



**ADDIS ABABA UNIVERSITY SCHOOL OF
LAW AND GOVERNANCE STUDIES**

**Post-2018 Reform on Institutional Independence
Of the Ethiopian Human Rights Commission**

BY

Halewiya Kiyar Aman

May, 2023

Post-2018 Reform on Institutional Independence of the Ethiopian Human Rights Commission

**Thesis Submitted in Partial Fulfillment of the Requirement for the
Degree of Masters Law (LLM) in Human Rights Law at the School
of Law and Governance Studies, Addis Ababa University.**

By

HALEWIYA KIYAR

Advisor

YONAS BIRMETA (Ph.D.)

May 20/2023

ADDIS ABABA UNIVERSITY
SCHOOL OF LAW AND GOVERNANCE STUDIES

**Post-2018 Reform on Institutional Independence of the Ethiopian
Human Rights Commission.**

By Halewiya Kiyar

Board of Examiners

Name	Signature	Date	
Advisor	_____	_____	_____
Examiner	_____	_____	_____
Examiner	_____	_____	_____

DECLARATION

I, the undersigned, announce that the thesis entitled “Post-2018 Reform on Institutional Independence of the Ethiopian Human Rights Commission” consists of my original work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work.

Name:-Halewiya Kiyar

ID: - GSE/5595/11

Date: - May 20, 2023

Signature_____

I, Yonas Birmeta, have read this thesis and approved it for examination.

Supervisor:-_____

Signature:-_____

Date;-_____

Acknowledgments

I am pleased to give my sincerest gratitude to my advisor, my friends Fiqade Alemayhu and Wegenae and all those who helped me in various ways throughout my study and preparation of this thesis. My special appreciation goes to my family and my husband Feysel Kedir Ali for your persistent support.

List of Abbreviations

EHRC-Ethiopian Human Rights Commission

HPR-House of Peoples Representatives

GANHRI- Global Alliance of National Human Rights Institutions

NHRIs- National Human Rights Institution

SCA- Sub-Committee of Accreditation

EPRDF-Ethiopian People’s Revolutionary Democratic Front

UDHR- Universal Declaration of Human Rights

ECOSOC- The UN Economic and Social Council

UN- United Nations

UNHCR- United Nations Center for Human Rights

ICC- International Coordinating Committee

EU-European Union

CSO- Civic Society Organization

NGO- Non-Governmental Organizations

OHCHR- Office of High Commissioner for Human Rights

CHR-Center for Human Rights

USAID-United States Agency for International Development

Table of Content

Acknowledgments	iv
List of Abbreviations	v
Abstract	viii
Chapter One.....	1
INTRODUCTION	1
Background of the Research	1
Research Question	3
Research Objectives.....	3
General Objectives.....	3
Specific Objectives	4
Methodology.....	4
Literature Review	4
Scope of the Study	6
Limitations of the Study.....	6
Thesis Organization	6
Chapter Two	8
National Human Rights Institutions: Mandate and Independence.....	8
Introduction	8
2.1Mandate and power of National Human Rights Institutions	9
2.1.1Advisory Role	9
2.1.2 Awareness Creation	10
2.1.3 Monitoring	10
2.1.4 Investigation	11
2.1.5 Cooperation.....	11
2.2 Institutional Independence of NHRIs: Main Criteria of the Paris.....	12
Principles	12
2.2.1 Appointment and Dismissal Procedure	12
2.2.2 Mandate and Competence	13
2.2.3 Autonomy from Government	14
2.2.4 Adequate Resource	16
2.2.5 Pluralism.....	17
2.2.6Adequate Powers of Investigation.....	19

Chapter Three	20
3. General Observation and Institutional Independence of Ethiopian Human Rights Commission (EHRC)	20
3.1 Institutional Independence of Ethiopian Human Rights Commission	20
Introduction	20
3.1.1 Legal Foundation of the EHRC.....	21
3.1.2 Structure and Composition of the Commission.....	22
3.1.3 Mandate and Power of the EHRC	22
3.1.4 Autonomy of the EHRC.....	25
3.1.4.1 Legal Autonomy	26
3.1.4.2 Financial Autonomy.....	27
3.1.4.3 Operational Autonomy.....	29
3.1.5 Investigation and Enforcement Power of EHRC	33
3.1.6 Appointment and Dismissal Procedures.....	34
3.1.7 Composition of the EHRC	37
Chapter Four	40
4. Conclusion and Recommendation.....	40
4.1 Conclusion	40
4.2 Recommendations.....	42
Bibliography	45
ANNEX	49

Abstract

Institutional reform has been a key component of Ethiopia's transitional period since the change in the political leadership in 2018. In this regard, the Ethiopian Human Rights Commission (EHRC) is identified as one of the institutions to undertake reform. The reform intended to address the issue of institutional independence for which the Commission was previously criticized.

