions must be free from the other organs of the government especially the executive, it must also be independent from NGOs and civil society groups so as to ensure that the national institutions are not overly influenced by a particular interest group. As human right commissions are statutory bodies with specific powers and mandates to protect and promote human rights unlike NGOs, which are not appointed directly by the people or indirectly by the parliament, there must not be unnecessary influence exerted by these pressure groups on these

¹⁰⁸. Anne Smith, *the unique position of National Human Rights Institutions: A mixed Blessing*, Human Rights Quarterly, Vol. 28 (2006), pp. 931

¹⁰⁹. *Id.*

¹¹⁰. *Id.*

¹¹¹. *Id.* See also Benaifer Nowroife, Human Rights Watch, *Protectors or Pretenders? Government Human Right Commissions in Africa*, New York, 2001, (available at [http:// www. hrw. Org/reports/2001/Africa/overview/factors.htm](http://www.hrw.org/reports/2001/Africa/overview/factors.htm) (Internet Source accessed on 2nd January/2009)

¹¹². *Id.*

¹¹³. Anne Smith, *Op. Cit.*, pp. 931

institutions under the pretence of assisting or collaborative activities.¹¹⁴ It must also be noted that national human right institutions have a different status in the community and different tools at their disposal to hold the state and other bodies to be accountable for violating human rights standards.¹¹⁵

G. *Accountability*: the other element of a successful and effective national human right institution is its accountability. But accountability why? How? And to whom? Are basic concerns that need to be properly and carefully addressed. Institutional effectiveness requires the development of a system of accountability based on specific and ascertainable goals.¹¹⁶ Besides legal and financial accountabilities to the government and/or parliament, a national human right institution also needs to find ways to be accountable to those groups and individuals whose rights it is established to promote and protect.¹¹⁷ Its procedures and decision making processes, for instance, should be visible, transparent, open, rational, consistent and shared.¹¹⁸ By way of developing mission and value statements, strategic objectives and plans, staffs codes of ethics, quality service standards and procedural handbooks, national human right institutions may be able to ensure their accountability for high standards of achievement.¹¹⁹ Just like the other concepts as elements for an effective functioning of national human right institutions, the notion of accountability is also central and multi-layered to their work.¹²⁰ Accordingly, there are four layers of accountability: namely *formal accountability*, *public/popular accountability*, *broader accountability* and *government accountability* and each layer presents its own dilemmas and some are problematic than others.¹²¹ Formal accountability is the basic textual level of accountability and requires national human right institutions to submit an annual report and special reports to the

¹¹⁴ . *Id.*

¹¹⁵ . *Id.*

¹¹⁶ . Professional training series # 12, *Op. Cit.*, pp.39

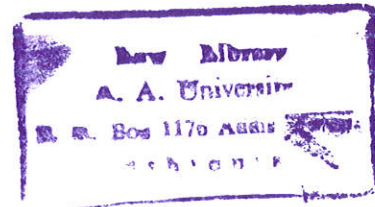
¹¹⁷ . *Id.*

¹¹⁸ . *Id.*

¹¹⁹ . *Id.*

¹²⁰ . Anne Smith, *Op. Cit.*, pp. 937

¹²¹ . *Id.*



authority that appoints them, usually the legislatures and to their funders.¹²² It should be relatively straightforward and it should be an opportunity for the parliament to engage in a discussion about the reports.¹²³ The second layer of accountability of national human right institutions is public/popular accountability. This is the mainstay of national human right institutions and a national human right institution's reports has to be distributed to the public and made available in different formats accessible to the public at large for instance, in a form of leaflets, short summaries in the media, and other public presentations of the institution's work.¹²⁴ By doing so, the public can see what is being done in their name and ensure that the national human right institution is performing properly.¹²⁵ According to Dawn Oliver, this wider understanding of accountability requires that a person or body explain and justify, against criteria of some kind, their decisions or actions.¹²⁶ When national human right institutions are established, they are usually accompanied by high expectations of what such institutions are to achieve, especially, when they are given a very broad mandate where almost anything could be framed as a human right issue.¹²⁷ The situation is compounded for national human right institutions in divided societies where there is a history of community division and, therefore, differing notions or expectations of what a national human right institution is supposed to offer.¹²⁸ The third type of accountability is a broader accountability, establishing relationships with civil society groups and professional human right organizations, which allows the national human right institutions to benefit from their experience and insight while also providing civil society bodies an opportunity to scrutinize the national human right institution's performance.¹²⁹ By establishing these relationships, national human right institutions can give

¹²² . *Id.*

¹²³ . *Id.*, See also Sinn Fein, Press release, *Human rights Commissioners disgraceful comments influenced by holy cross judgment*, (16th of June, 2004) available at [http:// www. sinnfein. ie/news/detail/](http://www.sinnfein.ie/news/detail/) accessed on 10th of January/2009 1:30 pm.

¹²⁴ . *Id.*, pp. 938

¹²⁵ . *Id.*

¹²⁶ . Dawn Oliver, *Law, Politics and Accountability*, Public Law Journal, Vol. 238, pp. 246 (1994)

¹²⁷ . *Id.*

¹²⁸ . *Id.*

¹²⁹ . *Id.*

societal groups effective channels to make their claims and, as Hucker says, act as receptors and transmitters in the cycle of human rights activity as they endeavor to implement international norms in practice while simultaneously filtering information from civil society back to the state.¹³⁰ Such relationships have an inherent duality: on one hand, these relationships are believed to increase the national human right institution's accountability by creating a link with human rights NGOs and provide the institution with an opportunity to monitor the NGOs performance, and on the other, the national human right institution benefits from using the knowledge, experience and expertise of grass root NGOs.¹³¹ When this is about the role of these institutions in the promotion and protection of vulnerable groups, it will even get more attention and in this regard, it would be plausible to mention the relevance of the 9th international conference on national human right institutions held in Nairobi, Kenya in 2008. The conference was held under the theme "*improving access to justice for vulnerable groups: Towards a strategic partnership between NGOs and national human right institutions*" and aimed at strengthening the partnership between NGOs and national human right institutions in the area of access to justice particularly for the poor and disadvantaged like women, children, minorities, persons living with HIV/AIDS and disabilities. The outcomes of the conference were:

- a better cooperation between national human right institutions and NGOs must be created more than ever so that they can strengthen their respective roles in terms of oversight within the justice system,
- the broadening perspectives of access to justice, which is much more than improving an individual's access to courts or guaranteeing legal representation that it should be defined in terms of ensuring that legal and judicial outcomes are just and equitable,
- a better access to justice to the poor and disadvantaged, including women, children, minorities, persons living with HIV/AIDS and disabilities, and

¹³⁰. John Hucker, *Bringing Rights Home: the Role of National Human Right Institutions*, in *Human Rights Protection: Methods and Effectiveness*, 29, 34 (Frances Butler /Ed./2002)

¹³¹. Anne Smith, *Op. Cit.*, pp. 940

- A plan of action should be developed to strengthen cooperation and to further improve the national legislation and law enforcement in the area of administration of justice.¹³²

The last type of accountability is referred to as government accountability.¹³³ This kind of accountability is all about that the authority, which appoints and funds national human right institutions, has the power to supervise the institution and the institution is accountable in the sense that it is responsible for ensuring the proper promotion and protection of human rights. This requires governments, or those involved in negotiating the remit and powers of the institution, to ensure national human right institutions live up to their writ and to investigate if the institution is not working effectively.¹³⁴ However, there seems to be a problem with respect to this layer of accountability of national human right institutions. It is a stark truth that Governments have a clear obligation to provide adequate resources and powers to the bodies that they themselves created. In western democracies, governments should be able to provide national human right institutions with sufficient staffs and financial resources and without such resources; they can be beholden to the whims of the government and prevented from carrying out their mandate effectively by imposing budgetary constraints.¹³⁵ Governments are also accountable in the sense that they are required to respond to national human right institutions due to their “*semi official status.*”[Author’s emphasis].¹³⁶ As has been stated earlier, their status as national institutions should allow them to engage with government officials more closely than NGOs. Their reports and recommendations should have a stronger impact within the government than NGO reports.¹³⁷ At last, it should also be remembered that governments, which have been involved in supervising the powers of national human right institutions, are also responsible to ensure that such institutions abide by and live up to what was agreed.¹³⁸ If a national human right

¹³² . Decisions of the NGO forum of the 9th international conference on national human right institutions held in Nairobi, Kenya in 2008.

¹³³ . Anne Smith, *Op. Cit.*, pp. 941

¹³⁴ . *Id.*

¹³⁵ . *Id.* pp. 942

¹³⁶ . *Id.*

¹³⁷ . *Id.*

¹³⁸ . *Id.*

institution is acting improperly, under this form of accountability, the government is required to express concern in order to ensure that national human right institutions are adhering to their remit as agreed under the enabling legislation. In such situations, national human right institutions must accept that they should be held accountable and not view criticisms as an attack on their independence.¹³⁹ In other words, national human right institutions must be careful not to abandon the very concept of accountability they seek to promote and if there is any dysfunction, it should not be taken as the abandonment of national human right institutions by the government, rather an assessment of what further support in necessary should be looked for. Nevertheless, one should bear in mind that this can result in creating tension between accountability and independence.¹⁴⁰ When it is said that national human right institutions should assume some degree of accountability to the government and the government is empowered to check that they stick to their statutory responsibility, so that a healthy balance between the two might be maintained, it doesn't mean that governments can use this as an excuse for not wanting national human right institutions in order to shy away from carrying out their responsibilities. In other words, Governments must not be allowed to escape from their duties and should also be guilty of shirking their responsibility if they tend to use their power and the accountability of national human right institutions as a shield to attack the independence of these institutions.

2.4. Human rights commission: a definitional aspect

It is hardly possible to find a precise definition for the term National Human Rights Commission or simply Human Rights Commission as all most, all literatures defined it in terms of its function, responsibilities, nature and its status in the overall National Human Rights Institutions by comparing it with the other bodies like the ombudsman and specialized institutions. For instance, according to Linda Reif, A Human Rights Commission can be understood by its mandate, composition, jurisdiction, appointment and specific functions. According to her,

¹³⁹ *Id.*

¹⁴⁰ *Id.*, pp. 943

*“The Human Rights Commission has its express mandate the protection and promotion of human rights. A human right commission is composed of a number of members who should have human right expertise. A human right commission may be appointed by the executive, the legislature or some combination of the two. The powers of a human right commission include but not limited to providing advice to the government on human right laws and policies, conducting research, undertaking human right education and investigating complaints made by members of the public that their human rights have been violated. A human right commission may also have jurisdiction over both the public as well as in the private sector. It may have also the power to receive and investigate complaints made alleging the violation of socio-economic rights.”*¹⁴¹

Similarly, according to the Human Right fact sheet # 19,

*“Human rights commissions are concerned primarily with the protection of nationals against discrimination and with the protection of civil and other human rights. The precise functions and powers of a particular commission will be defined in the legislative act or decree under which it is established. These laws or decrees will also serve to define the commission’s jurisdiction by specifying the range of discriminatory or violative conduct that it is empowered to investigate. One of the most important functions vested in a human right commission is to receive and investigate complaints from individuals and groups alleging human right abuses committed in violation of existing national law. In order to properly carry out its tasks, the commission will usually be capable of obtaining evidence relating to the matter under investigation”.*¹⁴²

Again, in a very similar way, the human rights training manual prepared by the center for human rights use the functions and solutions that may be given as its determinant factors to define it. According to it, human rights commissions are authorized *“to receive and investigate complaints both from individuals and groups alleging human rights abuses committed in violation of existing national law the result of*

¹⁴¹. Linda C. Reif, *Building Democratic Institutions: The role of National Human Right Institutions in good governance and human rights protection*, Harvard Human Rights Journal, Vol. 13/2000, pp. 10.

¹⁴². UN Human Right Fact Sheet # 19, *Op. Cit.*, pp. 7

which might be ending the violative act.”¹⁴³ According to Dr. Anna-Elina Pohjolainen, a human right commission “represents the classic type of national institutions and conforms most clearly to the model outlined in the Paris principles. This type of national institution is some times also referred to as the ‘Commonwealth model’ due to its origin and its relatively strong popularity in the Commonwealth region. In many cases and according to the Paris principles, the jurisdiction of this commission includes any act of discrimination both in the public as well as in the private sector.”¹⁴⁴ Again, in the same way, Paulo Pinheiro and David Baluarte wrote:

“The main objective of the Human Rights Commission is to ensure that the laws and regulations concerning the promotion and protection of human rights are effectively applied. Most Commissions function independently of the government though they are often required by law to submit reports to the legislature. Though the focus of these Commissions was initially centered on the defense of civil and political rights, they have responded to the increased trend of State ratification of the International Covenant by including economic, social and cultural rights in their agendas. The Commission realizes its objective in a number of ways. One of its most important roles is to receive and investigate complaints of human rights abuses. The Commission's role in the investigation and resolution of complaints is, in some cases, primarily one of conciliation or arbitration. Although they are rarely granted authority to impose legally binding outcomes to parties to a complaint, there exist the possibilities of forming special tribunals or transferring the case to civilian courts as a means of offering a more definite resolution. Another essential function of the Commission is to review the government's human rights policy as well as the implementation of ratified human rights treaties. The goal of the Commission in this case is to draw attention to the deficiencies in specific areas and suggest means for improvement. Finally, the Commission is often entrusted with the important responsibility of improving community awareness of human rights issues. This is achieved by informing the community of the Commission's purpose and function, organizing seminars,

¹⁴³. Professional training series # 4, NHRI, hand book, *Op. Cit.*, pp. 7.

¹⁴⁴. Anna-Elina Pohjolainen (Dr.), *Op. Cit.*, pp. 17

holding counseling services and meetings and producing and disseminating human rights publications."¹⁴⁵

There fore, what we can understand from the above discussions and analysis made by different scholars and international documents is that National Human Rights Commissions are one of National Human Rights Institutions, which are bestowed with the powers and responsibilities of promoting and protecting human rights recognized internationally, regionally and nationally in the domestic legal and justice system without making or rendering binding decisions. Human Rights Commissions can be distinguished from the other types of National Human Rights Institutions like the ombudsman, specialized institutions and others in that Human Rights commissions are authorized, *inter alia*, to investigate alleged human rights violations, to advise the government on human rights issues/matters and to comment on the policies and laws of the government in light of internationally and constitutionally recognized and protected principles of human rights and fundamental freedoms, in this sense, the jurisdiction/scope of power of National Human Rights Commission seems much broader than the other institutions. For instance, the overall jurisdiction of the institutions of the ombudsman is to receive and investigate alleged maladministration in government organs and public enterprises.¹⁴⁶ Human rights commissions are also technically different from specialized human rights institutions that the latter focuses mainly on the protection of specific rights and freedoms belongs to specific groups of the society like children, women, national, ethnic, linguistic or religious minorities, persons with disabilities, and the like whereas the former engaged itself in the promotion and protection of human rights and fundamental freedoms in general. In many countries, there are independent commissions/ institutions for children, women separately tending to work on the human rights issues of these groups in a relatively greater depth.

In such a way, we can understand the meaning and nature of national human rights commissions and let us now look at the importance of having/establishing national human right commissions at the domestic context.

¹⁴⁵. Paulo Pinheiro and David Baluarte, *National strategies – Human Right Commissions, Ombudsmen and National Action Plans*, Human Development report, 2000 background paper, p. 2.

¹⁴⁶. *Id.* pp. 3

2.5. The need for having a National Human rights commission

International support for the establishment and strengthening of national human rights commissions along side with the institution of the ombudsman and other similar human right institutions is currently considered as one of the most important ways to improve domestic human right records especially in emerging democracies and countries recovering from internal conflicts or times of extreme oppression.¹⁴⁷ The potentially important role of national human rights commissions and the other human rights institutions has been acknowledged by several inter-governmental and non-governmental organizations in the field of human rights, and many international actors have also considerably stepped up their activities relating to these domestic bodies.¹⁴⁸ In addition, the traditional democratic institutions especially the regular courts may not be sufficient enough in the protection/enforcement of human rights due to various reasons like problem of expertise that judges in courts may not have the required professional expertise and specialization in the field of human rights promotion and protection, they are also excused for having so many cases/files, in spite of the fact that they are constitutionally obliged to respect and enforce the constitutionally guaranteed human rights and freedoms along side with the other organs of the government as per art. 13(1) of the 1995 FDRE constitution, in reality they are not seen giving attentions to cases that involve the question of human rights violation the same attention and time as any other case, in addition to these, courts are known for their rigidity that they follow and make others (especially the parties to the litigation) to follow a legally prescribed procedure the non-compliance of which results in the losing of your substantive as well as procedural rights. In support of this argument, C. Raj Kumar wrote:

“The protection and promotion of human rights are clearly important functions of the state. While fundamental rights are generally couched in the language of negative rights against the state, the state apparatus ought to function in an active manner that protects the rights and freedoms of its people. In fact, the important wings of the government-the legislative, executive, or the judiciary-function with a view toward ensuring the rights and freedoms of

¹⁴⁷. Anna-Elina Pohjolainen (Dr.), *Op. Cit.*, pp.1

¹⁴⁸. *Id.*

people. But there is something fundamental and basic about National Human Rights Institutions (NHRIs) that is different of the state and its aforementioned instrumentalities that unlike other institutions, which are vested with the task of governing a country (Legislative and executive) and the administration of justice (judiciary), National Human Right Institutions' exclusive mandate is to protect and promote human rights. While various functions of other institutions can ensure the protection and promotion of human rights, this is the core mission and fundamental purpose of National Human Rights Institutions (NHRIs)."¹⁴⁹

However, this scholar also expresses his fear that

"... [P]erformance assessments of National Human Right Institutions (NHRIs) tend to become another arm of the state apparatus, producing less accessible bureaucratic styles of responding to human rights violations."¹⁵⁰

More on this, practically, in most cases, these institutions, though expected to address all types of human right violations in every aspect, they usually focus on the protection and enforcement of civil and political rights. Using the words of Kumar,

"National Human Rights Institutions are perceived as institutions that only respond to violations of civil and political rights. The international community has neglected the obligations under the international covenant on economic, social and cultural rights with its nearly uniform focus on the International Covenant on Civil and Political Rights (ICCPR). This has contributed to National Human Rights Institutions focused attention to addressing violation of civil and political rights. of course, enforcement of international law and international human rights norms has generally been weak, under this already weak enforcement regime, economic, social and cultural rights are given much less attention than civil and political rights. This has created a situation in which National Human Right Institutions are, at best, institutions that function well only when the legal, constitutional and governance framework respects the rule of law,

¹⁴⁹. C. Raj Kumar, *National Human Rights Institutions and Economic, Social and Cultural Rights: Toward the Institutionalization and Developmentalization of Human Rights*, Human Rights Quarterly, Vol. 28 (2006), pp. 759.

¹⁵⁰. *Id.*, pp. 760.

*promotes good governance, and pursues sound development policies. At worst, National Human Right Institutions become institutions that legitimize the functions of the state and do not intervene even when blatant violations of civil, political, economic, social and cultural rights occur.”*¹⁵¹

In order to fill such a gap, the Committee on the International Covenant on Economic, Social and Cultural Rights (ICESCR) issued its general comment No. 10 in December 1998 on the role of National Human Right Institutions in the protection of economic, social and cultural rights. The Committee stated that:

*National Institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is, therefore, essential that full attention be given to economic, social and cultural in all of the relevant activities of these institutions.*¹⁵²

Despite the fact that problems of such kind may occur, All in all, the role and importance of National Human Right Institutions in general and National Human Right Commission in particular seems to be acceptable by most countries and these countries strongly believe the fact that the institutions should be strengthened to the extent possible.

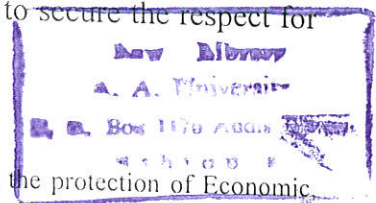
2.6. Principal functions of the National Human Rights Commission

Under this section, the major functions of one of these institutions, i.e. human right commissions will be discussed. Mainly, human right commissions have two basic functions. The promotion and protection of human rights and fundamental freedoms recognized internationally and domestically. When we say human right commissions promote human rights, it implies the inculcation of a greater respect for human rights among peoples and governments.¹⁵³ Where as, protective function involves the examining and the taking of actions on petitions of an alleged violation of human rights. Thus, protection of human rights implies the taking of measures to secure the respect for

¹⁵¹. *Id.* pp. 758

¹⁵². General comment on the Role of National Human Right Institutions in the protection of Economic, Social and Cultural Rights, H.R.C. General Comment 10, UN Doc. E/C. 12/1998/25 (1998).

¹⁵³. Lawrence J. Leblane, *The OAS and the promotion and protection of human rights*, (1977), pp. 28 (Cited in Asfaw G/Alif, *infra note 209*, pp. 50)



them.¹⁵⁴ In short, the idea of protection is based on the presumption that promoting for the respect for human rights is not sufficient that it is surely necessary to see to it that they aren't violated.

2.6.1. *Promotional functions*

The Human right commission, along side with the Inter-Governmental and Non-Governmental Organizations (NGOs), can play an important role in promoting human rights at the domestic level.¹⁵⁵ Promotion is a very general term and encompasses a wide range of possible activities like informing and educating about human rights and fostering the development of values and attitudes that uphold human rights.¹⁵⁶ Educating is to create awareness and impart knowledge of human rights. The respect for and protection of human rights depends on people knowing about their rights to which they are entitled and the mechanisms, which are available to enforce those rights. In the same way, all members of the society should be made aware of their own personal responsibilities to respect the rights of others.¹⁵⁷ The development of values and attitudes is necessary for the full enjoyment of human rights; and promoting human rights means working towards the development of a culture of respect for and observance of human rights at the national level, a culture in which knowledge of rights and responsibilities is reinforced by a determination to transform that knowledge in to practical reality.¹⁵⁸

There are a lot of strategies that a human right commission may adopt in its promotional function. The first is by way of collecting, producing and disseminating information materials. A human right commission should have at its disposal a range of information materials on human rights and the capacity to disseminate this information efficiently and effectively.¹⁵⁹ In addition to obtaining materials relevant to their particular responsibilities, all national human rights institutions and national human right commissions in particular should endeavor to collect and make available the following basic information materials:¹⁶⁰

- Information on the institution it self, including annual reports,

¹⁵⁴ . Asfaw G/Alif, *infra note 209*, pp. 50

¹⁵⁵ . Professional training series # 4, NHRI, *Op. Cit.*, pp. 18. See also Sec A (1) of the Paris principles.

¹⁵⁶ . *Id.*

¹⁵⁷ . *Id.*

¹⁵⁸ . *Id.*

¹⁵⁹ . *Id.*

¹⁶⁰ . Professional training series # 4, NHRI, *Op. Cit.*, pp. 18.

- International human right instruments and standards including information on ratifications and reservations by the state in question,
- Reports of the state to treaty bodies and comments made by treaty bodies on those reports,
- Domestic legislation relating to human rights and relevant administrative and judicial decisions, which have interpreted or applied that legislation, and
- Information on domestic mechanisms for protection of human rights including other national institutions, parliamentary commissions, ministerial committees and non-governmental organizations.

Such information and other materials relevant to the commission's particular fields of activity can be obtained from inter-governmental organization like the UN, from government departments and agencies and Non-Governmental Organizations (NGOs). National Human right commissions are also expected to become depositories for human right documentations emanating from the UN and others.¹⁶¹ The commission is expected to be well aware of the human right situation domestically and must have an access to important statistical data to that effect.¹⁶²

The second strategy that a human rights commission may make use of in order to play its promotional role effectively is by organizing promotional events and by encouraging community initiatives. By way of organizing promotional events and encouraging initiatives within the community, national human right commissions can play an important role in facilitating widespread awareness of human rights.¹⁶³ Promotional events may include drawing competitions with a human rights theme for school-age children, organization of lectures in universities and other higher educational institutions and exhibitions and special events to mark anniversaries such as the Human Rights day on 10th of December every year.¹⁶⁴ A human right commission is also expected to work effectively with structures already existing within the community by encouraging or participating in the initiatives of others aimed at promoting awareness and knowledge of human rights.