In view of this, this research examines the impact of the institutional reform of the EHRC in securing the commission's independence. In doing so, this study used the minimum standards set out in the Paris Principles as a parameter. The study finds out that there are several legal and practical changes that have been made to help the EHRC achieve its institutional independence. One of the important changes that has been made in this regard and that also directly affects the institutional independence of the EHRC is amendment of the Establishment Proclamation of the Commission. Following this amendment, EHRC is allowed to adopt its own internal financial rules without the interference of the executive and this helps it to utilize its budget according to its priority. The amendment of the Establishment Proclamation also made changes, among others, in the appointment procedure of Commissioners whereby political party members are prohibited from being nominee to the Commission. Other practical improvements that play a role in the institutional independence of the EHRC include improved pluralistic composition of its staff and its collaboration with other stakeholders. Despite the positive impacts of these reforms which make the institutional independence of EHRC encouraging, the study also looks into areas demanding further consideration to achieve the complete institutional independence of the EHRC.

Chapter One

INTRODUCTION

Background of the Research

National human rights institutions are established for the sole purpose of advancing and defending human rights at the national level. ¹The Ethiopian Human Rights Commission (EHRC) is one of NHRIs established with the mission of promotion and protection of human rights. The establishment of EHRC is one of the results of democratization process in the country following the downfall of the Derg regime and the coming to power of the Ethiopian People's Revolutionary Democratic Front (EPRDF). ²The EHRC was established by virtue of article 55(14) of FDRE Constitution, ³and subsequent Promulgation of Proclamation no 210/2000. ⁴The Commission was established with the aim of overcoming past injustices and human rights violations witnessed in the country.⁵However, the EHRC has been criticized for failing to achieve its goal mainly because of the absence of institutional independence.⁶

Institutional independence is crucial for the effectiveness of NHRIs. In this regard, the Paris Principles⁷ define widely accepted set of principles for establishment and functioning of NHRIs,

¹Anna-Elina Pohjola, 'the Evolution of National Human Rights Institution , the Role of the United Nations', (The Danish Institute For Human Right 2006) 1 (Anna-Elina Pohjola)

²Mohammed Abdo Mohammed, ' the Human Rights Commission of Ethiopia and Issues of Forced Eviction - A Case Oriented Study and its Practice' (2013) <<https://biblio.ugent.be/publication/5855468>>, Accessed 12 May ,2023

³ FDRE Constitution,1995, Art 55(14) (15)

⁴Ethiopian Human Rights Commission Establishment Proclamation, 2000, Art. 3, Proc. No 210, Federal Neg. Gaz, year 6. No. 40

⁵LemessaGuddeta, 'Ethiopian Human Rights Commission Critical Analysis of Its Roles in Protecting Human Rights',<https://www.academia.edu/31271791/The_Ethiopian_Human_right_commission_Critical_analysis_in_its_role_of_promoting_human_rights> accessed in 12 May , 2023

⁶ibid

⁷UN General Assembly Resolution 48/134 (Dec 1993) Available at <<https://www.legal-tools.org/doc/b38121/pdf/>> accessed 12 May , 2023

including criteria which help secure the independence of NHRIs.⁸ Before the mid-2018 political transition, EHRC was challenged with many problems that affected its institutional independence.⁹ These challenges included the fact that the EHRC lacked financial and operational autonomy, had the involvement of politically affiliated officials in its decision-making positions, lacked credibility of its reports, failed to investigate politically sensitive issues, lacked transparent appointment and dismissal procedure, and the nomination committee for its commissioners was composed of politically affiliated members.¹⁰

Following the mid-2018 political transition, EHRC is identified as one of the institutions to undergo reform.¹¹ The reform sought to address the issue of institutional independence for which the Commission was formerly criticized. The amendment Proclamation of the EHRC made changes, among others, on provisions related to securing the institutional independence of the Commission.¹² In this regard, meaningful changes were made related to enhancing financial autonomy of the Commission, broadening the mandate of the Commission, changing the composition of nominating committee for its commissioners, prohibiting political party members from being nominated and making the appointment procedure relatively clear and transparent.¹³

Politically neutral and competent officials joined the Commission. Besides it continuously released reports on the human right issues of the country including criticism against the government for failure to exercise its duty of human rights protection.¹⁴ Also, it is observed that the Commission started to take the initiative to undertake joint investigation with international human rights bodies on human right issues of the country. Though the Commission under took

⁸ ibid

⁹ LemmesaGuddeta (n 5)

¹⁰ ibid

¹¹ Meskerem Geset, 'Legal Reform towards Building an Effective National Human Rights Commission in Ethiopia', In Sisay A. Yeshanew and Abadir. M. Ibrahim (eds), *Righting Human Rights through Legal Reform, Ethiopia's Contemporary Experience/* (Vol. XI/ Addis Ababa University - School of Law/ 2020).

¹² ibid

¹³ Ethiopian Human Rights Commission Establishment (Amendment) Proclamation, 2020, Art .16, Art. 12(17), .11(13), Proclamation no, 1224, Neg. Gaze, Year 26th. no 75

¹⁴ 'Ethiopian Human Rights Commission official website' (Sep 28/2022) <<https://ehrc.org/category/report/>> accessed April 15/2023

meaningful reform in ascertaining its institutional independence, there are still areas that need further consideration to enhance the gained institutional autonomy of the Commission. These include strengthening enforcement power of the Commission, tenure security of staff, clear articulation of provisions on the operational independence of the Commission and maintaining operational autonomy.¹⁵

Research Question

EHRC is among the institutions which passed through significant reform following the recent political transition of the country.

Thus, this thesis seeks to answer the following research questions:

- What matters necessitated the Ethiopian Human Rights Commission's institutional reform?
- What are the reforms made with regard to securing the institutional independence of the Ethiopian Human Rights Commission following the mid -2018 political transition in Ethiopia?
- What steps are further expected to enhance the institutional independence of the Commission?

Research Objectives

General Objectives

- Evaluate post-2018 reform of the Ethiopian Human Rights Commission in light of securing its independence and identifying means and mechanisms which help enhance the Commission's recently gained institutional independence.

Specific Objectives

- Identify matters which necessitate institutional reform of Ethiopian Human Rights Commission.
- Identify areas of the reform made by the Commission which could result in realizing its institutional independence.
- Examine the recent institutional reform made by EHRC with regard to securing the Commission's institutional independence.
- Point out areas which need further consideration so that it helps to enhance independence of the Commission.

Methodology

Given the nature of the research objectives and questions mentioned above, this research paper employs a qualitative data collection method to examine the extent of the current institutional independence of EHRC. Primary data is collected through face-to-face key informant interview with staffs of EHRC. The interviewees have been selected based on their position in the EHRC, knowledge and experience. This research is also descriptive doctrinal study. Accordingly, the study involves the assessment of all relevant laws including the FDRE Constitution, establishment and amendment Proclamation of the EHRC, international instruments on human rights including the Paris Principles as well as authoritative and/or scholarly legal interpretations. Secondary data was collected by assessing literature written on the issue including journals, scholarly articles, publications, researches, websites and reports. Besides, this study has an empirical feature as it assesses the practical improvements observed in the EHRC after the reform.

Literature Review

Addis Ababa University press published an edited book in 2020, which discusses legal reforms done in the human rights issue.¹⁶ In this book, an article written by Meskerem Geset specifically

¹⁶SisayA. Yeshanew and Abadir. M. Ibrahim (eds) 'Legal Reform towards Building an Effective National Human Rights Commission in Ethiopia', */Righting Human Rights through Legal Reform, Ethiopia's Contemporary Experience/* (Vol. XI/ Addis Ababa University - School of Law/ 2020).

discusses the legal reform made by EHRC. In this article, Meskerem tried to indicate the driving factors for the amendment of the Commission's Establishment Proclamation¹⁷ by analyzing the provisions of Proclamation no. 210/2000 which are amended by the Amendment Proclamation,¹⁸ and pointing out gaps and areas which need further consideration in order to enhance the effectiveness of the EHRC.¹⁹

Besides, Charles Fombad provided an overview of NHRIs of Eastern and Southern Africa including EHRC, in light of the Paris Principles minimum standards, such as pluralistic composition, autonomy, finance and infrastructure, legal frame work of their establishment and appointment and dismissal procedure of NHRIs.²⁰ In addition, Getahun Kassa assessed the history, appointment and dismissal procedure, mandate, staff organization, financial autonomy, cooperation with civil society, accessibility and accountability as well as mandate of the EHRC.²¹

Lemessa Gudetta in his article about EHRC briefly discussed the Commission's history, mandate, and power.²² Lemessa also noted challenges the Commission has faced since its establishment, such as lack of legal and operational autonomy, and problems concerning finance, appointment and dismissal procedure.²³ Another article written by Mohammed Abdo mainly focused on the Commission's history and the challenges it faced.²⁴ Mohammed Abdo in his article indicated reasons for lack of effectiveness of the Commission. The two authors'

¹⁷Meskerem Gesset (n 11) 309

¹⁸ibid

¹⁹ibid

²⁰Charles M Fombad, 'An Overview of NHRIs IN Eastern and Southern Africa ' /*Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa*/ (Pretoria University Law Press /2019)

²¹Getahun Kassa, 'The Ethiopian Human Rights Commission' in Charles M Fombad (ed), /*Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa*/ (Pretoria University Law Press /2019)

²²Lemessa Guddeta (n 5)

²³ Ibid

²⁴Mohammed Abdo Mohammed, 'The Ethiopian Human Rights Commission and Its Contribution In The Protection of Human Rights and Building of Good Governance: Challenges and Prospects', <<https://biblio.ugent.be/publication/5855951/file/5876631/thumbnail.png>> accessed 13 May , 2023,

Lemmessa Guddeta and Mohammed Abdo pointed out that the main problem for the failure of the effectiveness of the EHRC is associated with lack of institutional independence.