¹⁶¹. *Id.*, pp. 19

¹⁶². *Id.*

¹⁶³. *Id.*

¹⁶⁴. The day when the Universal Declaration of Human Rights (UDHR) came to effect in 1948. See Professional training series # 4, NHRI, *Op. Cit.*, pp. 19.

Working with the media can be considered as the other strategy of national human right commissions in their promotional activities. Communication Medias of both types; namely electronic and print Medias have come to be dominant forces in the democratization process by which ideas are formed and opinions are expressed.¹⁶⁵ Due to their ability and professional responsibility in this regard, the media like many other influential elements of the society, can be an instrument of empowerment as well as one of repression.¹⁶⁶ The role of the media in promoting human rights will depend to a great extent, on the social and political structure within which they operate. International human rights law clearly affirms the right of all people to freedom of opinion and expression and the absolute right to hold opinions with out interference.¹⁶⁷ To be a useful partner in a human right promotion strategy, the national media must be free to express themselves, this means, they should not be subject to government control, save some exceptions, nor should their freedom of expression be hampered by undemocratic private interests.¹⁶⁸ In view of their importance in formulating and expressing public opinion, the media can be an extremely valuable partner of a national institution, which is vested with a responsibility to promote awareness of human rights. A national institution especially a human right commission should develop a strategy for identifying the areas of its promotional program, which would benefit from media involvement and the media may participate and cooperate with national human right commission in the following activities:¹⁶⁹

- informing the public about the existence of the institution, the functions with which it is entrusted and the activities in which it is engaged,
- educating the community about the concept of human rights to which they are entitled, the duties which they owe to others and the structure, which have been developed to implement those rights and duties,

¹⁶⁵. Richard Carver, *et al.*, Freedom of Information, training manual for public officials, ARTICLE 19 Global Campaign for Free Expression, pp. 15 (Year of publication is not stated), Available at <http://www.Penwill.com>. Accessed on May 19/2008 at about 12:22 p.m.

¹⁶⁶. *Id.*

¹⁶⁷. Refer to Art. 19 of the Universal Declaration of Human Rights of 10th December/1948 (UDHR) and Art. 19 of the International Covenant on Civil and Political Rights of 1966 (ICCPR.)

¹⁶⁸. Toby Mendel, Freedom of Information, A Comparative Legal Survey, UNESCO, 2003, pp. 34

¹⁶⁹. *Id.*

- disseminating general human right information as well as opinions and recommendations of the national institution, including the results of investigations or inquiries, and
- Highlighting national or international situations or issues and expressing the opinion of the institution on the human rights aspects of those situations or issues.

More over, national human right commission should employ public relation experts or press officers to ensure that all avenues of the media are fully exploited in the effort to promote human rights and is expected to ensure that its existence is widely known in news paper, television and radio circles.¹⁷⁰ Active solicitations of free or subsidized air time or newspaper space can be an important strategy in this regard. The institution is also expected to take measures to ensure that staff training in communications skills, including conducting interviews and writing press releases.¹⁷¹

The last but not actually the least strategy that might help national human right commission in its promotional function is by way of ensuring the visibility of the institution and its work. A national human rights commission can't function properly unless the community is aware of its existence.¹⁷² For this reason, a national human rights commission should set it self a policy goal of high visibility and it must devise a strategy or program to achieve this goal, which is targeted towards those individuals or groups most likely to benefit from what it has to offer.¹⁷³ As has been said earlier, while the institution should be able to enlist the help of other entities like Non-Governmental Organizations (NGOs), international organizations and others, the ultimate responsibility for ensuring that the public is well aware of its existence must rest with the institution itself and the best way of ensuring this high visibility is to disseminate widely the proceedings and results of work undertaken. If for instance the institution has decided to take a position on a draft law before the parliament, it should, then, make an effort to ensure that the general public is aware of this activity.¹⁷⁴ In such a way, it can gain public support for its position as well as use the opportunity to publicize the fact of its own

¹⁷⁰ . *Id.*

¹⁷¹ . *Id.*

¹⁷² . *Id.*

¹⁷³ . *Id.*

¹⁷⁴ . *Id.*

existence. The same can be said for publicizing the terms of reference of a public inquiry that the institution is to undertake and the final results of any investigation.¹⁷⁵

2.6.2. Protective functions

As has been discussed herein above, the promotional function of a national human rights commission is very significant. However, if this function is not accompanied by the function of protection, which is as equally important as the promotional function, the desired goal will not be achieved. The establishment of a national human rights commission in other countries today seems to be one step a head for the proper domestic protection of human rights and fundamental freedoms. It is believed that the existence of this commission protects individuals and groups in the community from the delirious effects of discrimination and exploitation it is also becoming an essential part of the country's program for the protection of human rights.¹⁷⁶ In all countries, groups characterized by ethnicity, religion, language, color, sex, social or economic status, etc.... are in varying degrees subjected to practices of discrimination.¹⁷⁷ This being one of the hard facts that makes the protective function of national human rights commission very vital, the next question worth asking is what are the main protective functions and their methods. Basically, a national human right commission accomplishes its protective function by making sure whether or not all laws, regulations, directives and government decisions and orders are in line with the international and domestic constitutional laws and principles and by conducting investigations on alleged human right violations. The commission may accomplish its first basic protective function; i.e. making sure of the compliance of all domestic laws, regulations and decisions with international standards may be made by way of making recommendations for the revision of existing laws and the making of new ones and formulation of policies and by way of forwarding its opinions and making the necessary comments on human right development reports that countries make and submit to international organs.¹⁷⁸ Such protective functions of a human right commission can be realized through a lot of mechanisms. For instance, the

¹⁷⁵. *Id.*

¹⁷⁶. Asfaw G/Alif, *infra note 209*, pp. 56

¹⁷⁷. Human rights, UN workshop for the Asian pacific region on human rights issues report, January/1993. (Cited in Asfaw G/Alif, *infra note 209*, pp. 56)

¹⁷⁸. See Sec. A (3) /a/ of the Paris principles and art. 6(2), (4), (5), (6) and (7) of Procl. 210/2000 (Proclamation to provide for the establishment of the Ethiopian human right commission)

first basic protective function of the commission; i.e. ensuring the compliance of subordinate laws with the cardinal principles and standards of human rights can be done through reviewing the existing legislations and policies of the government that have impacts on human rights of citizens and by way of proposing legislations or by way of assisting the government in the drafting of new laws and in the designing of new policies that may enhance the proper protection and implementation of human rights. According to some, a national human right commission can be well placed to assist the government in respect of legislation and to act as a watchdog in the legislative process.¹⁷⁹ Most importantly, a national human right commission, in the course of performing its protective function, is expected to be closely involved in the legislative process and such proximity places the commission in an excellent position to evaluate the practical effectiveness of existing laws, to identify problems that may have escaped the attention of the legislature or other implementing agencies and to suggest amendments or improvements.¹⁸⁰ Improvements or even new laws may be required as technical defects in a law, which have come to the attention of the commission during its overseeing of the law's implementation or because of certain human right problems that have been identified by the commission during its work as areas not adequately addressed by existing legislation.¹⁸¹ The ability to comment or advise on proposed legislation can be especially important as it is believed to be easier to change a draft law than to amend or to repeal an existing one and a national human right commission with an authority in this regard is expected to undertake the following steps:

- Identify legislative drafts with a human rights content or with human rights implications and these may include, among other things, proposed laws relating to crime and the administration of justice, the family, immigration, election, nationality or social welfare,
- Ascertain compliance of the draft law with the state's international or domestic human rights obligations,
- Asses the potential human rights implications of the proposed legislation, and

¹⁷⁹ Professional training series # 4, NHRI, *Op. Cit.*, pp. 24

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

- Submit a report based on the above steps to the executive, to a parliamentary drafting group or to any other relevant body of the government even revealing it to the public by way of publishing.¹⁸²

Designing policies or assisting or pushing the government to review its already existing or to issue a new and a human right friendly policy is the other task with which a human right commission is entrusted.

As has been described above, the other aspect of the protective function of a national human right commission is with respect to legislations, is not only commenting on new draft legislations but also reviewing the existing ones. As indicated earlier, a national human right commission may, during its course of activities, identify problems or inadequacies in existing legislations from a human rights perspective.¹⁸³ The mandate of the commission may specify the procedure to be followed in such a situation and the institution, by it self, is expected to take the initiative at each stage and is, there fore, expected to:

- Detect legislative in adequacies,
- Conduct a study of their human right implications with reference to both national and international standards,
- Identify the relevant branch or agency of government responsible for implementing or other wise overseeing the legislation under review, and
- Communicate with or report to that branch or government agency or any other relevant body of the government.¹⁸⁴

In addition to reviewing legislations, a national human right commission is often able to submit general policy advice to government bodies and to comment on the existing administrative arrangements.¹⁸⁵ This particular function can be of great practical benefit and may result in significant improvements in the day to day human right situation for many individuals and groups.¹⁸⁶ In all cases, a policy advice of a national

¹⁸². *Id.*

¹⁸³. *Id.*

¹⁸⁴. *Id.* pp. 25

¹⁸⁵. *Id.*

¹⁸⁶. *Id.*

human rights commission is expected to be enhanced by an ability to express an opinion on the positions and reactions of the government.¹⁸⁷

The other basic protective function of a human right commission is undertaking investigations on alleged human right violations and taking appropriate actions if it finds out the alleged violation has actually been occurred. The action may include awarding compensation for victims, taking the case to courts by way of representing the victim, providing an amicus brief to the court and the like. This function is perhaps one of the most important one with which a national human right commission can be entrusted. The existence of a national mechanism with the power to investigate abuses and provide relief to victims can act as a powerful disincentive to violative behavior.¹⁸⁸ It is also a clear indication of a government's commitment to human rights and of its genuine willingness to take international and domestic obligations seriously. An effective investigatory mechanism is basically characterized by an adequate legal capacity, organizational competence, a defined and appropriate set of priorities and a political will to pursue its work.¹⁸⁹ When it has been said that a national human rights commission is authorized to investigate alleged human right violation complaints, it is not to mean that this institution is going to replace/substitute the regular judiciary as the judiciary is the basic structure for protection of human rights at the national level and the ability of a national human rights commission to receive and act on complaints should, therefore, be seen as an additional measure of protection and a complementary mechanism established to ensure that the rights of all citizens are fully protected and this complementarity implies that the complaints receiving function of a commission should be able to offer something that the regular legal and justice system or process cant.¹⁹⁰ The other issue worth mentioning here in relation with the lodging of complaints to and investigatory role of the commission is the issue of standing. Most of the complaints mechanisms of a national human right commission specifically provide that any person is entitled to lodge a complaint against the objects over which the commission is granted jurisdiction and some define the term

¹⁸⁷. *Id.*

¹⁸⁸. *Id.*

¹⁸⁹. *Id.* pp. 28

¹⁹⁰. *Id.*

"any person" as to include non-citizens and refugees.¹⁹¹ The question whether the term "any person" includes an association of persons should be directly addressed in the enabling legislation establishing the complaint procedure and with regard to complaints by third parties, it is generally accepted that, in principle, a complaint should be lodged by the person against whom the alleged violation occurred.¹⁹² There are good reasons for such a requirement that it is the alleged victim who is presumed to have the best knowledge of the incident and who should properly have the freedom to decide whether or not to make a complaint.¹⁹³

However, this being the guiding principle, it is some times the case that those most vulnerable to human rights violations are not in the position to invoke protective mechanisms and there are many reasons why it may be impossible for a complaint to be lodged by the person who has suffered the violation as the victim might be a child or a person with some sort of disability either physically or mentally and in other situations, the victim of the violation may have disappeared, or be held in custody or even dead.¹⁹⁴ Due to such unavoidable facts and real possibilities, it is essential that formal provisions be made for representative and anonymous complaint procedure, which may be lodged by a relative, a friend, legal representative or a non-governmental organization or any one on behalf of the alleged victim.¹⁹⁵ Class action is the other most important point in this respect. A number of national human right commissions have developed a procedure for receiving class actions, where by an individual affected by a human right violation is able to complain not only on his/her own behalf, but also on behalf of others who are similarly affected.¹⁹⁶ This possibility of representative complaints helps to ensure that wide spread problems are treated as such and are not approached as isolated aberrations.¹⁹⁷ In addition, regardless of how thorough the investigative process has been and how appropriate the remedies are, resolution of an individual complaint may not always be enough to secure the necessary changes within the government or wider society.¹⁹⁸

¹⁹¹ Professional training series # 4, NHRI, *Op. Cit.*, pp. 30

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Paulo Pinheiro and David Baluarte, *Op. Cit.*, pp. 9

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

Where class actions are possible, strict guidelines are usually established to determine the suitability of an issue or complaint for a resolution. A national human right commission may, for instance, require that:

- a. the complainant must be a member of the class affected or likely to be affected,
- b. the complainant must personally have been affected by the alleged violation,
- c. the class of persons affected or potentially affected is so numerous that it is impossible to deal with the matter simply by joining a number of specified individuals to the complaint,
- d. there are questions of law or fact common to the members of the class and the claims of the complainant are typical of the claims of the class,
- e. multiple complaints would be likely to produce inconsistent results, and
- f. The grounds for action appear to apply to the whole class and making it appropriate to grant remedies to the class as a whole.¹⁹⁹

An aspect of this investigatory power of a national human right commission is the power to make enforceable orders.²⁰⁰ Some even argue that a national human rights commission may be granted the power to make legally enforceable orders and binding decisions and such power will, generally, permit the commission to seize a higher body in the event that an entity refuses to comply with the decision of the commission within a given time even if the actual enforcement procedure is entrusted to another body.²⁰¹ This very much significant power of the commission to make enforceable orders will benefit the commission itself by considerably strengthening its authority with regard to complaints of human rights violations.²⁰² Not only rendering enforceable orders but also publishing these orders and other decisions given by it is the other aspect of the investigatory role of a human right commission. It is strongly believed that national human right commission is expected to be empowered to publish the results of every

¹⁹⁹. *Id.*

²⁰⁰. Professional training series # 4, NHRI, *Op. Cit.*, pp. 34

²⁰¹. *Id.*

²⁰². *Id.*

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¹⁹⁹. *Id.*

²⁰⁰. Professional training series # 4, NHRI, *Op. Cit.*, pp. 34

²⁰¹. *Id.*

²⁰². *Id.*

investigation or conciliation it undertook along with any recommendations made.²⁰³ According to the opinion of the writer, however, this power of national human rights commission is very controversial as it raises various questions the most important of which is its relationship with the other organs of the government especially the judiciary. As has been discussed elsewhere in this work, as per the principle of separation of power, only the judiciary is entrusted with making the final, ultimate and legally binding decisions. A national human right commission, on the other hand, is an organ entrusted with the power of promoting and protecting the fundamental human rights and freedoms of human beings by making use of different methods discussed above, and as can be clearly seen from the Paris principles, this institution can't enjoy the power of making binding decisions though it has the competence to assist and enable the courts to be human rights sensitive in their adjudicative activities.

This institution is expected to play an advisory role and to make recommendations, forward its opinions, proposals and reports to the government, taking cases to courts and providing an amicus brief to the courts. In addition, a national human rights commission, unlike the regular courts, is directly answerable mostly to the legislative organ, which established it and this might not be comfortable to the overall system that the legislative, being a politically articulated organ, may influence the protective and promotional function of the commission by way of questioning the validity of its decisions. Nevertheless, the above assertion can also be held appropriate in the sense that a national human rights commission, *within the limits prescribed by law, may make binding decisions* (Emphasis added).²⁰⁴ In this regard, the phrase "*within the limits prescribed by law*" clearly indicates that the national law of a country can prescribe the power to render binding decisions of a human right commission. Moreover, a national human rights commission can bring a case to court and make sure that its opinions are judicially enforced; i.e. the commission may be able to appear in court to support orders for the enforcement of its determinations. By this, it can be argued that the commission might indirectly involve in the rendering of binding decisions.

²⁰³ . *Id.*

²⁰⁴ . See Sec. D (1) of the Paris principles.

Last but not actually the least; a human rights commission may intervene in legal proceedings usually by submitting an *amicus curiae* brief in cases, which involve human right issues over which the commission has competence.²⁰⁵ A human rights commission can use this opportunity to ensure that the court is aware of the human right implications of a case at hand and of the relevant national and international standards.²⁰⁶ This being the guiding principle, the capacity of a national human right commission to intervene in judicial proceedings is not, however, automatic and requires the fulfillment of certain procedures like the procedural requirement to seek and obtain the leave of the court. The granting of such leave will generally be conditional on the commission demonstrating an interest in the matter at hand.²⁰⁷

To come to a conclusion of this part, there fore, a national human right commission is mandated basically to promote and protect the human rights of individuals and groups by making use of various strategies and methods and these strategies and methods are believed to be significant and test the efficiency and effectiveness of the commission.

2.7. National Human rights commission in Ethiopia

The denial of human rights and fundamental freedoms not only is an individual and personal tragedy but also creates conditions of social and political unrest sowing the seeds of violence and conflict within and between societies and nations,²⁰⁸ And, we are here living in Ethiopia having experienced the massive human rights violations perpetrated by both the state against the individual, or one individual against his or her fellow citizen. Nevertheless, especially, in a third world country like ours, states have been held liable for violating the constitutionally and internationally guaranteed rights and freedoms of human beings as equal as the individual violators, and for this reason, it seems to be globally recognized that the practical task of the promotion and protection of human rights should rest primarily in the national government.²⁰⁹ This being the fact, the current human right policy of the Ethiopian government mainly focuses on:

²⁰⁵ Professional training series # 4, NHRI, *Op. Cit.*, pp. 35

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ The UN and Human Rights-United Nation, (unpublished material) 1984, pp. 20

²⁰⁹ Asfaw G/Alif, *A Human Rights Commission, Its relevance to Ethiopia*, LLB Thesis (unpublished) AAU, Faculty of Law, 1997, pp. 32

- the adoption of and incorporation to laws of various international conventions and treaties that pertain to human rights,²¹⁰
- public education in the field of human rights by various means with a view to raising public legal awareness,²¹¹ and
- The promotion and protection of human rights as guaranteed in the laws.²¹²

A very important provision enshrined in the 1994/5 Ethiopian Federal constitution refers to the Universal Declaration of Human Rights (UDHR) and the international conventions adopted thereafter.²¹³ And according to some, the inclusion of these bills of rights in the constitution and the need to create institutional frameworks to guarantee their legal protection implies the commitment of the government to promote the civil liberties detailed in the provisions [of the constitution].²¹⁴ Among these institutional frameworks, of particular relevance is the declaration of the establishment of the Human Rights Commission in the said constitution with a defined legal mandate to protect and promote human right activities.²¹⁵ The idea of establishing human rights institutions in Ethiopia has been around since the promulgation of the 1994/5 Federal constitution. In 1996, the House of Peoples Representatives of the Federal Republic of Ethiopia approved a bill to launch a preparatory project to create a Human Rights Commission and the Office of the Ombudsman.²¹⁶ In order to expedite the process, the House of Representatives in collaboration with various multilateral and bilateral donors organized a five-day conference at the UN conference center in Addis Ababa, from May 18-22, 1998, where over 80 country and expert reports on the variety of legislative and functioning aspects of institutions of human rights protection were delivered and discussed.²¹⁷ A wide range of legislative and functional practices of national institutions

²¹⁰ See Art. 9 (4) of the 1995 FDRE (Federal Democratic Republic of Ethiopia's) Constitution.

²¹¹ See Art. 6(3) of Procl. 210/2000 (Ethiopian Human Rights Commission Establishment Proclamation) of 4th of July/2000, 6th years # 40. See also section 3 (a) /iv/ f of the principles relating to the status of national institutions (the Paris principles) adopted by GA Res. 48/134 of 20 December 1993. See also Arts. 89-91 of the 1995 FDRE (Federal Democratic Republic of Ethiopia's) Constitution.

²¹² See Art. 13 of the 1995 FDRE (Federal Democratic Republic of Ethiopia's) Constitution.

²¹³ *Id.*

²¹⁴ L.F.M. Besselink and H/Selassie G/Selassie *et al.* (Ed.) *Op Cit*, pp. 23.

²¹⁵ See Art. 55(14) of the 1995 FDRE (Federal Democratic Republic of Ethiopia's) Constitution.

²¹⁶ L.F.M. Besselink and H/Selassie G/Selassie *et al.* (Ed.), *Op. Cit.*, pp. 24

²¹⁷ *Id.*

was presented in the conference working groups.²¹⁸ The main objective of this conference was to prepare the ground and to assist in the drafting of the national legislation and subsequent formation of a viable institutional mechanism for Ethiopia.²¹⁹ Based on the proceedings in the conference, a concept paper containing issues to be included in the legislation was developed and examined during the follow-up Civil Society consultations held between May 10 & 12, 1999, in Addis Ababa in which various civil society groups like NGOs, professional associations and unions, the media and other representatives of segments of the public participated and follow-up consultations were envisaged both at the regional and central levels.²²⁰ The feedback gained from the specialists, the public and civil society at large during these consultations was highly valued in terms of the contributions to the production of a well-informed legislation and the eventual creation of effective institutions to protect civil and human rights in Ethiopia. However, there was little doubt about the contribution made by the substantial input of the conference that eventually assisted in the choice, determination, mandate, working methods and type of institutions of human rights protection to be established in Ethiopia.²²¹ This being the legislative and formation history of the Ethiopian human rights commission, when we come to its mandate, it can generally be categorized as promotional and protective functions. The promotional activities will focus on raising the awareness of the public and of members of relevant institutions and civil society organizations by way of education and publicity and the protective activities will concentrate on the investigation of complaints of alleged human right violations.²²² However, just like those who are in favor of the importance of the commission in Ethiopia, there are also arguments against its establishment by underestimating its importance. Their first point of argument lies on the nature of human rights specially socio-economic and socio-cultural rights.²²³ According to these scholars, rights are claims, which must be respected/protected and enforced immediately. Nevertheless, Economic, Social and Cultural Rights are mere

²¹⁸ *Id.*

²¹⁹ *Id.* pp. 25

²²⁰ *Id.*

²²¹ *Id.*

²²² See art. 6 of proclamation 210/2000 (the proclamation that established the Ethiopian Human Rights Commission)

²²³ Ross M. Flower, *Thinking about Human Rights: contending approaches to human rights in the US foreign policy*, 1987, vol. 6. (Cited in Asfaw G/Alif, *Op. Cit.*, pp. 36.)



standards that governments strive to meet to the best of their capacity; and if these so called "*Socio-economic and socio-cultural rights*" [Emphasis added] are going to be encompassed in the concept of human rights, it would be considered as a permission for governments to act as though civil and political rights are also mere future aspirations and the logical consequence of such would be lessening the value attached to the civil and political rights.²²⁴ More on this, the realization of socio-economic rights in third world nations seems to be very far from being possible and it doesn't give any sense to classify these rights as human rights *per se*. using the words of Maurice²²⁵

"A human right, by definition, is a universal moral right some thing of which no one may be deprived with out a great affront to justice, something of which is owing to every human being simply because he is human. Consequently, economic, social and cultural rights can't be considered as rights in the same way in which civil and political rights are rights"

So, for scholars like Maurice, rights are those the enforcement of which is forthwith or immediate not time taking or progressive or dependent on the occurrence of another event. In addition to this, the exact content of the so called socio-economic rights and the corresponding state's obligation towards them is argued to be very unclear or vague and it is difficult to say that specific entitlement is guaranteed by a particular state/government or what exactly is the state's obligation towards the realization of these rights. On top of these, these rights are non-justiciable; i.e. they can't be enforced by judicial decisions.²²⁶ For these reasons, it has been argued that, the commission is not competent and can't have a jurisdiction to receive complaints of individuals that allege the violation of their socio-economic rights. Permitting such would amount to opening the door for all the Ethiopian people to come and to make the function of the commission unmanageable as all the citizens of the country would come to the commission and flood the same with dozens of complaints. In addition, taking the current economic reality of our country in to consideration, the government may not be in a position to responding all the claims of individuals who allege the violation of their socio-economic rights.²²⁷ The

²²⁴. *Id.*

²²⁵. Maurice Cranston, *What are Human Rights?* (1973), (Cited in Asfaw G/Alif, *Op. Cit.*, pp. 36.)