However, most of the literature on EHRC is published before the institutional reform of the Commission. The writings by Mohammed Abdo and Lemmessa Gudeta were limited to an overview on the Commission and challenges which it faced before the institutional reform. Meskerem Gesset, focused mainly on the legal reform of the Commission. Gesset's article was limited on examining amended provisions of the establishment Proclamation of the Commission. Hence, there is still need for critically examining the practical independence of EHRC following institutional reform of the Commission and none of the above literature examined this issue.

Scope of the Study

The research is limited to examining the effectiveness of the institutional reform made on EHRC with regard to securing the Commission's independence. In this respect, practical examples are also given to explain the Commission's status concerning its institutional independence after the reform. Though it might be raised as part of assessing matters that necessitated the reform which aimed to bring about institutional independence, this study does not provide an in depth analysis of all the challenges EHRC used to face while discharging its mandate before the reform. Brief discussion can be conducted about NHRIs to provide background information about EHRC. However, the study's core is limited to the institutional independence of EHRC following the Commission's reform which will be assessed in light of the minimum standards set out in the Paris Principles.

Limitations of the Study

The study's main limitation is the lack of literature written on the situation of the Commission after the recent institutional reform.

Thesis Organization

This research paper consists of four chapters. The first chapter contains an introduction which includes the background of the study, preliminary literature review, and statement of the

problem, research objective, limitation of the study, thesis organization and scope of the study. Chapter two provides an overview on National Human Rights Institutions including their mandate and elaborates the Paris Principles' minimum standards in relation to institutional independence of NHRIs as part of the author's effort to lay the ground for the analysis made in Chapter three of this study. The third chapter highlights the history of EHRC including its structure, composition, and mainly assesses its institutional independence after the reform. The fourth chapter is comprised of the conclusion of the preceding discussion and provides recommendation driven out of the assessment made in the study.

Chapter Two

National Human Rights Institutions: Mandate and Independence

Introduction

"NHRIs are independent bodies established by government for the specific purpose of promoting and protecting human rights at the domestic level."²⁵

NHRIs are formal autonomous establishments recognized by domestic legislation established for the exclusive purpose of advancement and safeguard of human rights.²⁶ They are exceptional and are not similar to other organs of government even though funded primarily by the government.²⁷ NHRIs are essential to link other human rights institutions and government.²⁸ The central aim behind the formation of NHRI is the protection and promotion of internationally recognized human rights at the national level.²⁹

Even if it took firm ground in the 1990s, the idea of a national human rights institution at the global level traces back two years before the adoption of the UDHR in 1946³⁰ when the UN Economic and Social Council (ECOSOC) tried to encourage member states to establish national human rights institutions in their respective country for the promotion of human rights at the national level.³¹

In the early stages, the aim of establishing NHRIs was only the promotion of internationally recognized human rights at the national level and the idea of institutional independence was not considered. In 1978, United Nations Human Rights Program conducted a fruitful seminar that

²⁵Anna-Elina Pohjolainen (n 1) 6

²⁶Asian Pacific Forum, *A Manual on National Human Rights Institution, Asian pacific forum* , (Rev edn May 2018)

11

²⁷Office of United the Nations High Commissioner for Human Rights, Professional training series No.4 ‘ Human Rights, History, Principle, Role and Responsibilities’ (2010) UN DOC HR/P/PT/4/Rev.1

²⁸Ibid

²⁹Anna-Elina Pohjolainen (n 1) 6

³⁰Ibid 30

³¹Ibid

helped with the adoption of guidelines for the setting up of a national human rights body.³² This Guideline played an important role in making NHRIs acquire the attention of the international society. The Guidelines stipulates the formation and structure of national human rights bodies. However, the Guidelines had its own lacuna with respect to setting out the criteria for the efficiency and autonomy of NHRIs.³³This gap was addressed by the subsequent promulgation of the Paris Principles in 1993.³⁴

2.1Mandate and power of National Human Rights Institutions

The central duties and purposes of NHRIs are the promotion and protection of human rights; all other mandates stem from these two.³⁵ According to the Paris Principles, the mandate of NHRIs should be “as wide as possible” and should be well-defined.³⁶Clearly, defining the mandate of NHRIs is necessary to avoid mandate overlap among such institutions or with other government organs.³⁷Moreover, NHRIs should exercise their mandate freely, without external influence.³⁸

2.1.1Advisory Role

NHRIs can play advisory role on their own initiative or at the request of external organs which includes the government.³⁹Concerning the advisory role of NHRIs, there are important questions that arise, such as, who can request for advice ,the cases in which providing advice is necessary, and the follow-up mechanisms for the advice.⁴⁰Under the Paris Principles, the advice can be submitted to the government.⁴¹

³²Ibid 6

³³Ibid 49

³⁴ Ibid

³⁵ History, Principles, Roles and Responsibilities (n . 27)

³⁶Paris Principle (n .7),and Fombad (n . 20)14

³⁷ ibid (n. 20) 14

³⁸Paris Principle (n.7) and ‘Fact Sheet 3, The Importance of Independence’ (Asian Pacific Forum) <<https://www.asiapacificforum.net/members/what-are-/independence/>>accessed May 13/ 2023