²²⁶. Asfaw G/Alif, *Op. Cit.*, pp. 37

²²⁷. *Id.*

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²²⁶ Asfaw G/Alif, *Op. Cit.*, pp. 37

²²⁷ *Id.*

second point of the argument against the importance of the human right commission is the already existence of institutions for the protection and enforcement of human rights either by directly applying the constitution or indirectly by making use of other subordinate statutes like the regular courts and other specialized administrative tribunals.²²⁸ They are argued to be adequate and sufficient enough machineries with the power of making binding decisions.²²⁹ Thirdly, even if it can't be denied the fact that positive actions of the government contributes much to the overall mechanism of human right protection and enforcement, its role compared with the infringement and massive violation, it makes no sense, rather, it would have been better if the government had fully respected and observed human rights by refraining from violating instead of forming/establishing the so called human right commission.²³⁰ However, with regard to these arguments that try to underestimate the role, which the Ethiopian human rights commission could play don't seem tenable to the writer of this paper. As to the first line of argument on the ground of the nature of some categories of human rights, especially socio-economic and socio-cultural rights, it is an undeniable fact that these rights can't be immediately implemented /realized like the civil and political rights. More over, there are also strong arguments that judicial enforcement is hardly possible concerning these groups of rights. Using the words of Prof. Marius Pieterse:²³¹

.....socio-economic rights typically focus in the first place on their legitimacy; i.e. whether their nature and content is suitable for constitutionalisation and secondly on whether courts are institutionally competent to enforce them. Legitimacy-based objections to the constitutionalisation of socio-economic rights typically related to the broader

²²⁸ . These specialized administrative tribunals are recognized and legally empowered by virtue of the 1995 FDRE constitution art. 37(1) and art. 78 (4). In Ethiopia currently, we have the Federal Civil service administrative tribunal under the Federal Civil Service Agency re-established by art. 74 of Procl. 515/2007 (The Federal Civil Servants Proclamation) with the power of adjudicating cases of Civil Servants. The tax appeal commission under the former ministry of revenue authorized by art. 107(1) of Procl. # 286/2002(Income Tax Proclamation) to adjudicate litigations involving tax assessment issues, the labor relation board under the ministry of labor and social affairs with the power of adjudicating collective labor disputes as per art. 147(1)/a/ and art. 142(1)/b-h/ of Procl. 377/2003 (Labor proclamation), the other tribunal is the commercial inquiry commission established by Procl. # 329/2003 under the ministry of trade and industry.

²²⁹ . Asfaw G/Alif, *Op. Cit.*, pp. 43

²³⁰ . *Id.* pp. 44

²³¹ . Marius Pieterse, *Coming to Terms with Judicial Enforcement of Socio-Economic Rights*, South African Journal of Human Rights Vol. 20/2004, pp. 389

ideological concerns on redistribution of wealth and state intervention in market economies and it has been claimed that, there fore, socio-economic rights are choice sensitive that are better left to the political rather than legal deliberation. More over, socio-economic rights are ill suited to judicial deliberation because they are positive in nature, ideologically loaded, vague and indeterminate, expensive to realize and achievable only progressively.”

Similarly, Asst. Prof. Ibrahim Idris, while expressing the position of the Ethiopian constitution, has observed:²³²

“Because of the special nature of these [Socio-Economic rights], which are in the nature of positive obligation, Ethiopia, like all other state parties to the ICESCR (International Covenant on Economic, Social and Cultural Rights) of 1966, is expected to engage in progressive implementation and not an immediate enforcement” [Emphasis added]

From the above two assertions, there fore, it might be true that socio-economic rights can't be even categorized even as rights that can be claimed rather mere directive principles of state policies.²³³ However, to begin with, the way how socio-economic and socio-cultural rights are categorized as “mere standards” is not clear and such would amount to creating undesirable hierarchy of rights that one is more important than the others. Secondly, Maurice himself recognized, in his definition of human rights, that human rights are universal moral rights the deprivation of which is an affront to justice. And as per the opinion of the writer of this paper, socio-economic and socio-cultural rights are also universal moral rights the deprivation of which is a clear violation of social and economic justice and they can be made to operate in the same way as civil and political rights and this doesn't hinder the role of the human right commission in the protection and enforcement of human rights and in such cases, the role of the commission to undertake tasks to monitor the progress being made by the government in the realization of these rights is significant. It can report on and make proposals for the removal of obstacles, which attempt to make the enforcement of such rights hardly

²³². Ibrahim Idris (Asst. Prof.), *The structure of the Human Rights Regime of the 1994 FDRE Constitution: Fundamental Rights and Freedoms*, (paper presented to the Symposium on *the role of courts in the enforcement of the Constitution* organized by the Ethiopian Civil Service college), 2001, pp. 73

²³³. Look at art. 89 and art. 90 of the FDRE constitution.

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possible. For instance, in the Republic of South Africa, pursuant to sec. 184 (3) of the 1996 constitution, the relevant organs of the state are obliged to provide the human right commission with information, on an annual basis, on the measures that they have taken towards the realization of socio-economic rights in the bill of rights concerning housing, health care, food, water, social security, education and the environment.²³⁴ In a similar fashion, art. 216 of the 1992 Ghana's constitution gave a quasi-judicial power to the commission on human rights and administrative justice to entertain human rights claims and accordingly, it has handled several cases involving socio-economic rights most of which involved the right to education.²³⁵

More over, this categorization of rights as socio-economic rights or traditionally second generation rights is proved to be fallacious now-a-days as human rights are very much interrelated, interdependent and indivisible, i.e. the violation of the socio-economic and socio-cultural rights might result in the violation and denial of the civil and political rights. If an individual is denied his/her right to food or shelter, which is social and economic rights, it is a violation of his/her civil right of life, i.e. the right to live a life of dignity. The human right commission, there fore, is required to furnish to the House of Peoples Representatives (HOPR) and to the public at large the information that would assist in bringing about the realization of these rights by supporting the government in the discharge of its obligations.²³⁶ Coming to the second line of argument against the establishment of human right commission, that is the already existing and available/easily accessible institutions like regular courts and specialized tribunals, however, it is not convincing and it doesn't have the capacity of discrediting the idea of having the human right commission, in fact it strengthens the need of having the commission. It is vital to the well-being of every society that the administration and proper enforcement of human rights should be felt to be efficient and humane when the ordinary citizen whose right is

²³⁴. John Cantius Mubangizi, *the Constitutional Protection of Socio-economic rights in selected African Countries: a comparative evaluation*, African Journal of Legal studies, vol. 2 #1 (2006), pp. 8. See also Anja Snellman, *The development of socio-economic rights jurisprudence in South Africa*, a minor field study, Orebro University, September/2002, pp. 55. See also Mitra Ebadolahi, *Using structural interdicts and the South African Human rights commission to achieve judicial enforcement of economic and social rights in South Africa*, New York University Law Review Vol. 83, pp. 1598.

²³⁵. John Cantius Mubangizi, *Op. Cit.*, pp. 17 and 18.

²³⁶. Asfaw G/Alif, *Op. Cit.*, pp. 39



violated is provided with adequate legal remedy from the ordinary justice machineries like regular courts or specialized tribunals. This being the principle, nevertheless, experience shows that these ordinary courts in the justice system are proved to be hardly inadequate and inappropriate in the field of human right protection and enforcement.²³⁷ Regular courts are said to be inappropriate for various reasons. It is a fact that courts have always been overworked. In Ethiopia, There have been and to a certain extent there is still unmanageable number of cases, which are being adjourned from time to time and pending decisions and having the factual situations of the country, the courts can't stamp out the problems they have confronted with as they are not empowered to enforce the constitutionally guaranteed and protected rights by directly interpreting and applying the constitution by way of adjudication and the being protracted and the slowness of litigations in Ethiopia also discouraged citizens from making the use of the judicial system and administration. In addition to this, regular courts are very much formal in administering justice as they strictly stick to procedural rules the non-compliance of which might result in the losing of ones substantive rights. Using the words of Gerald Caidon:²³⁸

"[C]ourts can't conduct informal investigations and are limited by rules for the production of evidence, they are confined basically, to adversary party proceeding.....and where administrative courts exist, even using procedures as informal as possible, they still follow court like adversary procedure and they frequently move slowly and there is a great delay in executing their judgments"

More over, a body staffed with personnel who have expertise of how this dignity of an individual be ensured like the human rights commission is in a relatively better position to take a leading role in the field of human rights than the ordinary courts as the human rights commission is expected to employ all the necessary experts in the field of human rights whose main function is implementing what is clearly put in the establishment proclamation, in the constitution, in the other subordinate statutes and in the international human right instruments; i.e. promoting and protecting human rights and

²³⁷. Gerald E. Caidon, *International Hand Book of the Ombudsman: Evolution and present function*, (1983), pp. 5

²³⁸. Gerald E. Caidon, *Op Cit.*, pp. 28

freedoms.²³⁹ Regular courts, on the other hand, are not well equipped with adequate specialists in the field of human rights and they only consider protecting and enforcing human rights and freedoms as one of their ordinary jobs, among other things, that they may not give it priority. Considering the third line of argument that rather than establishing an institution, it would have been best if the government simply follows a hands off policy and refrain from violating human rights and freedoms of citizens is again unacceptable. It is impossible to control and provide effective measures of punishment and deterrence on every government official in the system and individuals not to violate human rights of citizens and whether intentionally or unknowingly, it is a fact that human rights and fundamental freedoms of citizens are violated in some way or another. To argue that it would have been better for the government not to violate human rights rather than forming a commission to protect human rights seems to be "*crying for the moon or expect the impossible.*"²⁴⁰ Even in the so-called developed countries that claim to be liberal and democratic, one will be wrong if he/she concludes that there is no any kind of violation of human rights what so ever.

All in all, it was and still is believed that the establishment of the human right commission in Ethiopia is an important step to sustain the momentum of the human right movement in the country. In addition, the formation of the commission and other similar national institutions will not only enhance human rights and freedoms protection, but also help forge links between the international standards and national constitutional guarantees derived from the universal norms.

Chapter Three

Human Rights of Vulnerable groups

3.1. Definition and Types of vulnerable groups

According to Benedek and Nikolova, vulnerable groups are:

"population groups that are least involved in the exercise of public powers, have the least access to public economic resources, exert the least influence on

²³⁹. Asfaw G/Alif, *Op. Cit.*, pp. 43

²⁴⁰. *Id.* pp. 44

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distribution of public wealth, and are the least capable of maintaining subsistence and seeking self-development in a dignified manner."²⁴¹

In the manual edited by the same scholars,

*"Vulnerable groups consist of people that fall into several categories. Among them, there are people who, due to adverse economic, social and political factors, fall below the average citizen in living standard and in terms of the environment in which they live."*²⁴²

There are also people who are subject to unfair treatment or being helpless and, therefore, find it difficult to maintain subsistence and protect their own rights and can easily fall prey to harms.²⁴³ Vulnerable groups can also be defined as "*social groups in need of special legal protection.*"²⁴⁴ Because of the differences in the acquisition of social resources, these groups are subject to discrimination in person and their rights and interests are easily violable and, in social status, they are subordinate to others. A correct definition of vulnerable groups is the basis for protection of their rights, and in such a human rights sense, certain population groups often encounter discriminatory treatment or need special attention to avoid potential exploitation.

Vulnerable groups of the society need special protection and care as they are considered to be disadvantaged as compared to others mainly on account of their reduced access to any service.²⁴⁵ It has been said that human rights applies universally to all and the process of identifying vulnerable groups within the context of this universal legal rule is as much difficult as the effort to get solution for the problem. Human rights generated from the pressing reality on the ground that stemmed from the fact that there are certain groups who are vulnerable and marginalized lacking the full enjoyment of a wide range of human rights like the rights to political participation, the right to health and education etc...²⁴⁶ In general, vulnerability within the framework of human rights means deprivation of certain individuals and groups of their fundamental rights and freedoms and these groups in the society often encounter discriminatory treatment as a result of

²⁴¹ Wolfgang Benedek and Minna Nikolova (Ed.), *Op. Cit.*, pp. 126

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ Chandrima Chatterjee and Gurjan Sheoran, *Vulnerable groups in India*, (2007), pp. 1

Id.

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²⁴⁵ .

²⁴⁶ . Chandrima Chatterjee and Gunjan Sheoran, *Vulnerable groups in India*, (2007), pp. 1

Id.

which need special attention to avoid or at least minimize such a potential exploitation. This population constitutes what is referred to as vulnerable groups.²⁴⁷ In the world today, there are multiple socio-economic disadvantages that members of a particular groups experiences, which limits their access to various aspects of human rights.²⁴⁸

Be that as it may, let's come to a brief discussion about the various types of vulnerable groups recognized currently in the world. While there is an agreement that globalization has both positive and negative effects, it is less clear exactly how these negative effects exert their impact on people's lives.²⁴⁹ Whether globalization is the cause of increased vulnerability or whether vulnerability is maintained by an inability to maximize the benefits of globalization is not clear, but it is probable that both forces are at work and thus, vulnerable groups such as the elderly, the young, and the poor are already so marginalized that they can't benefit from globalization, and are increasing in numbers as globalization increases the gap between the rich and the poor.²⁵⁰ The definition and types of vulnerable groups may vary between countries, but amongst the most important defining characteristics are age, sex and ethnicity. But also important are people with disabilities and stigmatized illnesses, such as mental ill-health. In areas facing war or civil conflicts displaced people and refugees form an important vulnerable group. Based on such characteristics, in the world today, we have various types of vulnerable groups who need special protection. Women and girls, children, refugees and internally displaced persons, stateless persons and national minorities, indigenous persons and migrant workers, persons with disabilities, elderly persons and HIV positives are some.²⁵¹

3.2. The need for having special legal and institutional protection for vulnerable groups

Some strongly argue that there can be no reason for designing special legal standards and establishing special institutional machineries devoted to the promotion and protection of human rights of vulnerable groups and argue that such is not a wise use of scarce resources and that the already existing legal frameworks and institutions are

²⁴⁷ *Id.*

²⁴⁸ *Id.*, pp. 5

²⁴⁹ World Health Organization, Vulnerable groups, (internet source [http:// www. Who. Int. en](http://www.who.int/en)) accessed on 12th of June/2008, at 2 pm.

²⁵⁰ *Id.*

²⁵¹ Icelandic Human Right Center, the Human Rights Protection of Vulnerable groups, (internet source [http:// www. Human rights. is.](http://www.Humanrights.is)) accessed on 3rd January/2009, at 11 pm)

enough to ensure that violations of human rights of vulnerable groups do not occur as the aim of general human right instruments is also the protection of these vulnerable groups of their fundamental rights.²⁵² However, others believe that these groups, for various reasons, are weak, vulnerable and consequently require special attention and protection for equal and effective enjoyment of their fundamental rights.²⁵³

The main problems facing these vulnerable groups from a human rights perspective are discriminations and lack of adequate and proper special attention for their special needs. The existing international and domestic legal and institutional standards are argued to be insufficient and inadequate as the problems of these groups need more detailed, point by point type of solution, special expertise and focus. For instance, a recent report, commissioned by UNICEF on child poverty in developing countries, measured child poverty on the basis of the non-fulfillment of basic human rights and demonstrated how far we are from ensuring the rights of children around the world.²⁵⁴ The inferior status of women is entrenched in history, culture and tradition even though it can be argued that some traditions and cultures might be constructive in this regard. Through the ages, attempts were made to justify violations of women's rights to equality and enjoyment of fundamental rights.²⁵⁵ Even now, women are subject to discrimination in all stages of life; in income, education, health and participation in society and they are particularly vulnerable to specific violations such as gender-based violence, trafficking and sexual discrimination.²⁵⁶ Like wise, the members of this vulnerable group, for such reasons need to be specially protected. More on this, the reason for having such special legal and institutional frameworks may be justified as gap filler and complements the already existing international, regional and domestic legal and institutional protection system. Vulnerable groups will have a wider opportunity to exercise and enjoy their fundamental human rights as it is well protected both in the general human rights regime as well as in the specialized protection system.

²⁵². *Id.* See also Professional training series # 4, NHRI, *Op. Cit.*, pp. 36

²⁵³. Icelandic Human Right Center, *Op. Cit.*, pp. 1

²⁵⁴. Mary Robinson, *Mobilizing People to claim rights*, speech given at the conference on human rights perspectives on the millennium development goals, New York University, Center for Human rights and Global justice, New York, November/2003.

²⁵⁵. Icelandic Human Right Center, *Op. Cit.*, pp. 18

²⁵⁶. *Id.*

3.3. Fundamental Rights of vulnerable groups

The principle of non-discrimination is of the utmost importance in international law and the salient feature of the rights of vulnerable groups. Various formulations of prohibition of discrimination are contained in, for example, the UN Charter (Articles 1(3), 13(1)(b), 55(c) and 76), the Universal Declaration of Human Rights (UDHR) (Articles 2 and 7), the International Covenant on Civil and Political Rights (ICCPR) (Articles 2(1) and 26) and the Convention on the Rights of the Child (CRC) (Article 2) and Convention on the Rights of persons with Disabilities (CPD) (Article 5). Some instruments are expressly aimed at addressing specific prohibited grounds for discrimination, such as the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and other instruments aim at addressing the prohibition of discrimination in the exercise of one or several rights, such as International Labor Organization (ILO), which refers to discrimination in the exercise of the right to work (employment and occupation), and the United Nations Education, Social and Cultural Organization (UNESCO) Convention against Discrimination in Education.

A definition of discrimination is included in Article 1(1) of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), Article 1 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Article 1(1) Convention against Discrimination in Education and Art. 2 of the Convention on the Rights of persons with Disabilities (CPD). From the different concepts it is possible to conclude that the term '*discrimination*' refers to:

Any distinction, exclusion or preference, be it in law or in administrative practices or in practical relationships, between persons or groups of persons, made on the basis of race, colour, sex, religion, political opinion, nationality, social origin or physical appearance, which have the effect of nullifying or impairing the equal enjoyment of any human rights.

In general, human rights instruments require states to respect human rights and ensure that all persons within their territory and subject to their jurisdiction enjoy the guaranteed rights without distinction of any kind. Even when a state is allowed to take measures derogating from its obligations under a human rights treaty, such measures

must not be discriminatory. This being the guiding principle, today, it is well established in international human rights law that not all distinctions in treatment constitute discrimination. This is summed up by the axiom, 'persons who are equal should be treated equally and those who are different should be treated differently' ('in proportion to the inequality').²⁵⁷ As indicated by the Human Rights Committee of the ICCPR, 'the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance' and hence, there may be situations in which different treatment is justified.²⁵⁸ Although not all differences in treatment are discriminatory, and international law establishes some criteria for determining when a distinction amounts to discrimination. In a nutshell, a distinction is compatible with the principle of equality when it has an objective and reasonable justification, pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought.²⁵⁹ These requirements have been stressed by some of the major human rights supervisory bodies. For example, in the words of the Human Rights Committee: [Emphasis added]

*Not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation is reasonable and objective and if the aim is to achieve a purpose, which is legitimate under the Covenant.*²⁶⁰

As the European Court of Human Rights in the case *Marckx v. Belgium* has stated: [Emphasis added]²⁶¹

According to the Court's established case-law, a distinction is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is no a 'reasonable relationship of proportionality' between the means employed and the aim sought to be realised.

²⁵⁷. *Id.*

²⁵⁸. *Id.*

²⁵⁹. *Id.*

²⁶⁰. Human Rights Committee, General Comment No. 18

²⁶¹. Icelandic Human Right Center, *Op. Cit.*, pp. 19

In the same vein, the Inter-American Court of Human Rights has held that:
[Emphasis added]²⁶²

Accordingly, no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations, which are contrary to justice, to reason or to the nature of things. It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications to the nature of things. It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind.

Thus, differences in treatment (distinction, exclusion, restriction or preference) that comply with the criteria mentioned above are not discriminatory and do not infringe the principle of equality and non-discrimination. Furthermore, certain preferential treatment, such as the special treatment aimed at protecting pregnant women or persons with disabilities, is not considered discrimination as the purpose of the preferential treatment is to remedy systematic inequalities.²⁶³ Similarly, affirmative action, defined as measures necessary '.....to diminish or eliminate conditions, which cause or help to perpetuate discrimination' [Emphasis added] aimed to benefit historically disadvantaged groups within society, must not be considered as 'discrimination' [Emphasis added].

3.3.1. direct and indirect discrimination

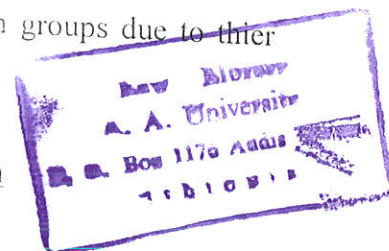
women & persons with disabilities

Any discrimination with the purpose or the effect of nullifying or impairing the equal enjoyment or exercise of rights is prohibited under the non-discrimination provisions of international human right instruments. In other words, the principle of non-

²⁶². Advisory Opinion No. 4 'Proposed amendments to the naturalisation provisions of the Constitution of Costa Rica', OC-4/84 of 19 January 1984, para. 57.

²⁶³. Icelandic Human Right Center, *Op. Cit.*, pp. 19

discrimination prohibits direct and indirect forms of discrimination. The concept of 'indirect' discrimination refers to an apparently neutral law, practice or criterion, which has been applied equally to everyone but the result of which favours one group over a more disadvantaged group.²⁶⁴ In determining the existence of indirect discrimination, it is not relevant whether or not there was intent to discriminate on any of the prohibited grounds. Rather, it is the consequence or effect of a law or action that matters.²⁶⁵ On the other hand, direct form of discrimination results from the obvious differentiation of the law or a policy having the purpose and effect of marginalizing certain groups due to their nature and social status.²⁶⁶



3.3.2. vulnerable groups and non-discrimination

The principle of non-discrimination demands that particular attention be given to vulnerable groups and individuals from such groups. In fact, the victims of discrimination tend to be the most disadvantaged groups of society. States should identify the persons or groups of persons who are most vulnerable and disadvantaged with regard to the full enjoyment of all human rights and take measures to prevent any adverse affects on them.²⁶⁷

3.3.3. affirmative actions for vulnerable groups

The concept of affirmative action has been defined as 'a coherent package of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality and to diminish or eliminate conditions, which cause or help to perpetuate discrimination'.²⁶⁸ In some circumstances, the principle of non-discrimination requires states to take affirmative action or protective measures to prevent or compensate for structural disadvantages and these measures entail special preferences, which should not be considered discriminatory, because, as has been discussed above, they are aimed at

²⁶⁴. *Id.*

²⁶⁵. *Id.*

²⁶⁶. World Health Organization, *Supra note* 256.