³⁹ibid (n 7)

⁴⁰ Asian Pacific Forum (n 26)106

⁴¹European Union Agency, ‘*Strong and Effective National Human Rights Institutions Challenges Promising*

The advisory role of NHRIs gives them the mandate, for instance, to insist on the government to revise a national legislation to be in line with international human rights instruments, to which the state is a party, and to encourage the state to endorse international human rights instruments. Moreover, NHRIs' mandate, in this regard, may extend to informing governments to take necessary measures concerning human rights violations that occur in their country.⁴²The mandate also includes the support to governments in the preparation of reports to the UN human rights bodies.⁴³

2.1.2 Awareness Creation

NHRIs have mandate to create awareness about human rights.⁴⁴This may be achieved through human rights education targeting parliamentarians, political leaders, civil servants, police and prison officers, community leaders, business people, workers, women, children, and school and university students.⁴⁵Such education can help develop a culture of human rights within the society and enable the society or an individual to defend its rights.⁴⁶NHRIs often face problems delivering human rights education because governments do not give the necessary consideration to the issue⁴⁷ and do not include it easily in the school curriculum.⁴⁸

2.1.3 Monitoring

Monitoring is the process of documenting human rights abuses to recommend corrective measures on the issue.⁴⁹As per this mandate, NHRIs monitor the situation of the whole country or give attention to specific thematic situations or places such as detention centers and election sites. The ultimate goal of the monitoring mandate of NHRIs is to examine the presence of

Practices and Opportunities, (Luxemburg; publication office of European union 2021),

⁴²Paris Principle (n 7)

⁴³Ibid

⁴⁴Ibid

⁴⁵European Union Agency, Strong and effective NHRIs (n 41)

⁴⁶Asian Pacific Forum (n 26)116

⁴⁷European Union Agency, Strong and Effective NHRIs (n 41)

⁴⁸Ibid

⁴⁹Asian Pacific Forum (n 26)131

human rights abuses, recommend possible protective actions, provide corrective action, and preparation of a report about the human rights situation in the country.⁵⁰

2.1.4 Investigation

NHRIs are mandated to receive a complaint that might be individual or group complaint and have the power to investigate upon their initiation.⁵¹ After investigation, first they try to solve the issue amicably between the parties. If the violation persists, they refer the case to courts of law, or refer the case to government organs for corrective actions.⁵²

An investigation mandate is at the center of NHRIs human rights protection mandate; however, they are not a substitute for a judiciary.⁵³ The process of investigation varies from country to country.⁵⁴ However, there are four common steps. These are receiving of complaint; starting the investigation after evaluating that it has jurisdiction on the issue; verifying the complaint which is assuring that there is human rights violation or not; and finally exerting effort to solve the issue through mediation as well as reporting which is about referring the case to the government since NHRIs do not have the power to pass binding decision.⁵⁵

2.1.5 Cooperation

NHRIs work with other stakeholders who have human rights roles and responsibility.⁵⁶ NHRIs cooperate and collaborate with different groups, particularly with civil society organizations which are involved in human rights work.⁵⁷ In this respect, the Paris Principles identify that collaboration with international and regional human rights systems is an effective tool for NHRIs

⁵⁰Ibid

⁵¹Ibid

⁵²Smith, A. 'the Unique Position of National Human Right Institutions; A MixedBlessing?'(2006) available on <<https://deliverypdf.ssm.com/delivery.php?ID>>accessed 12 may 2023

⁵³ NHRIs History, Principles, Roles and Responsibilities (n 27)

⁵⁴Ibid

⁵⁵Ibid

⁵⁶Ibid 126

⁵⁷Fombad (n 20) 15

to uphold and safeguard human rights domestically.⁵⁸ This collaboration should be done taking in to account the existing priorities and resources of NHRIs.⁵⁹

2.2 Institutional Independence of NHRIs: Main Criteria of the Paris

Principles

2.2.1 Appointment and Dismissal Procedure

An effective human rights system needs the establishment of a state institution that act without interference, mainly from the government.⁶⁰ According to the Paris Principles, NHRIs are government institutions which are primarily funded by a government.⁶¹ This makes the independence of NHRIs from the government complex and its attainment impossible.⁶² Among the minimum standards that the Paris Principles consider necessary for the establishment of an effective NHRIs is a stable mandate of Commissioners.⁶³ A vital component that is necessary to make sure independence of NHRIs is the selection and removal process of associates of decision-making bodies.⁶⁴ According to the Sub-Committee of Accreditation (SCA), the choice of candidates should also be merit-based.⁶⁵ The Global Alliance of National Human Rights Institutions (GANHRI) emphasized that selection process should be formalized in legislations. If the appointment and dismissal process is clearly listed out in legislation and the process is transparent, it helps to attract independent and qualified candidates to the post.⁶⁶ In order to

⁵⁸Global Alliance of National Human Rights, ‘practical guideline to the work of Sub-Committee on accreditation’(Dec2018),availableon<https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/GANHRI_Manual_online.pdf>Accessed April 6/2023