²⁶⁷. Icelandic Human Right Center, *Op. Cit.*, pp. 24

²⁶⁸. *Id.* See also Bossuyt, UN Doc. E/CN.4/Sub.2/2001/15.

addressing structural disadvantages or protecting particularly vulnerable groups, encouraging equal participation. Through its General Comments, the Human Rights Committee often refers to the requirement of the adoption of affirmative action and it has adopted a definition in General Comment # 18, para. 10, which reads as follows:

The Committee also wishes to point out that the principle of equality sometimes requires states parties to take affirmative action in order to diminish or eliminate conditions, which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a state where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the state should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant. Affirmative action aims to remove obstacles to the advancement of vulnerable groups such as women, minorities, indigenous peoples, refugees and disabled persons. It is important to stress that affirmative action is of a temporary character; it must not continue after its objectives have been achieved.

The mechanism of affirmative action is a vital tool within human rights law in tackling some of the historical grievances that underpin inequality in modern societies. The principle can be understood as an elevator mechanism designed to raise a particular segment of the population that is at level zero (in terms of quantifiable indicators, such as access to services, employment within the private and public sector, political participation, level of and access to education, and other civil, political, economic, social and cultural rights) to the level that the rest of the population enjoys (level one).²⁶⁹ The causes for this difference between the target group (vulnerable group) and the rest of the population i.e. 'the gap', is often the result of persistent historical discrimination backed by structural discrimination by laws and policies. However, rather than a revision of history, which is undesirable as well as impossible, an elevator mechanism accepts the

²⁶⁹. Icelandic Human Right Center, *Op. Cit.*, pp. 24

need for the focusing of specific measures aimed at the alleviation of a particular disadvantage faced by a specific vulnerable groups.²⁷⁰ Crucially, however, the mechanism can only be effective if it raises the population to level one, and not to a level higher than the rest of the population, for it would then discriminate unjustly against the other portion of the population.²⁷¹ In determining when a particular segment of population is entitled to a package of special measures, it is important to stress empirical grounds. The test to examine the claim for affirmative action should be determined by at least two factors, these are;²⁷²

- i) the existence of determinable and persistent status of inequality; and
- ii) effective articulation of the legal right to special measures by representatives.

Beneficiaries of such action often express the sentiment that the perception of availing of special measures often belittles their own achievements. Instead, they are reduced in public perception to being no more than token beneficiaries of policy rather than grants on meritorious bases. The justification for special measures, however, outweighs these.²⁷³ First and foremost, it remains an admittedly imperfect legal guarantee through which historical power relationships within the society are sought to be balanced. Second, such measures attempt to remedy social and structural discrimination. Thus, while not necessarily tackling existing prejudice, they seek to create mechanisms combating structural and institutional imbalances by way of policy and legal reform. Third, it attempts the creation of diversity or proportional group representation, by fostering new aspirations and expectations within groups with a view towards fuller participation in all aspects of public life. A fourth argument in favour of affirmative action is the social utility argument stressing that society, as a whole, is better off with all its members with the intention of reducing and avoiding unequal status.²⁷⁴ Related to this is the idea that a level of interaction between different groups in a society can calm

²⁷⁰ . *Id.*

²⁷¹ . *Id.*

²⁷² . Joshua Castellino, *General Principles of Human rights relevant to international law*, (Available at [http:// www. Human rights. is.](http://www.Humanrights.is)) accessed on 3rd January/2009, at 11 pm)

²⁷³ . *Id.*

²⁷⁴ . *Id.*

potential future social unrest by enabling means other than violence for discussions about grievances.

Chapter Four

The Ethiopian Human Rights Commission in protecting rights of vulnerable groups

4.1. Protection of children

4.1.1. Introduction

There are various justifications as to why children need special protection from the state and society. It is an undeniable fact that every child has the right to grow to adulthood in health, peace and dignity as defined in the international human rights standards. Children are vulnerable and dependent on adults for their basic needs such as food, health care and education. However, in many countries they are forced to fend for themselves, often at the cost of their full development and education. The Human Rights Watch, for instance, estimates that annually 250 million children between the ages of 5 and fourteen years engage in some form of labor often related to debt bondage, forced or compulsory labor, child prostitution, pornography or drug trafficking and according to UNICEF's report, approximately 300,000 children in more than 30 countries are currently participating in armed conflicts.²⁷⁵ This being the hard fact, what makes it worse is that these vulnerable groups of the society are believed to be the future and at the same time they have nothing through which they can express their ideas, have particular difficulty in finding and using legal remedies when their rights are breached and so on. Ethiopia is not an exception to the above mentioned flaws concerning children. Studies have, for instance, revealed that child abuse, neglect and exploitation are widely spread in Ethiopia,²⁷⁶ and specially, the major factors behind the increase of sexual abuse in the Ethiopian context are rural urban migration, poverty, high rate of unemployment, family

²⁷⁵. *Id.*

²⁷⁶. Bulti Gutema (Dr.), the situation of sexual abuse and exploitation of children in Ethiopia, paper presented to the workshop on sexual abuse and exploitation of children, Addis Ababa, December/2002, pp. 10

breakdown, natural calamities, traditional practices like early marriage and marriage by abduction, irresponsible sexual behavior of males and more importantly the low status of women and the girl child in the society.²⁷⁷ Infant mortality rate is among the highest in the world with, according to government reports, about 154 out of every 1000 Ethiopian children are not living beyond the age of five; at least 2/3rds of under five's are severely wasted or stunted: desperate poverty affected millions; access to adequate food and shelter is denied to a majority of children; only 18% of children have access to clean water, it appears only about a third of the age groups are in primary education; 10% or less are in any form of secondary education, basic health services are available to only a small proportion of children and immunization coverage seems to improve steadily but remains very low.²⁷⁸ Considering all the above mentioned facts, no one would dare to question the relevance and timeliness of the 1989 Convention on the Rights of the Child (CRC) and its proper implementation/enforcement.²⁷⁹ Among the various strategies for the realization of all the principles and standards enshrined in the convention, one is the establishment of a children's rights unit in a domestic human right institution or else, the establishment of independent children's ombudspersons or commissions. This has been affirmed by the committee on the rights of the child in its general comment # 2 by stating:

"Art. 4 of the Convention on the Rights of the Child obliges States parties to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention." Independent national human right institutions are an important mechanism to promote and ensure the implementation of the convention, and the committee on the rights of the child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the

²⁷⁷ *Id.*, pp. 11

²⁷⁸ Peter Newell, *The place of child rights in a human rights and ombudsman system*, in L.F.M. Besselink and H/Selassie G/Selassie *et al.* (Ed.) *Op Cit*, pp. 134

²⁷⁹ This doesn't, however, mean that there was no effort taken by the international community to protect the interests and rights of children before the coming of the convention as we did have the 1924 Geneva declaration of the rights of the child and the 1959 declaration on the rights of the child adopted by the GA of the UN, which paved the way for the coming of the first ever binding legal instrument, the UNCRC (UN Convention on the Rights of the Child) in 1989.

breakdown, natural calamities, traditional practices like early marriage and marriage by abduction, irresponsible sexual behavior of males and more importantly the low status of women and the girl child in the society.²⁷⁷ Infant mortality rate is among the highest in the world with, according to government reports, about 154 out of every 1000 Ethiopian children are not living beyond the age of five; at least 2/3rds of under five's are severely wasted or stunted: desperate poverty affected millions; access to adequate food and shelter is denied to a majority of children; only 18% of children have access to clean water, it appears only about a third of the age groups are in primary education; 10% or less are in any form of secondary education, basic health services are available to only a small proportion of children and immunization coverage seems to improve steadily but remains very low.²⁷⁸ Considering all the above mentioned facts, no one would dare to question the relevance and timeliness of the 1989 Convention on the Rights of the Child (CRC) and its proper implementation/enforcement.²⁷⁹ Among the various strategies for the realization of all the principles and standards enshrined in the convention, one is the establishment of a children's rights unit in a domestic human right institution or else, the establishment of independent children's ombudspersons or commissions. This has been affirmed by the committee on the rights of the child in its general comment # 2 by stating:

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²⁷⁷. *Id.*, pp. 11

²⁷⁸. Peter Newell, *The place of child rights in a human rights and ombudsman system*, in L.F.M. Besselink and H/Selassie G/Selassie *et al.* (Ed.) *Op Cit*, pp. 134

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convention and advance the universal realization of children's rights. In this regard, the committee has welcomed the establishment of national human right institutions and children's ombudspersons, children's commissioners and similar independent bodies for the promotion and monitoring of the implementation of the convention in a number of States parties."²⁸⁰

The committee issued this general comment in order to encourage States parties to establish an independent institution, according to the Paris principles, for the promotion and monitoring of the implementation of the convention and to support them in this regard by elaborating the essential elements of such institutions and the activities, which should be carried out by them and if these institutions have been already established, the committee calls upon States to review their status and effectiveness for promoting and protecting children's rights.²⁸¹ The first attempt to create a channel to safe guard the rights of children was the model of a Non-Governmental Organization (NGO) ombudsman for children established by save the children, Sweden, in the 1970s.²⁸² In 1981, Norway became the first government to set up an independent ombudsman for children through legislation.²⁸³ Nowadays, from the establishment of national human rights institutions and making the case of children as one of their functions, the international trend is shifting to a new paradigm; i.e. the establishment of independent children's commissions and ombudspersons.²⁸⁴

²⁸⁰. General Comment No. 2: The role of independent national human rights institutions, CRC/GC/2002/2, Para., pp. 7

²⁸¹. *Id.*, Para. 2

²⁸². Nigel Cantwell (Ed.), *Op. Cit.*, pp. 3

²⁸³. *Id.*

²⁸⁴. For instance, we have Austria in 1989, Belgium in 1997 for the Flemish community and in 1991 for the French community, Canada in 1987, Iceland in 1995, France in 2000, Italy in 2001, Portugal in 1975, Ireland in 2001 and New Zealand in 1989 from Europe and Oceania; Denmark in 1994, Sweden in 1993 and Norway in 1981 from Scandinavians, Guatemala in 1990, Bolivia in 1998, and Costa Rica in 1993 from Latin America, Russian federation in 1998, former part of Yugoslavia, the republic of Macedonia in 1999, Ukraine in 1998 and Romania in 1997 from east Asia, the state of Israel from the middle east and the republic of South Africa in 1995. See Peter Newell, *Op. Cit.*, pp. 142; See also Eliza Pozza Tasca, Human Rights and the child: From the New York convention to the institution of the ombudsman, in L.F.M. Besselink and H/Selassie G/Selassie *et al.* (Ed.) *Op Cit*, pp. 149

4.1.2. Types of institutions for children's protection

As the number of institutions to protect the rights of children grows, there has been debate over the potential benefits of integrated institutions as opposed to separate/specialized institutions dedicated to the rights of children.²⁸⁵ Some human rights institutions have appointed a children's rights commissioner to work exclusively with children or include children with a broad mandate. Spain, Nicaragua, Northern Ireland, Australia, Hungary, Colombia and the Philippines are some of the countries that adopt such an integrated approach.²⁸⁶ Others particularly although not exclusively in Europe have been established specific institution to protect and promote the rights of children. The Swedish children's Ombudsman *Barnombudsmannen*, the Norwegian children's ombudsman *Barneombudet*, the Denmark National Council for Children *Borneradet*, the Austrian Federal Children's Ombudsman *Kinder & Jugend Anwaltschaft Des Bundes*, the Belgian children's rights commissioner for the Flemish and the General Delegate for the rights of children (*Delegue general aux droits de l'enfant de la Communaute francaise de Belgique*) for the French community, and the Russian Federation that established independent commissions for children in five different cities are some of the best instances to adopt such a separated/specialized approach.²⁸⁷ In fact, both models have their own pros and cons.

A. advantages of specialized institutions

1. It can provide an exclusive focus on children, ensuring that their concerns are not by-passed by adult agendas as there is a possible risk that children would receive low priority and low visibility within an integrated body.
2. It can promote it self directly to children. This is very essential if it is to be effective in promoting their rights, as it must be visible in their world. This can be done by way of educating the children, training the teachers, and the like...
3. Conflicts often arise between the rights of children and adults-for example, in respect of arrangements following divorce, use of physical punishment or

²⁸⁵ Nigel Cantwell (Ed.), *Op. Cit.*, pp. 9

²⁸⁶ *Id.*

²⁸⁷ *Id.*

arranged marriages.²⁸⁸ A specialized institution, on the other hand, would have a clear responsibility to promote children's rights in any such conflict. In addition, in an integrated body, it might be difficult to ensure a dedicated focus on the rights of children, rather than the rights of adults.²⁸⁹

4. Many abuses of child rights are perpetrated not by the state but by the adults who have the responsibility for children like parents, teachers, and residential workers. A specialized institution needs an explicit mandate to respond to such abuses; but if it is primarily focused on abuse of adult rights by the state, it may be poorly equipped to protect children's rights.²⁹⁰

B. advantages of integrated institutions

1. Integration promotes the recognition that children, like adults, are subjects of rights and have equal rights to protection. It is possible that a separate institution for children will be marginalized, with lower status than a mainstream human rights institution.
2. An integrated institution may present greater opportunity for cooperation between bodies representing the rights of different groups. Many of the issues that need to be addressed for children may benefit from the expertise like of a race commissioner or a disability commissioner working along side a children's commissioner.²⁹¹
3. Where resources are scarce, it may be more feasible to press for one integrated body than to seek funding for a separate institution for children.²⁹²
4. A broad-based human right commission bringing together commissioners representing the breadth of human rights issues can operate as a more powerful body to promote a culture of respect for human rights.²⁹³

²⁸⁸ Flekkoy, M., *A voice for children: Speaking out as their ombudsman*, London, 1991, pp. 34

²⁸⁹ *Id.*

²⁹⁰ *Id.* See also Nigel Cantwell (Ed.), *Op. Cit.*, pp. 10

²⁹¹ Nigel Cantwell (Ed.), *Op. Cit.*, pp. 10

²⁹² *Id.*

²⁹³ *Id.*

In fact, there is no significant evidence neither is there agreement that one model is more effective than the other.²⁹⁴ What is clear, however, is that children need independent bodies, either in a form of a unit in the integrated system or else by having a separate and independent organ, advocating for their human rights as their problems are wide in number, nature, content and for reasons of focus and expertise. Nevertheless, according to some scholars, if children's rights are to be represented within an integrated institution, the following conditions must prevail.²⁹⁵

- A. There must be a specific post dedicated solely to children and with its own budget from the commission. If the rights of children are subsumed under the responsibilities of a general human rights brief without such a post, there is believed to be a considerable risk that children would lose out in budget allocation and breakdown, time and profile.
- B. The children's commissioner or ombudsman must have the freedom and independence to provide services directly for children. Publicity, leaflets and media campaigns to raise awareness of the existence and role of the institution need to be targeted expressly at children so that children and their representatives start to make use of these institutions to realize their rights.
- C. The activities and priorities of the children's commissioner or ombudsman must be influenced by children's interest. It must be sufficiently free to respond to the priorities of children without being constrained by the pre-determined agenda of the broader institution, and
- D. The children's commissioner or ombudsman, and indeed the institution as a whole, must be strengthened to act in respect of every human rights standard to which their government is a signatory.

The other point worth mentioning here in relation with types of institutions for children's protection is the establishment of National or Regional institutions.²⁹⁶ In some countries, one national institution has been established for children-for example in

²⁹⁴ *Id.*

²⁹⁵ Rosenbaum, M., *Children and the Environment*, National Children's Bureau, 1993, pp. 29

²⁹⁶ Nigel Cantwell (Ed.), *Op. Cit.*, pp. 10

Iceland, France, Sweden, and Norway.²⁹⁷ In others like Austria, Australia, Spain, Belgium and Russian Federation there are both national and regional bodies and in a few there are bodies that operate within different regions or states. In Belgium, for instance, there is children's rights commissioner in both the Flemish and French communities and the Russian Federation has appointed commissioners in five city regions.²⁹⁸ The model adopted will depend on a range of factors including population size, whether the country has a federal structure, political will at a national or regional level and the available resources.²⁹⁹ It is important to ensure that, where there are only regional bodies, they are empowered to address issues at every relevant level. In many countries, key issues affecting children are determined at federal level such as social security, immigration legislation and justice.³⁰⁰

4.1.3. Aims and functions of independent Institutions for children's rights

The main aim is to monitor and ensure that governments promote and protect the human rights of children in accordance with their obligations under the Convention of the Rights of the Child (CRC) of 1989. Beyond that, individual institutions in different countries inevitably vary in their mandate and priorities depending on the existing structures, the historical context, the particular political situation and the situation of the children. Nevertheless, most scholars agree that existing institutions cover the following points as their cardinal aims:³⁰¹

- i. Promoting a high priority for children, in central, regional or local governments and in civil society and improving public attitudes to children with regard to the relevance of children's rights like corporeal punishment, child labor, exploitation and neglect,
- ii. Prompting effective coordination of government organs working in the area of children's rights and welfare at all levels;

²⁹⁷. *Id.*

²⁹⁸. *Id.*

²⁹⁹. *Id.*

³⁰⁰. *Id.*

³⁰¹. Rosenbaum, M., *Op. Cit.*, pp. 30. See also Nigel Cantwell (Ed.), *Op. Cit.*, pp. 4

- iii. Promoting effective use of resources for children like by way of constructing and running public schools;
- iv. Providing a channel for children's views and encouraging government and the public to give proper respect to children's views;
- v. Collecting and publishing data on the situation of children and encouraging the government to collect and publish adequate data;
- vi. Promoting awareness of the human rights of children among children and adults;
- vii. Conducting investigations and undertaking or encouraging researches;
- viii. Reviewing children's access to and the effectiveness of all forms of advocacy and complaints system like in institutions and schools and ensuring children's access to the courts; and
- ix. Responding to individual complaints from children or those representing children and initiating or supporting legal action on behalf of children where appropriate.

All in all, the above mentioned particular aims for the institution will need to reflect the country's situation and the extent to which these aims are fulfilled by existing organizations. These aims, which are believed to be broadly consistent with the Paris principles, can be translated in to action through four key functions.³⁰² These are:

1. Influencing policy makers and practitioners to take greater account of the human rights of children. If a human rights institution is to advocate for children's rights, it must identify and highlight ways in which current laws, policies and practices fail to respect those rights and propose measures to address those failures. Principles enshrined in the CRC provide the international standards for this process in most cases, along side the other international human rights instruments to which the government is a signatory. The CRC, being a comprehensive instrument addressing not only civil and political rights but also socio-economic and socio-cultural rights, the protection of all these rights would need to be incorporated in to the mandate of the institution.³⁰³ In particular, the CRC

³⁰². Nigel Cantwell (Ed.), *Op. Cit.*, pp. 4

³⁰³. Rosenbaum, M., *Op. Cit.*, pp. 29

committee has identified four basic principles that must inform the analysis and implementation of all other rights; these are

- Art. 2-all rights must apply to all children without discrimination of any kind; (the principle of Non-Discrimination)
- Art. 3-the best interests of the child must be a primary consideration in all action affecting children;
- Art. 6-children have the right to life and to survival and development to the maximum degree possible; and
- Art. 12-the right to express their views freely on all matters of concern to them and to have those views taken seriously.

Any institution needs to consider how well these four principles are being translated in to reality for all children in the exercise of all their rights and any institution could promote respect for these rights through analyzing the existing laws, policies and practices to assess compliance with the CRC, by undertaking inquiries and producing reports on any aspect of policy or practice affecting children, by commenting on proposed new legislations, and by undertaking formal investigations upon complaint.³⁰⁴

2. Promoting respect for the views of children. Art. 12 of the CRC embodies the principle that children have the right to express their views and to have those views taken seriously in all matters affecting them. The right to be heard is a procedural right that is fundamental to the exercise of substantive rights, applying to decisions that affect individual children and to matters that affect them as a group.³⁰⁵ Human rights institutions for children have a clear responsibility to promote the proper implementation of Art. 12 of the CRC by:

- ensuring that government's work is directly informed by the interests of children in order to reflect their wishes through using various approaches;

³⁰⁴. Nigel Cantwell (Ed.), *Op. Cit.*, pp. 5

³⁰⁵. *Id.*

- ensuring that the interests of children are reflected in proposals presented to the government, reports, responses to government initiatives, research priorities and strategies for dissemination;
- establishing structures through which children's interests could be directly and effectively represented to other bodies;
- Monitoring compliance with Art. 12 of the CRC in respect of all aspects of children's lives such as in education, in the family, in local municipalities, in decisions relating to health care and promoting the necessary legal reform to ensure its effective implementation;
- Promoting and disseminating models of good practice and guidance, if there is any, in implementing Art. 12 of the CRC; and
- Providing a source of expertise and support to governments in developing more effective mechanisms for promoting children's active participation in government at both local and national level.³⁰⁶

Some also would strongly argue that the right to be heard has the element of cogent expression and a considered rational assessment of strategies and goals. Therefore, this right can't be appropriately applied by children. However, the answer for this argument is crystal clear that this is the main reason why we need an institution to advocate for and realize the rights of children and we can still apply it by making the institution accessible to children.

3. Raising awareness of child rights among children and adults. Rights have little relevance if no body knows about them or understands them and raising awareness is an integral part of the process of enhancing respect for human rights.³⁰⁷ Protective legislation and enforcement mechanisms alone are not sufficient to create a culture of respect for human rights.³⁰⁸ Art. 12 of the CRC places an obligation on governments to make provisions concerning children

³⁰⁶ *Id.*, pp. 6

³⁰⁷ Woll, Lisa, *The convention on the rights of the child; impact study*, Save the Children, Stockholm, Sweden, 2000, pp. 36

³⁰⁸ *id.*

known to adults and children alike by appropriate and active means.³⁰⁹ The CRC committee consistently presses governments to disseminate information about the convention's principles and standards to every section of the population and human rights institutions for children let both children and adults know that child rights exist, explaining how those rights can be enforced, why those rights are important and create respect for the rights of others.³¹⁰ There are many activities that the institution could undertake to promote human rights like producing and disseminating information about children's rights, compiling and analyzing data on children, incorporating human rights in to the school curriculum, using the media, training professionals, using different occasional events to increase awareness and collaborating with local and international Non-Governmental Organizations (NGOs) that work in the same area.³¹¹

4. Ensuring that children have effective means of redress when their rights are violated. Children must have access to mechanisms for challenging violations of their rights and one of the most important functions of a human rights institution for children must be to ensure that such access exists.³¹² There is no one way to achieve this objective, but there are two general models that have evolved among the institutions that already fulfill this role.³¹³ The first one is *institutions that advocate for individual children*. Some ombudsman or commissioners for children do take up individual cases of complaint alongside their other functions. For instance, the Norwegian Ombudsman has the power to take up individual cases although it can't act on complaints between children and parents or cases that are already the subject of legal proceedings.³¹⁴ Similarly, both the Flemish and French commissioners in Belgium, the New Zealand commissioner, the Nicaragua sub-commission for human rights of children and adolescents and the Russian ombudsman in the city of *Ekaterinberg* are empowered to take up

³⁰⁹. R. Hodgkin and P. Newel, Article 12. Implementation Handbook on the Convention on the Rights of the Child, UNICEF, New York, 1998, pp. 19

³¹⁰. *Id.*

³¹¹. Nigel Cantwell (Ed.), *Op. Cit.*, pp. 6

³¹². *Id.*, pp. 7

³¹³. *Id.*

³¹⁴. *Id.*

individual complaints.³¹⁵ The second model is *institutions that advocate for children as a group*. Such institutions encompass a broad remit to promote the rights of children as a group, rather than receive individual complaints.³¹⁶ In Sweden, for example, the ombudsman has no statutory powers to intervene in individual cases, instead, the office is expected to act as a general spokesperson for children, to promote the needs, rights and interests of children and ensure that the government lives up to its obligations under the CRC.³¹⁷ The Icelandic ombudsman has a similar brief to improve the position of children in society and defend their rights and interests, to this end, the office is expected to propose reforms to policy and legislation to promote compliance with the convention and the Danish national council for children also has a broad remit to promote the rights of children, but is specifically precluded from taking up individual complaints.³¹⁸ All human rights institutions operate with limited financial and human resources and it is important to decide how those limited resources can be mobilized to best effect. For example, a commitment to undertaking individual case work may leave the institution with no time to fulfill its broader advocacy agenda and efforts might be better targeted in pressing for localized complaints mechanisms.³¹⁹ Nevertheless, it is important to note that every institution has the ability to investigate individual cases where an important principle is at stake, or where there is no way in which a child can achieve justice. Even where an institution itself doesn't have a general mandate to respond to individual complaints, it is imperative that it plays a part in ensuring that mechanisms exist to challenge individual violations of children's rights by way of monitoring the availability, effectiveness and usage of complaint procedures that already exist, by way of identifying gaps in the provisions of the complaint procedures or by way of analyzing the findings from children's complaints to identify patterns of

³¹⁵. *Id.*

³¹⁶. Woll, Lisa, *Op. Cit.*, pp. 40

³¹⁷. Nigel Cantwell (Ed.), *Op. Cit.*, pp. 7

³¹⁸. Rosenbaum, M., *Op. Cit.*, pp. 35

³¹⁹. Nigel Cantwell (Ed.), *Op. Cit.*, pp. 7

concern and feed these patterns in to policy proposals and recommendations for change.³²⁰

4.1.4. Challenges on and prospects for independent institutions for children

Despite the growing support for and significance of independent human rights institutions or units for the promotion and protection of children's rights, there are still some that are not persuaded about the case.³²¹ Indeed, public opinion may also be resistant to the idea and there is a consistent body of arguments used to oppose the establishment of such institutions and awareness of these is crucial to the formulations of counter-arguments.