⁵⁹ibid

⁶⁰V. Guiding Principle (n 79)

⁶¹Paris Principle (n 7)

⁶²Fombad (n 20) 12

⁶³Paris Principle (n 7)

⁶⁴NHRIs in the EU Member States (n 62) 18

⁶⁵Ibid

⁶⁶A Practical Guide to The Work of SCA (n 58)

realize real independence, limited duration of mandates should be clearly affirmed in official act.⁶⁷NHRIs staff should be free from the government to perform their mandates effectively.⁶⁸

2.2.2 Mandate and Competence

The Paris Principles stipulate that “national institutions shall be given as broad and clear mandate as possible which shall be undoubtedly set forth in constitutional or legislative text stipulating its structure and its scope of competence.”⁶⁹The broad mandate of NHRIs needs commitment on the part of governments because their enabling legislation is ratified by government organs.⁷⁰The scope of the mandate which is specified for NHRIs is one of the concerns of International Coordinating Committee (ICC) during the accreditation of NHRIs of EU member states.⁷¹Broad mandate of NHRIs should give consideration both to promotion and protection mandate of NHRIs.⁷²The Office of the UN High Commissioner for Human Rights (OHCHR) defines ‘ broad mandate’ as including economic, social, cultural and political rights.⁷³Hence, their mandate shall include the one discussed under section 2.1 of this study. The ‘broader mandate’ of NHRIs must also emphasize the indivisibility and interdependent nature of all human rights.⁷⁴The ‘broad mandate’ element also entails that NHRIs should also be equipped with the necessary resources which help the institution to carry out its functions.⁷⁵A broad mandate without sufficient

⁶⁷Paris Principle (n 7)

⁶⁸BalingeneKahombo, ‘The Democratic Republic of The Congo National Human Rights Commission’ inCharles M Fombad (ed), ‘*Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa*’ (Pretoria University Law Press /2019) 131

⁶⁹Paris Principle (n 7)

⁷⁰Asian Pacific Forum (n 26)30

⁷¹European Union Agency For Fundamental Rights, ‘National Human Right Institutions in The EU Member States’, (2010) available on<https://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf>accessed May 13, 2023

⁷²Asian Pacific Forum (n 26)84

⁷³Office of the United Nations High Commissioner for Human rights , ‘*Assessing the Effectiveness of National Human Rights Institutions*’, (international council of human right policy and office of United Nation High Commissioner for human rights 2005)

⁷⁴ibid

⁷⁵ NHRIs History, Principles, Roles and Responsibilities (n 27) 77

resources to execute it cannot make the institution effective by itself. Unjustified restriction of the mandate and power of NHRIs entails failure to comply with Paris Principles.⁷⁶

Among the fundamental features which show the legitimacy and effectiveness of NHRIs is the legal frame work on which they are based.⁷⁷ An institution established based on a Constitution is stronger and more credible than one established by other legislative instruments. The establishment of NHRI by a Constitution is preferable since Constitutional entrenchment provides a better safeguard against arbitrary change to NHRI's mandate or power for political expediency.⁷⁸ Founding of NHRIs by executive decree does not guarantee their solidity since executive decree can be amended or abolished by the ruling government easily.⁷⁹

Moreover, the national enabling legislation should list out the mandate of NHRI in a way which avoids ambiguity and overlap that adversely affect their effectiveness.⁸⁰

2.2.3 Autonomy from Government

Safeguarding the autonomy of NHRIs is one of the most important minimum standards that is set out under the Paris Principles in respect of establishing operative NHRIs.⁸¹ NHRIs must enjoy autonomy from the government so as to be able to investigate the government and other actors committing human rights abuses.⁸² The autonomy of NHRIs can be revealed in three different ways; legal autonomy, operational autonomy and financial autonomy.⁸³

The Paris Principles stipulate that in order to say NHRIs' operational autonomy is observed, they must be able to "... freely consider any questions falling within its competence....".⁸⁴ Besides,

⁷⁶Asian Pacific Forum (n 26)86

⁷⁷ibid, p 3

⁷⁸ibid, p 13

⁷⁹ NHRIs History, Principles, Roles and Responsibilities (n 27) 77

⁸⁰Fombad (n 20) 5

⁸¹Ibid 12

⁸²Smith (n 52) 909

⁸³Ibid, p 913

⁸⁴Paris Principle (n 7)

NHRIs should carry out their day-to-day job without the involvement of government.⁸⁵NHRIs endorsement, reports and decisions should not be subjected to the government's approval or prior review.⁸⁶The capacity of NHRIs to recruit and hire their own staff members, manage their assets and dealings freely from government interference is also crucial with regard to preserving their operational autonomy.⁸⁷