- The first line of argument posed against the idea of having an independent institution or unit to protect and promote children's rights is that it would create an unnecessary level of bureaucracy and bureaucracy by its very nature is proved to be unworkable. Nevertheless, this argument fails to understand the nature of the institution as it views it as another tier of government that would delay and complicate the process of decision-making.³²² However, a human rights institution for children would not be part of government as it would operate independently with clearly defined powers and duties and the central function would be to propose how existing bureaucracies can work together more effectively for children.³²³ This, however, doesn't mean that the institution is accountable to no body as independence and accountability are two flips of the same coin. The institution is independent in the sense that it will neither be accountable to nor controlled by the executive branch of the government and the only legitimate organ that may supervise its activities is the law making body, which at least is deemed to directly be elected by the people.

³²⁰ . *Id.*

³²¹ . As evidenced by the number of governments, which have as yet failed to do so, until the year 2001, only 30 countries have established fully independent bodies. (See Nigel Cantwell (Ed.), *Op. Cit.*, pp. 12 and pp. 26.)

³²² . Nigel Cantwell (Ed.), *Op. Cit.*, pp. 12

³²³ . *Id.*

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³²² Nigel Cantwell (Ed.), *Op. Cit.*, pp. 12

³²³ *Id.*

9 The second line of argument is that it is the government's responsibility to implement the child's rights convention and it shouldn't create a separate body to do its work. It is agreed that the government has the constitutional power to ratify international human rights treaties and it is the government's task also to implement the principles and standards of the CRC and other related instruments.³²⁴ The role of the independent institution for the children's rights is not to carry out the government's responsibility but to monitor how well the government is actually fulfilling that responsibility.³²⁵ It would identify areas where it is failing to comply and the changes to law, policy and practice that are needed to protect children's rights more effectively. It would play an important role in helping the government to fulfill its obligations, and it would seek to ensure that children's own views and experiences are heard by the government.³²⁶ In addition, it would serve as a resource, advising the government on the human rights of children, providing training and information, promoting a culture of human rights and helping to anticipate potential areas of public policy likely to harm or impede the exercise of children's rights.³²⁷

o The third challenge lies on the argument that instead of an independent institution, it would be better to form a minister for children. But, the two functions are entirely different though complementary to some extent. A minister for children with responsibility for implementing a children's strategy would be part of executive branch of the government, which tries to carry out the government's agenda.³²⁸ The independent institution, on the other hand, would be out side this branch of the government, providing an advocacy function in respect of children and not only would its remit include promoting and monitoring government's compliance with children's rights, but it would also investigate abuses of rights and taking a proper course of action and promote effective access to complaints procedure.³²⁹ Since, these are not functions that can be undertaken by government

³²⁴ . *Id.*

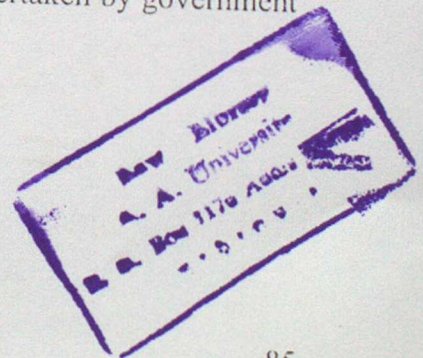
³²⁵ . *Id.*

³²⁶ . *Id.*

³²⁷ . *Id.*

³²⁸ . Rosenbaum, M., *Op. Cit.*, pp. 35

³²⁹ . *Id.* pp. 41



executive organs, the establishment of independent organs/units for children is imperative.

- The fourth challenge comes from the idea that the money/budget would be better spent on services for children. It is true that there is a strong emotive appeal to directing the maximum possible resources to services on the ground, particularly when those services are seriously under-funded and desperately needed.³³⁰ However, services provided for children are often badly coordinated, overlapping and inconsistent and many services are targeted at picking up the pieces once a problem has arisen rather than preventing the problem in the first place.³³¹ The costs of a human rights institution for children would be tiny compared to the costs of failing to protect children like mental illness, emergency child protection services and the significant costs of juvenile crime.³³² Part of the institution's role would be to help the government anticipate and prevent the abuses of children's rights that often lead to long-term difficulties. Certainly, the experience in those countries where they have been established has been that they can be cost-effective in promoting laws, policies and practice that improve children's lives.³³³
- The fifth challenge comes from the fact that there are many Non-Governmental Organizations (NGOs) already working for children that are independent from government. In fact, NGOs fulfill an important role for children but they have none of the statutory powers and duties that an independent human rights institution for children would hold.³³⁴ They can't undertake formal investigations, they have no powers to report annually to parliament on the state of children's lives and they have no right to be consulted on proposed policy or legislation.³³⁵ Many are primarily focused on providing services for children, rather than

³³⁰ Woll, Lisa, *Op. Cit.*, pp.29

³³¹ One of the most common subjects of concern raised by the CRC committee, in its concluding observations on state parties' initial reports is the lack of coordination within government with its consequent negative impact on implementation of the convention. See generally, R. Hodgkin and P. Newel, *Article 4, Implementation Hand Book on the Convention on the Rights of the Child*, 1998, UNICEF, New York, pp. 52

³³² Nigel Cantwell (Ed.), *Op. Cit.*, pp. 12

³³³ See the inquiry in to the role and function of the children's ombudsman in Sweden: Summary, Swedish Government official report No. 1999: 65, 1999 (Cited in Nigel Cantwell (Ed.), *Op. Cit.*, pp. 26)

³³⁴ Nigel Cantwell (Ed.), *Op. Cit.*, pp. 12

³³⁵ *Id.*

advocating for implementation of their rights and even where they do have an advocacy function; it is often the case that individual organizations have specific priorities in a particular field, such as homelessness, disability or juvenile justice, and do not have a remit to act across the spectrum of rights embodied in the CRC.³³⁶ It is significant that in many countries, NGOs are strong advocates for the creation of independent human rights institutions for children and this might be considered as a clear indication that the proposed functions are not carried out by the existing bodies alone.³³⁷

- The other challenge raises the question as to why do children need a special body. What about other groups such as women, people with disabilities and the elderly? It is true that every body needs independent institutions that will promote and protect their rights. But children are more vulnerable due to their nature of being children and have, there fore, a genuine claim to priority as they are such a group who can't vote, have no access to the justice system and the media and are particularly vulnerable to the power of the adults who have responsibility for them.³³⁸ They often lack the means to exercise their rights and need powerful advocates if their rights and interests are not to lose out to the interests of others.³³⁹
- The next challenging point on the significance of independent institutions for children is the problem of parental responsibility and unnecessary interference in such private relationship. Of course, parents are responsible for their children. But the government plays a very significant role in the lives of children by way of legislating for and funding education, tackling environmental pollution, providing health care services, introducing immunization programs and seeking to reduce youth crime and the like.³⁴⁰ A human rights institution for children would have a role to play in monitoring how far these services respect the rights and interests of children and the fact that children have rights within the family must not be

³³⁶ . *Id.* pp. 13

³³⁷ . *Id.*

³³⁸ . R. Hodgkin and P. Newel, *Op. Cit.*, pp. 54

³³⁹ . *Id.*

³⁴⁰ . *Id.*

forgotten.³⁴¹ The CRC requires that governments should support parents and enable them to protect and promote the rights of their own children.³⁴² But, sadly, parents do not always act in the best interest of children and the CRC also places clear obligations on governments to protect children whose parents are not protecting those rights or are actively violating them.³⁴³ The institution, on the other hand, would promote legislation that provides adequate protection to children in families, backed up by services and resources for effective implementation.³⁴⁴

- The other challenge seems to be more philosophical. Adherents of this idea strongly insist on the fact that children have needs not rights meaning they don't have rights in the strict sense of the term that they can't claim it from others; rather others may fulfill the interest of children.³⁴⁵ This argument has also its supporters even here in Ethiopia. For instance, an NGO engaged in working in this area affirmed that it has adopted a welfare-based approach in order to fulfill the needs of children rather than following a right-based approach that every thing must be looked at from the perspective of human rights,³⁴⁶ and according to the official of this NGO, in least developed countries of the third world like Ethiopia, Civil Societies working for the well being of children and the government must be able to work for these vulnerable groups by identifying their needs not because they have rights that they can claim it but due to the mere fact of making them ready to take up the next generation's responsibility.³⁴⁷ Nevertheless, this NGO doesn't deny and relegate the significance of the UNCRC and other international legal standards on children's rights and the vision of the NGO clearly states that it intends to see the rights of Ethiopian children respected by the society, this can be done not by enabling them to claim their rights directly, but by discharging our

³⁴¹ Rosenbaum, M., *Op. Cit.*, pp. 35

³⁴² See Art. 18 of the Convention on the Rights of the Child (CRC) of 1989.

³⁴³ Nigel Cantwell (Ed.), *Op. Cit.*, pp. 13

³⁴⁴ *Id.*

³⁴⁵ Woll, Lisa, *Op. Cit.*, pp.38

³⁴⁶ Interview with Ato Meseret Taddese, Executive Director of *Forum on Street Children Ethiopia*, held on January 31st/2009 at his office at about 11:00 A.M

³⁴⁷ *Id.*

obligation and making others to discharge theirs.³⁴⁸ Even if we would hold the same argument that children have needs not rights, this can't be considered as a problem that the institution is obliged to fulfill their needs and supervise and control the government to do the same. In addition to that, it is internationally accepted that every one has human rights, which includes children, and governments having ratified the CRC, have an obligation to respect those rights. True that children have needs, but they have an over-arching right to have those needs met.³⁴⁹ Children, for example, need to be able to play as part of their healthy development and growth—a right recognized in the CRC, but that right can only be fulfilled if backed by legislation limiting ages, hours and conditions of work and education, through the development of safe and healthy environment, the availability of decent housing and provision of appropriate facilities and resources. Human rights institutions can, therefore, play an important part in pressing governments to fulfill their obligations to all children.

- The other challenge poses the question as to why should a government set up a body that will only exist to attack the government itself. This argument, however, misunderstands the nature of human rights institution in general. Of course, any institution established to promote and protect human rights, will at times, need to criticize government action or inaction, which is the whole point of democracy and effective protection and enforcement of human rights and in fact, the commission should be enabled to criticize the government as it would help to develop a culture/tradition of human rights protection. However, it will also have a role to play in advising and assisting the government as well. It can, for instance, advise the government on the drafting of proposed legislation, provide advice on policy or administration of public services like health and social security.³⁵⁰ It can provide guidance to local and municipal authorities on the implementation of children's rights and it can provide assistance in the implementation of all relevant international human rights standards.³⁵¹ The

³⁴⁸ . *Id.*

³⁴⁹ . Nigel Cantwell (Ed.), *Op. Cit.*, pp. 13

³⁵⁰ . *Id.*, pp. 14

³⁵¹ . *Id.*

existence of an effective human rights institution can reduce the costs to governments that are associated with failure to protect children's rights.

- The last challenge is all about the non existence of tradition or culture of having such type of institutions. Supporters of this view strongly argue that some societies have no tradition of having separate and independent institutions for children.³⁵² Certainly, the concept of independent human rights institutions is a relatively recent one for many countries, particularly for new and emerging democracies. However, one central feature of a democratic society is that the government is accountable to its people and this accountability is established through a free press, access to the courts, a transparent political process and independent bodies empowered to protect human rights,³⁵³ and it is a mark of confidence and good will on the part of a government that it is prepared to establish a body that helps it to meet its human rights obligations and challenge it when it fails to do so.³⁵⁴ More over, The CRC obliges every ratifying state to question its traditional attitudes towards children and there is a need for dedicated institutions with the expertise to facilitate that process.

4.1.5. Children's rights protection and the Ethiopian Human Rights Commission

Having a good back ground on the idea and relevance of independent human rights institutions/units for children, let us see the situation in this area in the Ethiopian human rights regime currently. To start from the constitution, under art. 36, it is clearly stated that every child has the right to live in dignity, the right to have a name and nationality, the right to know and to get a good care by his/her parents or legal guardians, the right not to be subject to exploitive practices like sexual abuses and exploitation, child labor, child trafficking and the like, and the right to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of the children.³⁵⁵ On the other hand, the duty bearer, be it a government or a private entity, is expected to discharge some obligations towards children that all actions concerning

³⁵². *Id.*

³⁵³. *Id.*

³⁵⁴. *Id.*

³⁵⁵. See Art. 36 (1) a-e of the constitution of the Federal Democratic Republic of Ethiopia (FDRE) of 1995.

children must take the best interest of the child in to their consideration that this cardinal principle must be prioritized and the state, in particular, is obliged to accord special protection to orphans and shall encourage the establishment of institutions, which ensure and promote their adoption as one of the mechanisms/options and advance their (the children's) welfare and education.³⁵⁶ With this as a guideline, in November, 1996 E.C., the Ethiopian government through one of its organs; i.e. the Ministry of Labor and Social Affairs (MOLSA), issued a comprehensive developmental and social welfare policy one of whose focus is the welfare of children. The policy puts 10 points as its areas of focus concerning child welfare, these are:

1. appropriate and comprehensive care and services shall be extended to children so as to ensure their all round and harmonious development;
2. conditions shall be facilitated where by children in Ethiopia will be enabled to develop a sense of identity and belonging and thus grow up to be self-confident citizens;
3. all efforts shall be made to implement all international and regional conventions and legal instruments concerning the rights of children, which Ethiopia has already acceded to;
4. all necessary effort shall be made to eliminate harmful traditional practices with regard to child-rearing;
5. the necessary support and incentives shall be provided to the effort in the expansion of child-development-oriented day care centers, kindergartens and other services;
6. any effort that is being made towards the establishment and operation of child welfare and development organizations and services by appropriate organs of government, communities, non-governmental agencies, voluntary associations and individuals shall be given support;
7. every effort shall be made to create an environment conducive to addressing problems of children in especially difficult circumstances;

³⁵⁶ *Id.*, art. 36(2), (3) and (5).

8. conditions that will enable orphaned and abandoned children to get the assistance they need and to eventually be self-sufficient shall be facilitated;
9. effort shall be made to find appropriate and effective ways and means of dealing with the problems of children with physical and mental impairments; and
10. All efforts shall be made to provide protection against child abuse and neglect.³⁵⁷

In addition to setting these policy objectives and visions of the government on the overall welfare of children from the perspective of their rights, it also sets forth as to how these policy objectives will be implemented and the role of the concerned stake holders by stating, among other things:

*“Relevant governmental organizations, other than the Federal and Regional offices of labor and social affairs, Non-Governmental Organizations will participate in the follow-up and evaluation exercises related to social welfare and are inline with their mandates and responsibilities.”*³⁵⁸

More over, the same policy document stipulated that since the issues included in this policy are multi-sectoral in nature, they need to be implemented in collaboration with various relevant bodies. On the other hand, it is well known that there is no organizational structure for social welfare activities at community grassroots' level.³⁵⁹ Two main and important points can be identified from this policy document with respect to institutional arrangements to implement it. One is that the document strongly emphasized on the fact that institutions can play a vital role as they are the one that can bring the policies and laws to the ground and the other one is that collaboration between the private sector and the government is significant as the government institutions alone can do nothing with out the active involvement of the private sector.

Along side with the constitution and the policy that I've tried to mention above, there are also parliamentary statutes enacted for the sole purpose of implementing international human rights instruments like the UNCRC and other general bill of rights,

³⁵⁷. Ministry of Labor and Social Affairs (MOLSA), *Developmental Social Welfare Policy*, November/1996, A.A., Ethiopia, pp. 67 & 68

³⁵⁸. *Id.*, pp. 91

³⁵⁹. *Id.*

the constitution and the policy. For instance, the Revised Family Code of 2000 tries to protect the interest and rights of the child at different times like during ascertainment of paternity and maternity, adoption and during the appointment of guardian and tutor and post-divorce custody of children.³⁶⁰ In the Revised Criminal Code of 2004, similarly there are a lot of provisions criminalizing acts, which constitutes violation of children's rights like corporal punishment,³⁶¹ children's trafficking,³⁶² infanticide,³⁶³ sexual exploitation³⁶⁴ and others though the code puts a relatively few terms of prison and fine for FGM under art. 565; i.e. three months while the former penal code of 1957 puts 10 years by considering the act as a grave will full injury under art. 538 of the same code. The 1960 civil code also protects the rights of children at different situations. This being the legal, policy and institutional frame work designed by the government, however, the realities of children are still problems. Due to the unavailability of educational services in the country and other related reasons, the number of children enrolled in educational institutions today is very low and according to the 1995 annual statistics of the ministry of education, only 29% of all Ethiopian children of primary school (grades 1-6) age were enrolled.³⁶⁵ Their health condition is no better either. In fact, the infant mortality rate in Ethiopia is one of the highest in the world, the causes of their death being easily preventable diseases and malnutrition.³⁶⁶ A study done by the United Nations Children's Fund (UNICEF) in 1994 shows that 110 of every 1000 babies born alive die before they celebrate their first birthday, and 160 before they turn five.³⁶⁷ The number of children that become physically disabled as a result of harmful traditional practices is great, too.³⁶⁸ The above mentioned study conducted by UNICEF further states that in developing countries, of all children under 15 years of age, one in five live in especially difficult circumstances and according to the 1995 Annual Statistical Abstract of the Central Statistical Authority

³⁶⁰ . See section 1 of chapter nine art. 123 ff, art. 113, chapter 10 art. 180 ff and sec. 2 of chapter 12 art. 219 ff of the revised family code of Ethiopia (Proclamation # 213/2000, Federal Negarit Gazzeta Extraordinary issue #1/2000 6th year, Addis Ababa 4th of July, 2000)

³⁶¹ . See art. 576 of the Revised Criminal Code of Ethiopia (Proclamation # 414/2004 special issue of 9th of May/2004) here in after referred to as the "Revised Criminal Code of 2004"

³⁶² . See art. 597 of the revised criminal code of 2004.

³⁶³ . See art. 544 of the revised criminal code of 2004.

³⁶⁴ . See art. 626 and art. 627 of the revised criminal code of 2004.

³⁶⁵ . MOLSA, *Op. Cit.*, pp. 52

³⁶⁶ . *Id.*

³⁶⁷ . *Id.*

³⁶⁸ . *Id.*

(CSA) of the Federal Government, from the whole population, 48.6% being children under 15.³⁶⁹ That means, in the year 1994, 5,535,200 of the 26,675,000 children in this age group were estimated to be in especially difficult circumstances.³⁷⁰ An evaluative study carried out by the children and youth affairs organization in 1993 has shown that only 95,049; i.e. 1.8% of Ethiopian children had access to social services.³⁷¹ In fact, the above mentioned studies and data were taken from the Developmental Social Welfare Policy prepared by the Ministry of Labor and Social Affairs of the Federal Government in November, 1996 and clearly show us the reality of the situation 13 years ago. What is, then, the current situation? One recent study conducted in five regional states; i.e. Amhara, Oromia, Southern Nations Nationalities and peoples regional state, Tigray and Addis Ababa by the African child policy forum in the year 2006 covered the state of violence against children in Ethiopia including sexual violence and the finding of this study generally indicate the prevalence of all types of sexual violence including rape, sexual harassment and abduction in all the study sites with limited variations between urban and rural as well as between different cultural and traditional groups.³⁷² The study also identified that street children and children with disabilities represent the most exposed risk groups among children, which some called it extra-vulnerable children. Recent studies estimate that the number of street children has grown significantly; reaching 185,000 in 2003 and Street girls involved in this study reported that they are frequently raped and even gang raped by street boys.³⁷³ Similarly, children with disabilities have reported frequent experiences of sexual violence, which gets worse if the girl is physically incapable of moving, or has visual impairment.³⁷⁴ More over, the same study has identified that most of the perpetrators of such violence are fathers, stepfathers and some times close relatives such as uncles, and in schools fellow boy class mates of the girls and teachers.³⁷⁵ This, undoubtedly, show that the human rights awareness of the society is in its infancy level. According to another study conducted by Save the Children

³⁶⁹ . *Id.*, pp. 53

³⁷⁰ . *Id.*

³⁷¹ . *Id.*

³⁷² . African Child Policy Forum, 2005 (Cited in Forum on Street Children Ethiopia, *National Action Plan on Sexual Abuse and Exploitation of Children (2006-2010)*, pp. 7)

³⁷³ . *Id.*

³⁷⁴ . *Id.*

³⁷⁵ . *Id.*

Norway, in 2003, child prostitution, which is becoming an alarming problem in urban centers, is reportedly in the increase,³⁷⁶ and according to the study conducted by Action Professional Associations for the People (APAP) a local Human Rights NGO, children as young as 13-16 years of age are noted to be engaging in the practice of prostitution in large numbers; i.e. in Addis Ababa alone, it is estimated that there are a little more than 6000 commercial sex workers, and the major causes of such practice, according to the study, are rapid social change emerging with urbanization and cultural erosion, poverty, unemployment or lack of economic opportunities as well as the low status of the girl child, harmful traditional practices like abduction, early marriage, and FGM (Female Genital Mutilation).³⁷⁷ In terms of access to education, the enrollment at all levels of education like pre-school, primary and high school is indicated to be low compared to the large base of school aged population of the country.³⁷⁸ There fore, having the above mentioned flaws facing children in Ethiopia currently, in mind, One of government's institutions mandated in the fulfillment of the welfare policy and alleviating the above mentioned problems from the human rights perspective is the Ethiopian Human Rights commission and one of the most important role players in this area from the private sphere are human rights focused Non-Governmental Organizations (NGOs). The Ethiopian Human Rights commissions though legally established before nine years, it has started to be operational very recently, i.e. in 1998 E.C. and it established a unit that deals with the human rights of women, children and persons with disabilities.³⁷⁹ Of the Commission's functions listed under Art. 6 of the establishment proclamation, one is to undertake investigations on alleged human rights violations with or without complaint.³⁸⁰ And accordingly, Two cases, entertained by the Commission's, women's and children's and persons with disability's rights deputy commissioner's office clearly show as to how

³⁷⁶. Save the children Norway, 2003, pp. 2

³⁷⁷. APAP, 1996. See also Forum on Street Children Ethiopia, 2003.

³⁷⁸. UNICEF, the state of world children 2005; childhood under threat, 2004. (Cited in Forum on Street Children Ethiopia, *Op. Cit.*, pp. 5)

³⁷⁹. See Art. 8(2) /c/ of Procl. 210/2000 (The Ethiopian Human Rights Commission Establishment proclamation). But, the provision of the proclamation didn't mention any thing about the persons with disabilities and the reason, according to the Executive Director of the Ethiopian Human Rights Commission, is not intentional. (Interview with Ato Getahun Kassa, Executive Director of the Ethiopian Human Rights Commission, held on 9th February/2009, at 2:00 p.m)

³⁸⁰. See Art. 6 (4) of Procl. 210/2000 (The Ethiopian Human Rights Commission Establishment proclamation).

the commission is trying to play this statutory role. The first case was to ensure the socio-economic rights of the child to education by way of making the school, which forces the girl child to stop her education, to accept her by way of making the school be aware of the fact that such an act clearly violates art. 36(2) of the FDRE constitution. The second case, similarly, ensures the rights of children to get their family care and treatment. The case was brought by three children whose mother was an HIV victim that works in Debre Birhan (*Amhara Regional State, North Shewa Zone*). The children appealed to the commission that they are living in Addis Ababa and they missed their mother, their father passed away recently and if they are not going to get their mother, they will be forced to be on the streets; and upon complaint the commission investigated the matter and due to the commission's relentless effort, now their mother was in the process of being transferred from Debre Birhan to Addis Ababa.³⁸¹ The commission's group of experts has also paid a visit to investigate the situation of orphan children in orphanage centers in Amhara National Regional State from January 9-21st 2009. The team, focused on two zonal administrations; i.e. the North Gondar and east Gojam zones both orphanage centers and the regulatory functions of the concerned governmental organs.³⁸² The team had evaluated and assessed the level of care taken by 4 orphanage centers in the North Gondar zonal administration and one in the east Gojam zonal administration and in its finding, the team had concluded that the situation of orphans in the centers is good thanks to the relentless and close follow up of the zonal labor and social affairs departments of the regional government and those centers, which showed the tendency of involving the orphans in child trafficking was automatically closed. In addition, the zonal labor and social affairs departments took the initiatives in coordinating the community in the area that enabled the inhabitants to support orphans so that these vulnerable children may not be thrown to some illegal centers.³⁸³ Nevertheless, the proclamation's guidance for the commission investigatory function is believed to be problematic for three reasons.³⁸⁴

³⁸¹ Both this cases were not in an official publication and obtained by the writer of this paper from the women, Children and persons with disability's rights commissioner's office in the year 2008.

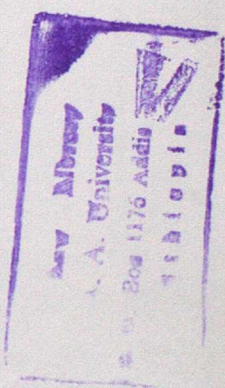
³⁸² Interview with W/ro Meseret, senior expert in the Women, children and persons with disabilities commissioner's office of the Ethiopian Human rights Commission and one of the members of the team.

³⁸³ *Id.*

³⁸⁴ Ethiopian Human Rights Commission, *Strategic plan for 2006-2011*, office of the Team of international consultants, April/2006., pp. 11

sustains such practices. In addition, the historically unequal relations between men and women, which are manifested in economic discrimination and subordination in family, cultural ideologies, which justify the subordination of women including legitimatization of certain violent practices as expression of religion, cultural tradition and negative stereotypes of women in the media exacerbate the problem of violence.

These are the reasons why women are termed as vulnerable and need special care and protection. In Africa, the problem is even well structured. For instance, there was a program in Switzerland showing how rich people in western countries exploit women in poor developing countries by getting to these countries and collecting young beautiful women to Europe and put them in prostitution houses.⁴⁰⁶ This being the fact, however, there are still arguments that strongly oppose the idea that women are vulnerable. According to these scholars, it is wrong to term women as vulnerable and need protection. All people who have no access to economic and social empowerment and positions can be termed as vulnerable. The most important problem is that we all belong to a society that has not progressed economically. No body is going to give women the rights as a matter of protection, kindness or generosity; rather, women themselves must get it with their own sweat and blood.⁴⁰⁷ In the message that women need protection, who is going to protect them? They have to be able to protect themselves since the mechanisms are there, they can organize to seize power equally with men. Any system will only work if the woman become a very active participant in the struggle for justice and this includes struggle internationally for a fair distribution of all means of a better life in the world and the relationship between men and women at home has to be fair and just.⁴⁰⁸



⁴⁰⁶. Speech delivered by Dr. Solomon, a former cabinet minister of Cameroon and chairperson of the national commission of human rights of Cameroon, at the international conference on the establishment of Human Rights Commission and the institution of the Ombudsman from May 18-22/1998.

⁴⁰⁷. Comment by W/ro Netsanet Asfaw at the international conference on the establishment of Human Rights Commission and the institution of the Ombudsman from May 18-22/1998.

⁴⁰⁸. *Id.*

However, others don't agree with such an assertion that women need special protection as they are vulnerable groups not because naturally they are unable to promote and protect their fundamental rights but because the overall system in the country made the situation difficult to name some social attitude that the society is gender stereotyped even now, problems in the justice system like attitudinal problems in the police during crime reporting, problem of prioritization of cases in the prosecution office due to which currently conviction rate of alleged gender related offences is below 20%, in the courts problem of legal interpretation and lack of expertise adjudicating gender related offences, in the government, problems of politicization of the issue, a case In point in this regard is the closure of EWLA (Ethiopian Women Lawyers Association) by an order of the Ministry of Justice; all in all these problems are making women vulnerable; i.e. making them unable to enforce their rights by themselves.⁴⁰⁹

Regarding the legal and policy framework of the current government on the rights of women, there is the constitution at the apex with the relevant international human rights instruments on women's rights, we have also the developmental and social welfare policy, we have also a separate policy of women's human rights and we have other subordinate laws on different issues. The constitution, under art. 35, it tries to list down the different but interrelated human rights and freedoms of women from general equality rights protection to the specific rights of women in marriage, work, property and administration.⁴¹⁰ With this constitutional mandate in view, the developmental and social welfare policy made women as one of the areas of focus with other vulnerable groups due to their economic dependence on others and being negatively discriminated by others for the mere fact of being women. The policy puts 6 points as its areas of focus concerning women's welfare, these are:

1. All efforts shall be made to eliminate all forms of discrimination against women in respect to access to technical training, formal sector employment, working

⁴⁰⁹. Interview with Ato Getahun Worku, Research and Advocacy Officer at EWLA held on 10th February/2009 at about 11 a.m. local time at his office.

⁴¹⁰. See Art. 35 (1)-(9) of the FDRE constitution.

- conditions, access to health care services and to protect them from all social and cultural pressures to which they are subjected on account of their sex;
2. appropriate measure shall be taken to protect women from being exposed to social problems and any effort to extricate those who are already exposed to these problems shall be supported and facilitated;
 3. the conditions that will enable low income women who need particular assistance to lighten their work load, play a meaningful role in the social, economic and political life of the country and sharing their benefits fairly shall be facilitated;
 4. arrangements that will make it possible for women to receive appropriate and timely, pre-natal, perinatal and post natal care shall be made;
 5. educational programs shall be designed and disseminated with a view to eliminating harmful traditional practices negatively impacting on the welfare and dignity of women through awareness creation; and
 6. Programs of rehabilitation for women in a especially difficult circumstances shall be launched; laws and regulations aimed at protecting women from all kinds of potential and actual abuses shall be enacted and vigorously enforced; and sustained public education programs shall be mounted to increase public awareness about and insight in to the seriousness of the problem.⁴¹¹

In addition to this social welfare policy, the Ethiopian government issued a separate policy on women's human rights and human development and one of the strategies to implement this women's policy is by way of facilitating and making the atmosphere conducive so that they may be able to enforce their rights legally and of such means, the establishment of democratic institutions like the Ethiopian human rights commission.

4.2.2. The need of having an institution for women's rights protection

As independent institutions with a mandate to combat discrimination and promote and protect universal human rights, a national human rights commission has a great potential to address challenges to the full realization of civil and political as well as

⁴¹¹. Developmental Social Welfare Policy, November/1996, A.A., Ethiopia, *Op. Cit.*, pp. 71 and 72

socio-economic and socio-cultural rights of women.⁴¹² The Beijing platform for action of 1995, referring to the world conference on human rights, called for the creation or strengthening of national institutions, the strengthening of the human rights of women as well as for the development of programs to protect the human rights of women by such institutions.⁴¹³ The UN committee on Economic, Social and Cultural rights, in its General comment # 10 of December/1998, noted that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights and that it is essential that full attention is given to economic, social and cultural rights in all of the relevant activities of these institutions.⁴¹⁴ A number of other international documents and statements address specifically the role of national institutions as it relates both to socio-economic and socio-cultural rights and the rights of women, for instance, the regional workshop on the role of national human rights institutions in advancing the international human rights of women held from 5-7 May 2000 in the Fiji islands urged national human rights institutions to pay greater attention to the economic, social and cultural rights of women like shelter, food, water, primary education and primary health care as fundamental rights as well as sexual and reproductive rights. This should include the active monitoring of government reporting obligations under the CEDAW and other international human rights instruments, the collation and consideration of gender disaggregated statistics, and the recommendation to governments of suitable programs that are available, cost effective and within a set time frame.⁴¹⁵ In 2001, the common wealth secretariat issued *National Human Rights Institutions: Best Practice* which stresses that regardless of a country's formal recognition of economic, social and cultural rights National Human Rights Institutions should be well versed with those rights and they should develop and conduct educational

⁴¹². Sneh Aurora, *Promoting and Protecting Economic, Social and Cultural rights of women: the National Human Rights Institutions Mandate*, International Center for human rights education, Montréal Canada, (Not Dated), pp. 1

⁴¹³. Beijing Declaration and Platform for Action adopted by the fourth world conference on women: Action for equality, development and peace, Beijing, 15th September/1995, Para. 230(e) and 232(e).

⁴¹⁴. UN Committee on ESC rights GC # 10, the role of national human rights institutions in the protection of economic, social and cultural rights, December/1998.

⁴¹⁵. Sneh Aurora, *Op. Cit.*, pp. 1

programs to promote rights awareness in this category of rights.⁴¹⁶ The best practice guidelines also suggest that National Human Rights Institutions should:

- Employ all available means to respond to enquiries related to the advancement of economic, social and cultural rights, whether or not it's enabling statute or national constitution recognize economic, social and cultural rights as justiciable.
- Advise the government on the development and implementation of economic policies to ensure that the economic, social and cultural rights of people are not adversely affected by economic policies by making, for instance, structural adjustment programs and other aspects of economic management.
- Work towards facilitating public awareness of government policies relating to economic, social and cultural rights and encourage the involvement of various sectors of society in the formulation, implementation and review of relevant policies.⁴¹⁷

The Best Practice Guidelines also stress that National Human Rights Institutions must be prepared to address human rights violations committed because of victim's gender or sex. The Guideline state that National Human Rights Institutions should assume responsibility in responding to human rights violations suffered on account of sex or gender and that National Human Rights Institutions staff should be properly trained so as to respond sensitively to human rights issues or violations related to sex or gender.⁴¹⁸ Regional conferences were held and are being held to emphasize on the role of National Human Rights Institutions in the protection and implementation of socio-economic and socio-cultural rights of women. For instance, from 11-13th of July/2001, the Asia Pacific Forum for National Human Rights Institutions together with the Hong Kong Equal Opportunities Commission hosted a regional workshop on the role of National Human Rights Institutions and other mechanisms in promoting and protecting economic, social and cultural rights.⁴¹⁹ The workshop stated that governments and National Human Rights Institutions have a responsibility to ensure that no people are discriminated against their

⁴¹⁶. *Id.*, pp. 2

⁴¹⁷. *Id.*

⁴¹⁸. *Id.*

⁴¹⁹. *Id.*

enjoyment of economic, social and cultural rights. Again, from 15-19 November/2004, the UN Office of the High Commissioner for Human Rights and the division for the advancement of women/department of economic and social affairs held a Round Table of National Human Rights Institutions and National Mechanisms for the advancement of women in Ouarzazate, Morocco.⁴²⁰ The meeting recommended that National Human Rights Institutions should consistently ensure that the protection and promotion of women's rights are an integral part of the work of National Human Rights Institutions and that they should use CEDAW as a framework for their work. In 2005, the UN Office of the High Commissioner for Human Rights in its human rights resolution 2005/74 affirmed the important role of National Human Rights Institutions, in cooperation with other human rights mechanisms in the promotion and protection of the human rights of women.⁴²¹ Another instance in this area is the Montréal principles on women's economic, social and cultural rights which were adopted at a meeting of experts held from 7-10 December/2002 in Montréal, Canada. These principles are a guide to the interpretation and implementation of the guarantees of non-discrimination and equal exercise and enjoyment of economic, social and cultural rights and these principles require states to ensure that there is a national system of institutions and mechanisms including National Human Rights Institutions, which will support the development of strategies, plans and policies specifically designed to guarantee women's equal exercise and enjoyment of their economic, social and cultural rights.⁴²²

The development of a normative framework regarding the economic, social and cultural rights of women through international conventions as well as decisions, declarations and statements from global, regional and from national bodies contributes to the general recognition of the role that National Human Rights Institutions must play in the protection and promotion of economic, social and cultural rights of women and this means that National Human Rights Institutions should have, as part of their mandate, in a very clear and express manner, the promotion and protection of women's rights.

⁴²⁰. *Id.*

⁴²¹. *Id.*

⁴²². *Id.*

4.2.3. *The Ethiopian human rights commission and women's rights*

As discussed above, the Ethiopian Human Rights Commission has a department under a commissioner that deal with women's rights along side with children and persons with disabilities though the provision doesn't further define that commissioner's role or function. The commission in its strategic plan has recognized that consistent violations of the rights of women, many arising out of traditional and cultural practices, were reported and some of these violations were more pronounced in some regions of the country than others and in rural regions more than urban ones.⁴²³ According to this plan, the most pervasive practices reportedly include:

- domestic violence reportedly affecting 70% of the women in the country,
- unfair division of labor in the home relegating women to servile positions,⁴²⁴
- denial of inheritance rights for girls,
- arranged and imposed, often early and forced marriage,
- abductions and rapes,
- FGM (Female Genital Mutilation),
- Discrimination against women in the work place, gender-stereotyped job assignments,
- Prostitution for lack of alternative employment or other income generation means, and
- Women trafficking.

This clearly shows us that the commission is well aware and well informed about the basic problems that Ethiopian woman faces. However, through out three years and half of the commission's history of operation, only few cases were entertained and very few of them were given solutions in relation to work place discrimination and other violence, the main cause for these is lack of awareness on the side of the victims about their rights in general and about the commission's existence, functions and even

⁴²³ Ethiopian Human Rights Commission, *Strategic plan for 2006-2011*, *Op. Cit.*, pp. 31

⁴²⁴ In one region, the experts from the commission had witnessed that women are culturally obliged to serve meals to their husbands while literally crawling on their knees. (Interview with Ato Getahun Kassa, *cited above*.)

address.⁴²⁵ What is more, the women's affairs is grouped together with the issue of children and persons with disabilities and these, according to the opinion of the writer of this paper, by itself is problematic as the problem of children and women is different both in content and in nature. Women's problems, as discussed above, are due to societal attitude backward cultural structures and beliefs not due to the wrong assumption that women, like children, are not able to stand and speak for themselves naturally. Moreover, all of these problems; i.e. women's, children's and persons with disabilities are being addressed only by two experts. The Ethiopian human rights commission is authorized, upon the approval of the parliament, to establish branch offices any where in the country and this would help the rural women, who are mostly being vulnerable to violence and discrimination, to easily access the commission and report their problems.

The other problem is that with regard to having adequate data and information about each and every gender based problem in the country that, as it has been discussed above, the commission has no organized and detailed information about the over all problems facing Ethiopian women so far and as a result, this will cripple its hands to take the proper course of action; it could be argued that the commission is at its infancy level and it is working to the best of its capacity; but three years and half is more than enough at least to throw a light and the commission couldn't even issue an official report at least once in three years, this doesn't mean that there has never been any violation in the country in the last three years, but it is due to the fact that the commission is not ready to do it. Better than the commission, other local NGOs have attempted to their best in promoting and enforcing the rights of women both domestically as well as in foreign countries. For instance, EWLA (Ethiopian Women's Lawyers Association) legal aid and litigation unit assisted a woman, who had been convicted and sentenced to death for brutally murdering her master in Bahrain and successfully won the case by persuading the court to mitigate the penalty.⁴²⁶ In terms of report, better than the commission, again NGOs are doing what they can with their limited resources; for instance, the Ethiopian Human Rights Council (EHRCO) issue annual official reports about the overall human rights protection and it always sends such to the concerned government institutions one

⁴²⁵ Interview with Ato Getahun Kassa, *cited above*.

⁴²⁶ Interview with Ato Getahun Worku, Research and Advocacy Officer, *Cited Above*.

of which is the commission.⁴²⁷ Nevertheless, the commission, as stated earlier, couldn't issue a single report within these 3 years and half.

All in all, the Ethiopian human right commission with respect to promoting and protecting the human rights of women, has done almost none and there are a lot left to be done in this area.

4.3. Protection of persons with disabilities

4.3.1. Introduction

It is believed that ways of expressions, descriptions and definitions have direct and sensitive influence on the life of persons with disabilities and the society in which persons with disabilities are living with attaches different connotations to terms and definitions either accepts or rejects matters related to persons with disabilities.⁴²⁸ Before any discussion about the rights and problems of persons with disabilities and the role of the Ethiopian human rights commission in the promotion and protection of the rights of persons with disabilities, then, it is essential to know that in what terms that persons with disabilities are defined and in addition to this, an attempt is made to see the different aspects of the terminologies used by the society to distinguish persons with disabilities from other persons.

According to Longman Dictionary, disability means to make (a person) unable to use his/her body properly.⁴²⁹ From this expression, one can easily understand that only physical disability of a person has been recognized but not mental disability. The Webster's third new international dictionary, on the other hand, disability means inability to do something, the condition of being deprived or lack especially of physical, intellectual or emotional capacity or fitness; also an instance of such a condition; a particular weakness or inadequacy or the inability to pursue an occupation or perform

⁴²⁷. Interview with Ato Yoseph Mulugeta, Secretary General of EHRCO, held on Friday, February 13/2009, at 11 a.m. at his office.

⁴²⁸. Eshetu Alene, *Op. Cit.*, pp. 15

⁴²⁹. Longman Dictionary of Contemporary English, 1978, pp. 308

services for wages because of physical or mental impairment.⁴³⁰ In terms of law, before the adoption and coming in to force of the current convention on the rights of persons with disabilities, the most significant instrument though not legally binding was the standard rules on the equalization of opportunities for persons with disabilities adopted in 1993 the purpose of which was to ensure that all persons with disabilities may exercise the same rights and obligations as others and according to these standard rules, the term disability summarizes a great number of functional limitations occurring in any population and people may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illnesses and such impairments, conditions or illnesses may be permanent or transitory in nature.⁴³¹ In accordance with such an approach of defining the term, the committee on Economic, Social and cultural rights used the term “persons with disabilities” rather than “disabled persons” in its general comment as the latter might be misinterpreted to imply that the ability of the individual to function as a person has been disabled.⁴³² The other and relatively recent definition of the day is the idea that has been incorporated in the convention of the rights of persons with disabilities, which has been adopted on 13th December/2006 by the General Assembly of the UN. The convention stated that:

“Persons with disabilities include those who have long-term physical intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”⁴³³

The instrument is meant to achieve its purpose of promotion, protection and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote and respect their inherent dignity; it has firstly defined as to what kinds of persons are included in the term “persons with disabilities”.⁴³⁴ The term is used to apply to all persons with disabilities including those, who in terms of

⁴³⁰. Webster's third new international dictionary, 1981, pp. 233

⁴³¹. Persons with disabilities: 09/12/94. CESCR General Comment 5, 11th session, 1994, pp. 2

⁴³². *Id.*

⁴³³. Art. 1 of the Convention of the rights of persons with disabilities of 13th of December/2006.

⁴³⁴. Eshetu Alene, *Op. Cit.*, pp. 16

time duration have long term physical, mental, intellectual or sensory impairments in the interaction with various attitudinal and environmental barriers, which may hinder their full and effective participation in the society on an equal basis with others and it is also important to note that a person with a disability in one society or setting, but not in another, depending on the role that the person is assumed to take in his/her community. The perception and reality of disability also depends on the technologies, assistance and services available, as well as on cultural considerations.⁴³⁵ In general, though the convention has not been ratified by Ethiopia, it has its own purposive and positive impact to have internationally.