Moreover, financial autonomy is necessary for government authorities not to put gratuitous financial punishment on NHRIs.⁸⁸The Paris Principles also demand that NHRIs financial autonomy should be assured by providing appropriate amount of budget with the freedom of choosing their priorities in using it.⁸⁹National laws should be promulgated in a manner which gives importance to financial autonomy of NHRIs.⁹⁰NHRIs should not be subjected to financial control which affects their independence.⁹¹A budget which is approved by parliament maintains the financial autonomy of NHRIs better than funding by ministerial office since the latter opens the door for political interference.⁹²

The other important way of safeguarding the autonomy of NHRIs is through their establishment legislation. The Paris Principles clearly stipulate that the mandate and power of NHRIs should be set forth in their establishment constitutional or legislative text.⁹³Mandate and power of NHRIs which is stated in the constitution or legislation give an amount of strict independence than

⁸⁵Ibid

⁸⁶Ibid

⁸⁷ Smith (n 52) 914

⁸⁸Ontario Human Rights Commission, 'V.Guiding principle', Available on <<https://www3.ohrc.on.ca/en/discussion--reviewing-Ontario's-human-rights-system/v-guiding-principles>>, accessed on May 13, 2023

⁸⁹ SCA guideline (n 58)

⁹⁰Ibid

⁹¹The Danish Center for Human Right, 'National Human Rights Institutions Articles and Working Papers'(revised edition, Dec 2001) <[G:\BOOKS\Projektrapporter\UDREDNING\nhri2001\hoved.wpd \(humanrights.dk\)](G:\BOOKS\Projektrapporter\UDREDNING\nhri2001\hoved.wpd (humanrights.dk))>, accessed May 13, 2023

⁹²Ibid

⁹³Paris Principle (n 7)

mandate which is recognized by government (executive body).⁹⁴The legislative foundation of NHRIs is important to safeguard autonomy.⁹⁵

2.2.4 Adequate Resource

One of the minimum standards enumerated by the Paris Principles with regard to institutional independence of NHRIs concerns the infrastructure and adequate funding of NHRIs.⁹⁶ The ICC and SCA also endorse, in their general observation, adequate funding included, at minimum, accommodation for head office staff, reasonable salary and benefits for staff, and establishment of communication service including telephone and internet.⁹⁷ Paris Principles also remind the government that funding should not put NHRIs under its control given the fact that such control affects their independence.⁹⁸ NHRIs are expected to be financially independent.⁹⁹ “Financial autonomy is crucial as an institution with little or no control over its finance or its spending cannot be independent or autonomous”.¹⁰⁰

Inadequate funding highly affects the efficiency of NHRIs.¹⁰¹ States should equip NHRIs with necessary financial and human resources to carry out their mandate effectively.¹⁰² Financial autonomy includes two important points which are the amount of budget and the way or procedure of using that budget.¹⁰³ Mainly, NHRIs face governmental control over their utilization

⁹⁴Smith (n 52) 913

⁹⁵NHRIs working papers (n 82)

⁹⁶Paris Principle (n 7)

⁹⁷ Strong and effective NHRIs (n 41)61

⁹⁸Paris Principle (n 7)

⁹⁹Bonolo Ramadi Dinokopila* and TshiamoRantao**, ‘The Office of The Ombudsman In Botswana’ in Charles M Fombad (ed.), ‘*Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa*’ (Pretoria university law press /2019) 47

¹⁰⁰Office of High Commissioner for Human Rights and United Nation Development Program ‘Collaboration Of National Human rights Institution’, (<https://www.ohchr.org/en/publications/policy-and-methodological-publications/toolkit-collaboration-national-human-rights>), accessed May 13,2020

¹⁰¹BonoloRamadi and Dinokopila* TshiamoRantao ** (n 99)47

¹⁰² Strong and effective NHRIs (n 41)

¹⁰³Fombad (n 20)12

upon receiving their budget.¹⁰⁴ This state of affair erodes their independence and is contrary to the Paris Principles. Besides, the source and nature of funds should also be identified in the enabling legislation.¹⁰⁵ In addition, the Human Rights Council (HRC) reported that NHRIs have to be assigned with sufficient resources to consider that governments are complying with the minimum standards of the Paris Principles set out in this regard.¹⁰⁶

Sufficient financial supply and having national legal basis to receive subsidy from multiple bases are vital for their practicability.¹⁰⁷ In this respect, the International Coordinating Committee(ICC) and SCA in their general observation recommend that funding from non-governmental bodies should not comprise the basic fund of government since government by itself is the primary duty bearer on providing sufficient fund for NHRIs.¹⁰⁸ Enabling legislation of NHRIs should assure that funding from external organ shouldn't be in a manner which jeopardizes NHRIs impartiality and independence.¹⁰⁹ Adequate funding, at least possibly improves NHRIs operation and fulfillment of their mandate.¹¹⁰ The ICC also gives prominence to the existence of adequate funding in re-accreditation.¹¹¹

2.2.5 Pluralism

One of the minimum standards which is set out in the Paris Principles is the pluralistic composition of members and collaboration with civil societies.¹¹² The Paris Principles specifies