4.3.2. Legal and policy framework to protect persons with disabilities in Ethiopia

Disability is one of the social problems' prevalent in our country. The World Health Organization (WHO) estimates that about 10.0% of the populations of developing countries are persons with disabilities and according to the national census taken in 1995, 943,620 of all Ethiopians in the regions where the census was taken were disabled.⁴³⁶ This might be the information, which shows the magnitude of the problem some 15 years ago, and currently, there are estimated about 650,000,000 persons with disabilities living in the world and in Ethiopia.⁴³⁷ Poverty, ignorance, war and drought are the major causes of disability in our country and the problem is aggravated by inadequate nutrition, limited access to health care and educational services as well as by the high prevalence of harmful traditional practices.⁴³⁸ A total of 23 types of disabilities have been identified in Ethiopia by those who took the census mentioned above and major among them are blindness, deafness and muteness, lameness, leprosy, amputation of limbs and mental illness.⁴³⁹ Studies done indicate that 85.0% of all Ethiopians with disabilities live in the rural areas and most persons with disabilities in our country do not have access to rehabilitative services, simply because the availability of these services is very much limited and further more, backward societal attitudes and prejudice against the victims

⁴³⁵ *Id.*, pp. 17

⁴³⁶ *Developmental Social Welfare Policy*, November/1996, A.A., Ethiopia, *Op. Cit.*, pp. 59

⁴³⁷ *Human Rights and Disabled persons*: Essay and relevant human rights instruments, Marinus Nishoff Pub., Vol. 40, 1995 (Cited in Eshetu Alene, *Op. Cit.*, pp. 22)

⁴³⁸ *Developmental Social Welfare Policy*, November/1996, A.A., Ethiopia, *Op. Cit.*, pp. 60

⁴³⁹ *Id.*

perpetuate fatalism; i.e. the victims and their loved ones would rather learn how to live with the problem accepting it as God's will than seeking a remedy for it and as a result of which, even those who could have been made productive become either life-time dependents of their kith and kin or resort to begging.⁴⁴⁰

The rehabilitative services that are available to persons with disabilities in our country emphasize on the fact that institutional care are too much costly and there fore greatly limit the number of beneficiaries and worse yet, the institutions are very few in number and urban concentrated and thus exclude the majority of those who need the services.⁴⁴¹ Mental retardation is another problem that needs to be mentioned here and though not much is known yet about its causes and magnitude, mental retardation is a serious problem in Ethiopia and the most troubling fact about it is that there is a wide-spread belief that it is a manifestation of the wrath of God.⁴⁴²

With this in mind, the social and developmental policy of the government had identified nine areas of focus concerning the protection of the rights and welfare of persons with disabilities. These are:

1. conditions that will enable persons with disability to use their abilities as individuals or in associations with others to contribute to the development of the society as well as to be self-supporting by participating in the political, economic and social activities of the country shall be facilitated;
2. efforts aimed at instilling in persons with disabilities a sense of confidence and self-reliance through education, skill training, gainful employment opportunities and other services shall be increased and appropriate legislative measures shall be taken to ensure their welfare;
3. mechanisms shall be created by which persons with physical and mental impairment will receive appropriate medical/health services and supportive appliances;

⁴⁴⁰. *Id.*

⁴⁴¹. *Id.*

⁴⁴². *Id.*

4. mechanisms by which persons with physical and mental impairment will receive appropriate support services in the context of their family and community environment shall be created;
5. all effort shall be made to establish special centers where persons with physical and mental impairment and without any family support will be cared for;
6. appropriate and sustainable educational programs shall be launched to significantly raise the level of public awareness concerning the determinants and consequences of the problems of physical and mental disability as well as to change the prevailing harmful traditional attitudes, norms and practices in respect to persons with physical and mental impairment;
7. strategies and programs designed to increase our understanding of the causes and prevalence of physical and mental disability and their by prevent and mitigate their spread shall be formulated;
8. all effort shall be made to gradually remove all physical impediments and make residential areas, work and other public places more physically accessible to persons with disabilities; and
9. Support and assistance shall be provided to community action-groups, Non-Governmental Organizations and voluntary associations involved in providing services to persons with physical and mental impairment.⁴⁴³

Coming to the international as well as domestic legal frameworks, starting from the general international human rights instruments like the UDHR, the ICCPR, the ICESCR, the CEDAW, the CRC, and others to the recently adopted special instrument; i.e. the convention on the rights of persons with disabilities of 2006, persons with disabilities have been and still are being protected. Especially, the recent legal instrument on disability has been founded on 8 basic principles; these are:

- respect for the inherent dignity and individual autonomy of a person with disability;
- non-discrimination,
- full and effective participation and inclusion in society,

⁴⁴³. *Id.*, pp. 74

- respect for difference and acceptance of persons with disabilities as part of human diversity and humanity,
- equality of opportunity,
- accessibility;
- equality between men and women and
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identity.⁴⁴⁴

Domestically, the constitution, starting from the general protective provisions of the fundamental human rights and freedoms of all human races that of course includes persons with disabilities like Art. 25; i.e. the equality clause, to specific provisions for them like Art. 41(5) that obliges the government to allocate adequate resources within available means, to provide rehabilitation and assistance to the physically and mentally disabled tries to protect these vulnerable groups of the society. Together with the constitution, there are also other subordinate laws protecting the rights of persons with disabilities; for instance, under art. 48(2), Art. 82 and Art. 179 of the revised criminal code made disability as a ground for criminal irresponsibility and ground for mitigation of penalty. The Ethiopian civil code, under its different books, deals with the rights of persons with disabilities; for instance, Book I, under Chapter Three Title II, states the two broad types of disabilities; i.e. mental and physical disability by stating deaf-mute and blind persons and others and the law imposes no liability or duty on these categories of persons with disabilities.⁴⁴⁵ These provisions of the law can be interpreted as; firstly, persons with disabilities have the right to invoke the provisions of the law to protect them from any societal or individual danger and this emanates from the presumption being unable to take care of ones personal act and being unable to protect ones property, and secondly, the word "*may*" in the provision connotes that persons with disabilities are with options either to seek protection for their personal act or administration of their property.⁴⁴⁶ The other law that specifically deals with persons with disabilities is the

⁴⁴⁴ Art. 3 of the Convention on the rights of persons with disabilities

⁴⁴⁵ Look at Art. 339(1) and Art. 340 of the Ethiopian Civil code of 1960.

⁴⁴⁶ Eshetu Alene, *Op. Cit.*, pp. 55

proclamation on the rights of persons with disabilities to employment.⁴⁴⁷ Unlike any other laws enacted in Ethiopia, this proclamation deals with only the specific problems of persons with disabilities and different types of human rights in employment aspects and it may be said that it contains three levels of rights concerning persons with disabilities; these are

1. rights related with pre-employment,
2. rights related with post employment, and
3. Enforcement of the rights.

The basic foundational principle of this proclamation is that a person with a certain kind of disability but having the necessary qualifications have the right to compete and to be selected for a vacant post through recruitment, unless the nature of the work dictates other wise. Not only this specific proclamation on employment, but also the general law on employment; i.e. the labor proclamation of 2003 (Procl. # 377/2003) tries to protect the human rights of persons with disabilities with special emphasis on the fact that after being employed and getting either mental or physical disability suffer. Especially, when a person gets disabled due to a work related injury as a result of which there is a decrease or loose of capacity to work either totally or partially for a permanent period of time, he/she is entitled to compensation.⁴⁴⁸ The proclamation also states that those who are disabled by an employment injury in the undertaking have the right to enjoy the priority of staying in the undertaking than other persons like those having the shortest length of service in the undertaking or those having fewer dependants.⁴⁴⁹ The other category of the legal framework that protects persons with disabilities in relation to the right to work is the Federal Civil Service Proclamation (Procl. # 515/2007) and according to this proclamation, job security and fair conditions of service to government employees/civil servants who are disabled have been ensured as it explicitly sets the right to an affirmative measures to persons with disabilities in the government office and the right to the affirmative measures to be taken during the filling of vacancies, by way of

⁴⁴⁷. Procl. # 101/1996 (Proclamation on the rights of persons with disabilities to employment), Federal Negarit Gazzeta.

⁴⁴⁸. Look at art. 109 of Procl. # 377/2003 (the Labor Proclamation)

⁴⁴⁹. *Id.*, Art. 29 (3)

interpretation, continues in cases of training, promotion, provision of facilities, transfer and reduction of work force, etc....⁴⁵⁰ More over, the right to affirmative action can be wider and wider if the person with a disability is both a woman and from unrepresented nationality in the government offices.⁴⁵¹ The last legal regime under consideration here is the Ethiopian Election Proclamation (Procl. 111/1995). This law provides different rights to persons with disabilities during the election process when presenting oneself either as a voter or a candidate and in general terms, the law provides that "...any Ethiopian whose electoral rights are not legally restricted shall be eligible to elect or to be elected."⁴⁵² [Emphasis added]. This provision confers the rights of participation of citizens during election and in such a case, this proclamation recognizes persons with disabilities to have the right in participating during election registration by stating "*the disabled, other than those specified under art. 20(1) here in above may be registered accompanied by their assistants.*"[Emphasis added]⁴⁵³ The right further extends to the conditions of modalities of voting of persons with disabilities, which is stated as "...electors who are blind, or other wise physically disabled may vote accompanied by an assistant of his/her choice."⁴⁵⁴ [Emphasis added]. However, this provision seems to have its own gaps as it only works for persons with physical disabilities not for persons with the other types of disabilities.

All in all, at least for a beginner democratic system, this might seem a good start; however, considering the rampancy and magnitude of the problem, these are just as a drop in the ocean and without creating an institutional mechanism with full power, independence and accessibility so that all the above mentioned laws that contains the substantive rights of these groups may be enforced properly, the realization of all the rights would remain a myth than a reality and one of these institutional mechanisms is the national human right commission.

⁴⁵⁰ . Art. 13(3) of the Federal Civil Servants Proclamation (Procl. # 515/2007)

⁴⁵¹ . Eshetu Alene, *Op. Cit.*, pp.58

⁴⁵² . Art. 14 (2) of Procl. 111/95 (Proclamation on the law of election)

⁴⁵³ . *Id.*, art. 21(4).

⁴⁵⁴ . *Id.*, art. 64(5).

4.3.3. The Ethiopian Human Rights Commission and persons with disabilities

Before discussing about the current role of the Ethiopian Human Rights Commission in promoting and protecting the rights of persons with disabilities, let us see first the international experience in this regard. A survey was conducted by the OHCHR in the year 2002 on thirteen human rights institutions,⁴⁵⁵ and as per this survey, all of the commissions included in the survey responded that they are well aware of the perspectives on disability and the majority of them stated that disability is a priority on their overall human rights protection and promotion agendas and some stated also that even the issue of disability had been their main agenda since their establishment.⁴⁵⁶ As to the point of mental, physical or any other kind of disability, most of the institutions in the survey didn't make such categorization as the definition of disability in their legislations was intended to give attention as far as possible on whether or not people are being discriminated against on such basis rather than on which specific type of disability they should be categorized; nevertheless, some responded that they make distinction as the physically disabled can easily be trained to do some activities in different areas while for mentally/intellectually disabled, they have to rehabilitate the mental part by making use of medical and psychological treatment and then, train them to do something.⁴⁵⁷ On the point of placing any emphasis on gender and disability or on multiple forms of discrimination based on disability, half of the institutions responded that principal emphasis is on ensuring that these multiple dimensions to person's identity do not exclude them from effective access to participation in the activities; for instance, ensuring that sex discrimination complaint processes and information are accessible to women with disability, rather than seeing people with disabilities as presenting only disability issues.⁴⁵⁸ The next issue was on staffing of specialists that all of the national institutions surveyed replied that they set aside personnel to deal specifically with disability rights

⁴⁵⁵ . The survey was conducted on the Denmark Human Rights Center, Disability Ombudsman of Sweden, equal opportunity commission of Hong Kong, equal treatment commission of the Netherlands, human rights advisory council of the kingdom of Morocco, human rights and equal opportunity commission of Australia, human rights commission of Mongolia, human rights Ombudsman of Bosnia and Herzegovina, human rights commission of the republic of Ireland, Malawi human rights commission, national human rights commission of Mexico, human rights commissions of Uganda and Zambia. (See Gerard Quinn and Theresia Degener, *Op. Cit.*, pp. 180.)

⁴⁵⁶ . An instance for this is the Disability Ombudsman of Sweden.

⁴⁵⁷ . Gerard Quinn and Theresia Degener, *Op. Cit.*, pp. 185

⁴⁵⁸ . *Id.*, pp. 187

issues. The institutions made it clear that either member of their institutions or research staff or lawyers associated with their institutions possessed competence in the disability rights field; for instance, the equal opportunity commission of Hong Kong has a director with the responsibility for disability and the Australian human right commission has a disability discrimination commissioner appointed by law.⁴⁵⁹ These findings show that some national institutions are poised to make a meaningful contribution in the disability rights field and it could also be held that designating staff to work on disability rights militates mainstreaming of the issue.⁴⁶⁰ More over, national institutions that have designated staff are said to be very active in the disability issue or at least more active than national institutions that have not and it could also be argued that the designation of staff is necessary at least in the medium term to bring the competence of national institutions on disability matters up to an acceptable international standard. The other case is the number of complaints from persons with disabilities or their representatives to which the great majority of the institutions had responded to the affirmative that they had received complaints alleging violations of the rights of persons with disabilities.⁴⁶¹ Concerning public inquiries on the status of persons with disabilities, about half of the institutions replied that they had held public inquiries on the issue and published major reports as a result; for example, the Australian human rights and equal opportunity commission held a major inquiry on the human rights of people with a mental illness in 1993, and it also conducted a public inquiry on housing problem in 2000 and a study on the procedures and training needs of the immigration department in handling persons with disabilities in 2001.⁴⁶² The other and perhaps the most important point is whether or not there is a trend of assisting persons with disabilities in court litigations to enforce their rights, which all of the institutions responded to the negative. For instance, the Australian and Swedish institutions reported that they haven't done it as it would be their

⁴⁵⁹. Gerard Quinn and Theresia Degener, *Op. Cit.*, pp. 189

⁴⁶⁰. *Id.*

⁴⁶¹. For instance, the Mongolian, Swedish and Hong Kong institutions stated that most of the disability complaints concerned employment, access to goods and services, and education; and the Zambian human right commission stated that many complaints are concerned about the settlement of homeless persons with disabilities and according to the Mexican human rights commission, in six months alone, 222 complaints concerning disabilities had been filed in 2002. (See Gerard Quinn and Theresia Degener, *Op. Cit.*, pp. 192)

⁴⁶². Gerard Quinn and Theresia Degener, *Op. Cit.*, pp. 192

responsibility to hear the case and assisting them in this regard would create a conflict of interest and the remaining institutions stated that they lack the competence to do so or that they had not yet exercised their competence; the same is true in cases of submitting an amicus brief to the courts that only one institution⁴⁶³ reported having submitted an amicus brief to the court and the Netherlands human rights institution responded surprisingly that there is no even a tradition of submitting amicus briefs in the country's justice system.⁴⁶⁴ Similarly, only the Swedish institution responded to the affirmative to the issue whether or not the institutions brought legal action in their own name or on behalf of persons with disabilities. The Swedish institution brought a legal action on behalf of a man with a hearing impairment who had been refused employment allegedly because of his impairment.⁴⁶⁵ Others like the Mongolian, Hong Kong and Ugandan human rights commissions haven't done so though they do have the competence.⁴⁶⁶ Concerning their link with NGOs and associations on the protection and promotion of the rights of persons with disabilities, three institutions replied to the negative due to either lack of competence⁴⁶⁷ or failure though they do have the necessary competence.⁴⁶⁸ The remaining responded to the affirmative and this can be considered as a good news as they show that human right commissions in particular, and national human rights institutions in general, are keenly aware of the importance of raising levels of understanding about human rights in disability NGOs and raising their levels of competence to use existing remedies and to participate effectively in the democratic process.

In the international level as well, the need of establishing an independent institution or at least a separate unit within the human rights commission is highly emphasized. For instance, the Committee on Economic, Social and Cultural rights, in its General comment # 5, urged state parties to the ICESCR, to establish the necessary institutions to serve as a national focal point on disability matters.⁴⁶⁹ In addition, the recently adopted convention on the rights of persons with disabilities, in a very clear and express manner, signifies the

⁴⁶³ . The Australian human rights and equal opportunity commission.

⁴⁶⁴ . Gerard Quinn and Theresia Degener, *Op. Cit.*, pp. 195

⁴⁶⁵ . *Id.*

⁴⁶⁶ . *Id.*

⁴⁶⁷ . The Netherlands human rights commission.

⁴⁶⁸ . The Ugandan and Moroccan institutions.

⁴⁶⁹ . Persons with disabilities: 09/12/94. CESCR General Comment 5, *Op. Cit.*, pp. 7

importance of national human rights institutions for the promotion and protection of the rights of persons with disabilities.⁴⁷⁰

Coming to the case of Ethiopia, in its enabling legislation, the issue of the rights of persons with disabilities seems to have been relegated as the establishment proclamation recognized the existence of a commissioner for women and children but not for persons with disabilities. However, the commission had included their issue together with the women and children unit though it couldn't categorize disabilities as the convention did as this might have its own problem in the nature and types of solutions/remedies they are entitled for. The other gap in the commission regarding the promotion and protection of the rights of persons with disabilities is that it has no connection with the concerned associations of persons with disabilities. According to the information obtained from the Ethiopian Federation of Associations of Persons with Disabilities (EFAPD) under which there are six Associations,⁴⁷¹ it has only a close working relationship with the institution of the ombudsman and the Ministry of Labor and Social Affairs (MOLSA); with the Ethiopian Human Rights Commission, however, though very important; there is no any kind of link.⁴⁷² Another problem with the commission in this area is that, like in the case of women and children stated above, it doesn't have its own organized, up-to-date and detail data and information about the prevalence and magnitude of the problem of disability in Ethiopia. For instance, as per the EFAPD, there are a lot of problems and violations of the fundamental human rights of persons with disabilities at work places that individuals are still being discriminated and they are still losing their job security by the mere fact of being with disabilities, graduates from higher learning institutions, no matter how they performed well in the educational institutions, due to the mere reason of being with a certain kind of disability, they are still being denied the right to work and the Federation is trying its best to alleviate this problem either by amicably settle the issue with the concerned government institution, or by taking the case to the court and make

⁴⁷⁰. Art. 33(1) and (2) of the Convention on the Rights of Persons with Disabilities of 2006

⁴⁷¹. The Ethiopian Blind Association, the Ethiopian Deaf Association, the Ethiopian Associations of persons with mental/intellectual disabilities, the Ethiopian Association of persons with physical disabilities and the Ethiopian Association of persons with leprosy.

⁴⁷². Interview with Ato Kassahun Yibeltal, President of the Ethiopian Federation of Associations of Persons with Disabilities (EFAPD) held on Saturday, 31st January/2009 at 3:30 a.m. local time at his office.

sure that their right is enforced and there are many cases decided by courts due to the relentless effort of the Federation.⁴⁷³ In all this, the Ethiopian Human Rights commission is silent though it is the close relevant institution to the issue. As I've tried to mention it earlier, the commission is not accessible to the public that very few know where it resides even here in the metropolitan let alone in rural areas where the rampancy of the problem of disability is great. The issue of expertise both in specialty as well as in number is another factor and the experience of taking cases to court is next to none for one reason or two neither is there an experience of submitting an amicus brief when ever there is a case in court. From the personal observation of the writer of this paper and from the information gathered from the commission, the commission currently is confined with its little promotional activities.

From the above assertions, I can safely conclude that the Ethiopian human rights commission's role in the promotion and protection of the rights of persons with disabilities is not touched yet and there are a lot to be done, which I'll try to forward them in the recommendation part.

Concluding Remarks

At the very beginning of this paper, the writer has attempted to set two basic objectives to address. The first one is as to what is the role of the Ethiopian human rights commission in the promotion and protection of certain groups, which are vulnerable for various reasons and secondly, is the commission playing its roles in the actual world? As to the first objective, the writer has attempted to asses and evaluates it starting from the theoretical and historical discussions of national human rights institutions in general and national human rights commissions in particular. Under this section, an attempt has been made to discuss the meaning, relevance, principal functions of and necessary elements as requirements for the existence of national human rights institutions generally and particularly national human rights commission. Then after, the writer has attempted to limit himself in discussing the role of these institutions in protecting the rights of vulnerable groups of the society by making women, children and persons with disabilities

⁴⁷³. *Id.*

a case in point. In doing so, it has been tried to conceptualize the meaning of vulnerability from various perspectives and the need to design and implement special protective mechanisms (both legal and institutional). This has been done by looking at the international experience and the move made towards protecting these rights in Ethiopia one of which the establishment of the Ethiopian Human Rights Commission and by creating its own unit to address these issues.

As to the second objective, which is the main concern of this paper, the writer has attempted to see the Ethiopian Human Rights Commission's current activities regarding the protection of the rights of women, children and persons with disabilities in light of the international standards, principles and the experience of other countries in the area and though the commission is argued to be in its infant stage, since the day of the establishment (the year 2000 G.C/1992 E.C) and the time when it has started to be operational in late 1997 and early 1998 E.C., it has performed little especially in the area of the above mentioned cases of vulnerable groups. ~~The~~ commission, according to the establishment proclamation, has only a single unit that tries to address the rights of women, children and persons with disabilities with only two experts, it has no strong link or common forum with ~~Non-Governmental Organizations~~ (NGOs) and other international treaty bodies, it has not issued a single report on the human rights situation in the country in general and the human rights situation of the said vulnerable groups in particular, though it has done little promotional activities, these can't be adequate enough as it doesn't even disclose the where about of the commission, it has not established branch offices any where in the country and it doesn't establish any system whatsoever to make the public well aware of its existence, functions and over all relevance and this seriously affects its accessibility. The commission is not sure enough whether or not it should play a vital role in any litigation process that involves a serious human rights issue in the courts neither is aware of its capacity and legal mandate to submit an amicus curiae brief to the courts in the area of human rights in general and human rights of vulnerable groups in particular. These are the main problems/flaws identified by the writer while preparing this paper and accordingly, some important points will be forwarded in a form of

Weakness

recommendations that may be helpful to make the commission more effective and efficient in its promotional as well as protective activities.

Possible points of Recommendations

The above mentioned flaws facing the Ethiopian Human rights commission and negatively influencing its activities in the area of promotion and protection of the human rights of women, children and persons with disabilities can be solved if the following essential points are seriously considered by the concerned.

1. The first and the most important one is the government's commitment in providing, as a priority, the necessary financial and material resources to allow the commission to effectively undertake its responsibilities. The government is also expected to take expeditious action to follow the conclusions, recommendations and advises made by the commission and persons whom the commission finds responsible for committing, ordering, encouraging or permitting any kind of violation of the human rights of women, children and persons with disabilities should automatically be brought to justice.
2. Secondly, the Ethiopian human rights commission should play an active and leading role in the promotion and protection of human rights of vulnerable groups especially children, women and persons with disabilities in the country and should not capitulate to the inevitable pressure from other government agencies to downplay or ignore human rights abuses and it should seek out regional and international support to ensure that the commission can function as autonomous as possible.
3. Thirdly, the commission should ensure that it is known by and accessible to all sectors of the society and particularly women, children and persons with disabilities by way of creating accessible procedures through which the commission can be contacted like by creating free Hotlines like the Norwegian and Egyptian human rights commissions that may allow children, women and persons with disabilities to call in and share their ideas and submit human rights violations of any kind freely from where ever they are, by way of community

meetings with children, women and persons with disabilities by organizing to elicit their views on a given issue, by way of establishing branch offices in other places of the country especially in regional states where most of the violations and abuses of the human rights of these groups are occurring.

4. Fourthly, the commission should create a strong link and working relationship with Local as well as International NGOs by way of planning a common forum in an annual or bi-annual basis as these link will be of a great help for both the NGOs as well as for the commission it self. The NGOs will be benefited from such forum as it will be easy for them to get assistance from the government in their human rights protection activities and the commission will also be benefited as it will take a lot of lessons from the experience of NGOs. Various international and regional conferences have strongly insisted on the idea of collaboration between NGOs and national human rights commissions.⁴⁷⁴ And this shows that such relationships will bring a uniform, effective and organized system of protecting and promoting the rights of these groups. Not only with NGOs, the commission should also establish a strong working link with international treaty bodies of the UN.⁴⁷⁵ The relationship between the commission and the UN treaty bodies might take the following forms:

- the treaty bodies may directly inform the commission about the reports required from the government, with a view to enabling the commission to follow the process of the preparation and examination of the reports and if necessary to actively intervene in case of delay,
- the treaty bodies should be cognizant of the comments made by the commission with regard to the state reports, and

⁴⁷⁴ For instance, the third conference on African national human rights institutions held in Lome Togo of 2001 adopted the Lome declaration and stressed on the importance of collaboration of NHRI and NGOs. Similarly, the fifth annual meeting of the Asia-Pacific forum on NHRIs in New Zealand of 2000, the fifth international workshop for NHRIs held in Rabat in 2000 that adopts the Rabat Declaration also strongly emphasized on the importance of NGOs and NHRIs relationships.

⁴⁷⁵ As per the Declaration of Athens adopted during the 2nd meeting of the euro-Mediterranean National Institutions for the promotion and protection of human rights in November/2001, the establishment of direct contacts between them will be very useful.

- The final observation of the treaty body should be directly forwarded to the commission and if this is so, the commission will be better placed to follow the implementation of the recommendations of the treaty bodies.
- 5. The fifth point of recommendation is that the commission should play a prosecutorial role and should be capable enough to bring the violators and perpetrators of human rights abuses of these groups to the court. On top of that, the commission should play the role of *amicus curiae* and should assist the court in arriving at a fair justice; the commission must have a prosecutorial role as it is in a better position than the public prosecutor under the ministry of justice in terms of specialty in human rights litigations, focus and expertise.
- 6. The sixth point of recommendation is establishing an independent institution for each group or at least establishing its own department/unit under the human rights commission. This is very necessary to make the commission well focused and specialist in the human rights of these groups and as a result their problems will be handled and addressed in detail and in a very professional manner.
- 7. The seventh point of recommendation is that the commission should be able to issue and publish a public report either annually or bi-annually about the over all human rights situation in the country and in the human rights situations of children, women and persons with disabilities in particular and the commission should be able to make sure that these reports reach the public.
- 8. The eighth point of recommendation is that the commission, not only advertising through the media for five or ten minutes, it should buy air time and it must prepare and transmit permanent programs on Human Rights in general and Human Rights of the vulnerable groups in particular.
- 9. The ninth point of recommendation for the commission is that it should insist the government in submitting any draft legislation before enactment for a critical and serious review from the perspective of its compliance with the international human right standards and principles and publish its own reports that might show the views and stands of the commission.

10. The tenth point of recommendation is the appointment process of the officials of the commission, that it shouldn't always be in a form of selection but also by way of a direct election by the people and the profession as well as the relevant work experience of these individuals should be seriously taken in to consideration.

Post script:

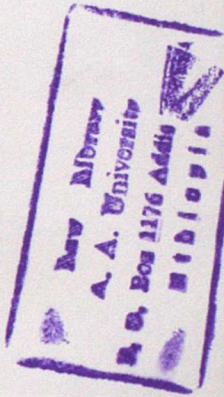
In fact, The Ethiopian Human Rights Commission, in December/2009 G.C. (Tahsas 2001 E.C) issued a report after paying a visit to various prison places administered by both the federal as well as regional states prison administrations. The commission, by organizing four groups comprised of commissioners and experts, paid a visit to 35 prison places in July/2008, December/2008 and from March 30 to April 20/2009. All the four groups prepared a check list based on the *Standard Minimum Rules for the Treatment of Prisoners of the UN* and the basic human rights of prisoners guaranteed under art. 19 and art. 21 of the FDRE constitution assessed the over all conditions of prisoners in terms of their health, the availability of adequate nutritionally quality food and water, clean and convenient environment for their recreational activities, convenient places for the exercise of the religious rights and practice, education and training and evaluated the administration of the prisons in terms of willingness to cooperate with the commission and transparency of its activities. In its findings, the commission has identified some problems with the treatment of prisoners though such can be easily resolved and it has also recommended some points like the allocation of adequate food budget per prisoner as the currently applicable budget doesn't consider the current economic crisis, the establishment and availability of health facilities, the construction of more buildings and rooms so that the accommodation problem might be resolved and so on.⁴⁷⁶

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~~~~~ [XXXXXXXXXXThe End!XXXXXXXXXXXX] ~~~~~

## ANNEX I

### Principles relating to the Status of National Institutions

*Adopted by General Assembly resolution 48/134 of 20 December 1993*

#### Competence and Responsibilities

1. A national institution shall be vested with competence to promote and protect human rights
2. A national institution shall be given as broad a mandate as possible which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. National institution shall, *inter alia*, have the following responsibilities
  - (a) To submit to the Government parliament and any other competent body on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral opinions recommendations proposals and reports on any matters concerning the promotion and protection of human rights the national institution may decide to publicize them these opinions recommendations proposals and reports as well as any prerogative of the national institution shall relate to the following areas:
    - (i) Any legislative or administrative provision as well as provisions relating to judicial organization intended to preserve and extend the protection of human rights in that connection the national institution shall examine the legislation and administrative provisions in force as well as bills and proposals and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights it shall if necessary recommend the adoption of new legislation the amendment of the already existing legislations and administrative measures,
    - (ii) Any situation of violation of human rights which it decides to take up

- (iii) The preparation of reports on the national situation with regard to human rights in general and on more specific matters
- (iv) Drawing the attention of the Government to situations any part of the country where human rights are violated and making proposals to it for initiatives to put amend to such situations and where necessary expressing an opinion on the positions and reactions of the government.
- (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights in strumpets toe which the state is a part and their effective implementation
- (c) To encourage ratification of the above mentioned instruments or accession to those instrument and to ensure their implementation
- (d) To contribute to the reports which states are required to submit to reunited nation bodies and committees and to regional institutions pursuant toe their treaty obligations and where necessary to express an opinion on the subject with due respect for their independence:
- (e) To cooperate with the United Nations and any other organization in the United Nations system the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights.
- (f) To assist in the formulation of programmers for the teaching of and research into human rights and to take part in their execution in schools universities and professional circles
- (g) To publicize human rights and efforts to comet all forms of discriminating in particular racial discriminating by increasing public awareness especially through information and education and by making use of all press organs.

### **Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members whether by means of an election or otherwise shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist

representation of the social orcas (of civilian society) involved in the promotion and protection of human rights particularly by powers which will enable effective cooperation to be established with or through the presence of representatives of

- (a) Non- governmental organizations responsible for human rights and efforts to combat racial discriminating trade unions concerned social and professional organization trade unions concerned social and professional organizations for example associations of lawyers doctors journalists and eminent scientists
  - (b) Trends in philosophical or religious thought
  - (c) Universities and qualified experts
  - (d) Parliament
  - (e) Government departments (if they are included these representatives should participate in the deliberations only in an advisory capacity)
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises in order to be independent of the government and not be subject to financial control which might affect its independence
3. In order to ensure a stable mandate for the members of the institution without which there can be no real independence, their appointment shall be effected by an official act, which shall establish the specific duration of the mandate. This mandate may be renewable provided that the pluralism of the institution's membership is ensured.

### **Methods of operation**

Within the framework of its operation the national institution shall

- (a) Freely consider any questions falling within its competence whether they are submitted by the government or take up by it with out referral to a higher authority on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assenting situations falling within its competence;

- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from amongst its members as necessary and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies whether jurisdictional or otherwise responsible for the promoting and protections of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by non-governmental organizations in expanding the work of national institutions develop relations with non-governmental organizations devoted to promoting and protecting human rights to economic and social development to combating racism to protecting particularly vulnerable groups (especially children migrant workers refugees physically and mentally disabled person) or to specialized areas.

### **Additional principles concerning the status of commissions with quasi- jurisdictional competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances and without prejudice to the principles stated above concerning the other powers of the commissions the functions entrusted to them may be based on the following principles.

- a) Seeking an amicable settlements through conciliation or with nth delimits prescribed by the law though binding decisions or where necessary on the basis of confidentiality;
- b) Informing the party who filed the petitions of his rights, in particular the remedies variable to him, and promoting his access to them;
- c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

- d) Making recommendations to the competent authorities especially by proposing amendments or reforms of the laws regulations and administrative practices especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

## ANNEX II

Proclamation NO 210/2000

Ethiopian Human Rights commission Establishment

Proclamation ..... page 1356

PROCLAMATION NO 210/200

### A PROCLAMATION TO PROVIDE FOR THE ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

*Whereas*, the goal jointly build one political community founded on the rule of law, as one of the basic objectives of the nations/ nationalities and peoples of Ethiopia, is to be achieved by guaranteeing respect for the fundamental rights and freedoms of the individual and of national/ nationalities and peoples;

*Whereas*, the immense sacrifices paid by the people of Ethiopia, in the protracted struggle they waged with a view to bringing about a democratic order and to enhancing their socio-economic development, calls for paving the way for the unfettered protection of human rights;

*Whereas*, the constitution of the Federal Democratic Republic of Ethiopia guarantees respect for peoples rights and freedoms and provides that Federal and regional government organs, at all levels and their respective officials shall have the responsibility and duty to respect and enforce said rights and freedoms .

Whereas it is found necessary to establish a human rights commission, as one of the organs that play a major role in enforcing such rights and freedoms and to determine its powers and functions, by law, in conformity with the provisions of the constitution.

Now the fore in accordance with sub article (1) and (14) of Article 55 of the constitution of the federal democratic republic of Ethiopia, it is hear by proclaimed as follows

## Part One

### General Provisions

#### 1. *Short Title*

This proclamation may be cited as the "Ethiopia human Rights commission establishment proclamation No. 210/2000"

#### 2. *Definitions*

Unless the context requires other wise, in this proclamation:

1. "Appointee" means the Chief Commissioner for Human Rights, the Deputy Chief Commissioner or Commissioner heading the children and women affairs, and Commissioners at the level of branch offices, appointed by the house, in accordance with this proclamation;
2. "Staff" includes department heads, professionals and other support staff of commission
3. "Family Member" means a person of relation by consanguinity or affinity, in accordance with the Civil Code of Ethiopia;
4. "House" means the House of peoples representatives of the Federal Democratic republic of Ethiopia;
5. "Human Right" includes fundamental rights and freedoms recognized under the constitution of the Federal Democratic republic of Ethiopia and those enshrined in the international agreement ratified by the country;
6. "Person" means any natural or juridical person;
7. "Region" means and of those specified under Article 47 (1) of the constitution of the federal Democratic republic of Ethiopia and for the purposes of this proclamation, includes the Addis Ababa City Administration and the Dire Dawa Administration;
8. "Government" means the Federal, or a Regional Government;
9. "Third Party" means a deputy, an association or a non-governmental organization representing an individual or a group;
10. "Investigator" means a staff assigned, by the chief commissioner, to conduct investigation

### **3. Establishment**

1. The Human Rights commission of Ethiopia (hereinafter referred to as "The commission") is hereby established as an autonomous organ of The Federal government having its own juridical personality.
2. The commission shall be accountable to the House.

### **4. Scope**

1. This proclamation shall also apply to violation of human rights Committed in any Region.
2. Provisions of this proclamation set out in the masculine gender shall also apply to the feminine gender

### **5. Objective**

The objective of the Commission shall be to educate the public be aware of human rights see to it that human rights are protected and fully enforced as well as to have the necessary measure taken where they are found to have been violated

### **6. Powers and Duties**

The Commission shall have the powers and duties to:

1. ensure that the human rights and freedoms provided for under the constitution of the federal Democratic republic of Ethiopia are respected by all citizens, organs of state political organizations and other associations as well as by their respective officials;
2. Ensure that laws regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the constitution
3. Education the public, using the mass media and other means, with a view to enhancing its tradition of respect for and demand for enforcement of rights upon acquiring sufficient wariness regarding human rights.
4. undertake investigation upon complaint or its own initiation in respect of human rights violations
5. make recommendations for the revisions of existing laws, enactment of new laws and formulation of policies
6. Provide consultancy services on matters of human rights

7. forward its opinion on human right reports to be submitted to international organs
8. translate into local vernaculars international human rights instruments adopted by Ethiopia and disperse same
9. participate in international human rights meeting conferences or symposia
10. own property enter into contracts sue and be sued in its own name
11. perform such other activities as may be necessary to attain its objective

#### **7. Limitation of power**

The Commission shall have full powers to receive and investigate all complaints on human rights obligations made against any person, save cases brought before the House, the house of the Federation, Regional Council or before the courts of law, at any level.

#### **8. Organization of the Commission**

1. a council of commissioners
2. (a) A Chief Commissioner
- (b) A deputy Chief commissioner
- (c) A Commissioner heading the children and women affairs
- (d) Others Commissioners and
- (e) The necessary staff

#### **9. Head office**

The commission shall have its head office in Addis Ababa and it may have branch offices at any place as may be determined by the House.

#### **10. Appointment**

1. The chief Commissioner, the Deputy Chief Commissioner and other commissioners shall be appointed by the house
2. The appointment of the Chief Commissioner the Deputy Chief Commissioner and of other commissioners shall be made as under the following selection procedure
  - (a) The appointees shall be recruited by a Nomination Committee to be formed pursuant to Article 11 hereunder;
  - (b) The nominees shall have to receive the support of a two-thirds vote of the members of the committee;

(c) The list of nominees shall be presented to the House, y the Speaker for in to vote upon;

(d) The nominees shall be appointed upon receipt of the support of a two-thirds vote of the House.

### **11. Composition of the nomination Composition of the Nomination**

The Nomination Committee shall have the following Members:

2. The Speaker of the House ..... Chairperson
3. The speaker of the House of the Federation ..... Member(s)
4. seven members from among members of the House of the Federation ..... Members
5. Two members of the House to be elected by joint Agreement of opposing parties having seats in the house ..... >>
6. The president of the Federal Supreme Court ..... >>
7. A representative of The Ethiopian Orthodox Church ..... >>
8. A representative of the Ethiopia Islamic Council ..... >>
9. A representative of the Ethiopia Evangelical Church ..... >>
10. A representative of the Ethiopia Catholic Church ..... >>

### **12. Criteria for Appointment**

Any person who:

1. is loyal to the Constitution of the Federal Democratic Republic of Ethiopia
2. Upholds respect for human rights
3. is trained in law or other relevant discipline or has acquired extensive knowledge through experience
4. is reputed for this diligence honest and good conduct
5. has not been convicted for a criminal offence
6. is an Ethiopian national
7. is of enough good heal the to assume the post
8. is above thirty five years of age

May be an appointee .

### ***13. Accountability***

1. The chief commissioner shall be accountable to the house
2. The Deputy chief commissioner and other commissioners shall be accountable to the chief commissioner

### ***14. Term of the office***

1. The term of office of an appointee shall be five years
2. Upon expiry of the term of office specified under Sub- Article (1) of this article the appointee may be re-appointed.
3. A person discharged from responsibility or removed from office as under Article 15, shall not unless reappointed assume a post in legislative executive and judicial organs for about six months thereafter

### ***15. Grounds for Removal of an appointee***

1. An appointee may be removed from office or discharged from responsibility upon the following circumstance
  - (a) upon resignation subject to a three-month prior written notices
  - (b) Where it is ascertained that he is incapable of properly discharging his duties due to illness
  - (c) Where he is found to have committed an act of human rights violation
  - (d) Where he is found to be corrupt or to have committed other unlawful act
  - (e) Where it is ascertained that he is of manifest incompetence
  - (f) Upon terminating of his term of office
2. Within six months of the removal or discharge of an appointee as under Sub- Article (1) of this article another appointee shall be made to replace him.

### ***16. Procedure for Removal of an Appointee***

1. An appointee shall be removed from office upon the grounds specified under article 15(1) (b-e) hereof, subsequent to investigation of the matter by a special inquiry Tribunal to be formed pursuant to Article 17.

2. An appointee shall be removed from office where the House finds that the recommendation submitted to it as supported by the majority vote of the Special Inquiry Tribunal, is correct and where it upholds same by a two – thirds majority vote.

### ***17. Composition of the Special Inquiry Tribunal***

The special inquiry Tribunal shall have the following members:

1. The Deputy Speaker of the House ... Chairperson
2. The Deputy Speaker of the House of the Federation .... Member(s)
3. Three members to be elected by the house .....
4. a member of the house to be elected by joint agreement of opposition parties have seats in the house
5. The vice president of the federal supreme court .....

### ***18. prohibition to Engage in other employment***

1. An appointee shall not be allowed to engage in other gainful, public or private employment during his term of office
2. Notwithstanding the provisions of sub- Article (1) of this artic the house may allow otherwise in consideration of the particular professions in which the appointee is required to make contribution

## **Part Two**

### **Powers and duties of the Appointees**

#### ***19. Powers and Duties of the Chief Commissioner***

1. The chef commissioner shall be the top executive of the commission and as such shall exercise the powers and duties of the commission provided for herein.
2. Without prejudice to the generality stated under Sub- Article (1) of this article the chief commissioner shall
  - (a) employ and administer the staff, in accordance with directive to be adopted by the Council of Commissioners,
  - (b) prepare and submit to the house, the budget of the commission deal upon by the council of commissioners and implement same upon approval

- (c) transfer a case where has sufficient grounds from one investigating section or investigator to another or investigate himself a case of human right violation committed anywhere
  - (d) undertake study of recurrent cases of human right violations and forward together with remedial proposal to the house
  - (e) Give his opinion on reports prepared by the federal government in respect of human rights protection
  - (f) Prepare and submit to the house draft legislation on human rights give his opinion on those prepared otherwise
  - (g) Submit a report, to the house on matters of human rights and on the activities of the commission
  - (h) Take part in meetings by way of representing the commission establish working relations with federal and regional government organs as well as with non-governmental organizations
  - (i) Organize, coordinate and follow up branch offices;
  - (j) Perform such other activities as may be assigned to him by the house.
3. the chief commissioner may to the extent necessary for the efficient performance of the commission delegate part of his powers and duties, other than those specified under sub- Article 2 (b), (f) and (g) of this article and Article 35 (2), to commissioners or other officials of the commission.

***20. powers and duties of the Deputy chief commissioner***

1. assist the chief commissioner in planning organization directing and coordinating the activities of the head office of the commission;
2. under take the activities of the chief commissioner in the absence of the latter;
3. Carry out such other activities as may be assigned to him by the chief commissioner.

## **21. powers and Duties of the commissioners of branch offices**

In addition to exercising within the local jurisdiction of a branch office the powers and duties vested in the commission other than those specified under sub articles (7) and (9) of article 6 of this proclamations the commissioner shall as the superior head of a branch office have the following powers and duties

1. to transfer a case from one investigation section or investigator to another or to conduct investigation himself, where it has a good cause
2. to submit, to the chief commissioner, a detailed report on matters of human rights
3. to direct and organize the branch office as well to administer its professionals an support staff, in accordance with directive issued by the commission
4. to effect payments in accordance with the budget allocated to the branch office
5. To establish working relations s a representative of the branch office with regional government organs and non- governmental organizations operating with in the region
6. to perform such other activities as may be assigned to him by the chief commissioner

### **Part Three**

#### **Rules of procedure of the commission**

##### **22. The right to lodged complaints**

1. A complaint may be lodged by a person claiming that his rights are violated or by his spouse family member representative or by a third party
2. The commission may in consideration of the gravity of the human right violation committed receive anonymous complaints
3. Without prejudice to provisions of article 7 of this proclamation the right to lodge complaints as under this proclamation, shall be no bar to the institution of criminal or civil proceedings over the same case
4. The commission shall receive and investigate complaints free of any charge

### **23. Lodging Complaints**

1. A complaint may be lodged with the commission orally, in writing or in any other manner
2. complaints shall to the extent possible be submitted together with supporting evidence
3. complaints may be made in Amharic or in the working language of a region

### **24. investigation**

1. The commission may conduct investigating on the basis of complaints submitted to it.
2. The Commission shall have the power to conduct investigation, on its own imitation where is so finds necessary.

### **25. Ordering the production of evidence**

In order to undertake necessary examination within a reasonable time the commission may order that

1. those complained against appear for questioning or that they submit their defense
2. Witness appear and give their testimony
3. any person in possession of evidence, relevant to the case produce same

### **26. Remedies**

1. the commission shall make all the effort it can summon to settle amicable, a complaint brought before it
2. it shall notify in writing, the findings of its investigation and its opinion thereon, to the superior head of the concerned organ and to the complainant
3. The remedy proposed y the commission pursuant to this Article, shall expressly state that the act having caused the grievance be discontinued that the directive having caused the grievance be rendered inapplicable and that the injustice committed be redressed or that any other appropriate measure be taken

4. Complaints submitted to the commission shall be accorded with due response within a short period of time

**27. The Right to object**

1. Any complainant or accused shall have the right to object to the official next in hierarchy where he is aggrieved by a remedy proposed by a subordinate appointee or official of the commission within one month from the time he is notified in writing of such proposed remedy
2. An appointee or official who receives an objection pursuant to sub- article (1) of this article may modify stay the execution of reverse or confirm the remedy having been proposed
3. The decision to be rendered by the chief commissioner shall be final

**28. duty to notify a fault**

Where the commission in the process of conducting investigations believes that a crime or an administrative fault is committed it shall have the duty to for the with notify in writing immediately toe the concerned organ or official

**29. overlap of jurisdiction**

1. Where cases falling both under the jurisdiction of the commission and of the institution of the ombudsman materials the question of which of them would investigate shall be determined upon their mutual consultation
2. Failing determination of the matter as under sub article (1) of this article the organ before which the case is lodged shall undertake the investigation

Part Fore

Administration of the council commissioners and staff of the commission

**Part Four**

**Administration of the council of commissioners and staff of the commission**

**30. Council of the commissioners**

1. council of the commissioners (hereinafter referred to a "the council") is hereby established
2. The council shall have the following members
  - (a) The chief commissioner ..... Chairperson

- (b) The Deputy Chief Commissioner ..... deputy chair person
  - (c) Other commissioners ..... Members
3. the council shall elect its secretary from among its members
  4. The council may draw up its own rules of procedure

**31. powers and Duties of the council**

The council shall have the following powers and duties

1. to adopt directives and by –laws necessary for the implementation of this proclamation
2. to discuss on the draft budget of the commission
3. to adopt staff regulations in conformity with the basic principles of federal civil service laws
4. To appoint department heads of the commission and branch offices of same
5. To examine and decide on cases petitions or complaints submitted to it in relation to staff administration within short period of time
6. to appoint heads at the level of branch offices of the children and women affairs department
7. To hear disciplinary cases relating to department

**32. The Right to Appeal**

1. Any department head of h the commission aggrieved by administrative decisions rendered by the council may appeal to the speaker of the house within one month from the date such decision has been made
2. the decision rendered pursuant to sub-article (1) of this article shall be final

**33. utilization of outside professionals**

The commission may utilize for a specific task and for a definite duration outside professionals necessary for its functions subject to making appropriate remunerations

**34. observance of secrecy**

Unless ordered by a court or otherwise permitted by he chief commissioner any appointee or staff of the commission or any professional employed pursuant to

Article 33 of this proclamation shall have the obligation not to disclose at all times any secret known to him in connection with his duty

### **35. Immunity**

No:

1. appointee or
2. investigator

Of the commission may be arrested or defined without the permission of the house or the chief commissioner respectively except when caught in flagrant delicate for a serious offence.

## **Part Five**

### **Miscellaneous Provisions**

#### **36. Budget**

1. the budget of the commission shall be drawn from the following sources
  - (a) budgetary subsidy to be allocated by the government
  - (b) Assistance grant and any other source
2. Of the monies obtained from the sources mentioned under sub Article (1) of this article, an amount equivalent to a quarterly portion shall in advance be deposited at the national bank of Ethiopia or at another bank designated by the bank and shall be utilized in accordance with financial regulations of the government for purposes of implementing the objects of the commission.

#### **37. Books of Accounts**

1. The commission shall keep complete and accurate books of accounts
2. The accounts of the commission shall be audited annually, by an organ to be designated by the house.

#### **38. Duty to cooperate**

Any person shall provide the necessary assistance with a view to helping the commission exercise its powers and duties

#### **39. Reporting**

1. the commission shall issue an official report as may be necessary

2. The commission shall exercise transparency in respect of its mode of operation including issuance of regular reports
3. Notwithstanding the provisions of sub-article (2) of this article the commissions shall have the duty to exercise caution in respect of matters to be kept secret, with a view to not endangering national security and will be or to protecting individual lives.

#### *40. Non- Answerability for Defamation*

1. No complaint lodged pursuant to this proclamation, shall, entail liability for defamation
2. No report of the commission submitted to the house on the findings of an investigation under taken nor any other correspondence of the commission relating to its activities shall entail liability for defamation.

#### *41. Penalty*

1. Any person who having received summons from the commission or been called upon by it otherwise does not appear or respond without good cause within the time fixed or is not willing to produce a document or to have same examined shall be punishable with imprisonment from one month to six months or with a fine from two hundred to one thousand birr or with both.
2. Any person who causes harm to witnesses before the commission or to persons having produced a document before it or who without good cause fails to take measures within three months from receipt of reports recommendations and suggestions of the commission or does not state the reasons for such failure shall be punishable with imprisonment from three to five years or with both unless punishable with more severe penalty under the penal law.

#### *42. Transitory provisions*

Complaints involving human rights that are under investigation by the house prior to the enactment of this proclamation shall be investigated by the commission.

*43. Inapplicable laws*

No law or practice inconsistent with this proclamation shall be applicable in respect of matters provided for in this proclamation

*44. Effective Date*

This proclamation shall enter into force as of the 4th day of July, 2000.

Negaso Gidada (Dr.)

President of the Federal Democratic Republic of Ethiopia