¹⁰⁴comparative look at implementing human rights commission laws'(The Institute for International Law and Human Rights With the assistance of the University of Virginia School of Laws Human Rights Law Clinic, March 2009) <[A-Comparative-look-at-Implementing-Human-Rights-Commission-Laws_08.01.22.pdf](#) (iilhr.org)>May 13/2020

¹⁰⁵Collaboration of NHRIs (n 100)

¹⁰⁶Ibid

¹⁰⁷Comparative look at Implementing Human Rights Commission Laws (n 104)

¹⁰⁸NHRIs in the EU Member States (n 62) 61

¹⁰⁹Comparative Look at Implementing Human Right Commission Laws,(n 104) 11

¹¹⁰ NHRIs History, Principles, Roles and Responsibilities (n 27) 40

¹¹¹NHRIs in the EU Member States (n 62)33

¹¹²Paris Principle (n 7)

several means of safeguarding pluralism.¹¹³ Pluralism is about both internal structure of NHRIs and their work relation with other stakeholders.¹¹⁴ Pluralism can be shown by diversified memberships and creating means and mechanisms which allow cooperation with other social and political organs.¹¹⁵ Pluralism is also essential to boost credibility, effectiveness and independence of NHRIs¹¹⁶ and also helps to prove the presence of parity in NHRIs.¹¹⁷ One of the apparent ways of guaranteeing pluralism is through diversified membership. For instance, commissioners and higher officials of NHRIs should be nominated from all segments of the society.¹¹⁸ The Paris Principles also emphasize on the procedure of nomination of higher officials and other associates of NHRIs stating that it should be in a manner which assures pluralism.¹¹⁹ Pluralism should be safeguarded by developing a procedure which can be employed in the process of nomination of members of NHRIs and in a partnership with civil societies.¹²⁰ The SCA also gives attention for the implementation of pluralism in the course of considering countries' application for accreditation and re-accreditation.¹²¹ Partial membership weakens NHRIs trustworthiness among other section of the public.¹²² According to the Paris Principles, another means of realizing pluralism is cooperation with civil society.¹²³ A strong and operative civil society is imperative for a lively human rights system.¹²⁴ In order to fulfill the pluralism requirement of the Paris

¹¹³Report and Recommendation of International Coordinating Committee Sub-Committee of Accreditation (March 22/2007) ,Available on <[2007_March_SCA_Report.pdf\(ohchr.org\)](#)>accessed May 12/2023

¹¹⁴ NHRIs History, Principles, Roles and Responsibilities (n 27)24

¹¹⁵Fombad (n 20) 8

¹¹⁶Rules of Procedures for GANHRI Sub-Committee on Accreditation, (March 4 /2019) Available on (https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/ENG_GANHRI_SCA_RulesOfProcedure_adopded_04.03.2019_vf.pdf) , accessed on May 13, 2023.

¹¹⁷ ibid

¹¹⁸ ibid

¹¹⁹ Paris Principle (n 7)

¹²⁰ SCA report (n 113)

¹²¹ ibid

¹²² NHRIs History, Principles, Roles and Responsibilities (n 27)17

¹²³ ibid 24

¹²⁴ Ibid

Principles, NHRIs should uphold relations with civil society.¹²⁵ The inclusion of civil society representatives is one way of safeguarding pluralism of membership in NHRIs.¹²⁶ Other members of the society who work in relation to the promotion and protection of human rights should also be included in the composition of NHRIs.¹²⁷ Besides, the inclusion of women's and vulnerable groups in NHRIs plays an important role in realizing pluralism.¹²⁸

2.2.6 Adequate Powers of Investigation

Adequate powers of investigation are important for NHRIs to conduct their investigation effectively.¹²⁹ Such power includes collection of evidence, compelling the presence of witnesses for questioning, to obtain documents and facts, to enter places and conduct inspection. Adequate power necessitates the existence of imposition of punishment if any person or organization fails to comply with an instruction.¹³⁰ Adequate powers of investigation should also include deciding on what investigation to carry out and how it can be conducted. This has its own impact in effectiveness of the investigation.¹³¹

¹²⁵Paris Principle (n 7)

¹²⁶ International Council on Human Rights, '*Performance and Legitimacy of National Human Rights Institution*',(International Council on Human Rights 2004)98

¹²⁷Fact Sheet 3 (n 38)

¹²⁸International Council on Human Right (n 126)112

¹²⁹Asian Pacific Forum (n 26)164

¹³⁰ibid

¹³¹ Fombad (n 20)12

Chapter Three

3. General Observation and Institutional Independence of Ethiopian Human Rights Commission (EHRC)

3.1 Institutional Independence of Ethiopian Human Rights Commission

Introduction

Historically, Ethiopia is criticized for its lack of robust human rights protection.¹³² In this regard, the establishment of the Ethiopian Human Rights Commission was a good first step¹³³ The Commission was established as one of the democratic institutions following the promulgation of the 1995 FDRE Constitution.¹³⁴ The foundation for the establishment of EHRC was laid down under article 55 (1) and (14) of the FDRE Constitution.¹³⁵ EHRC was established for the main purpose of promotion and protection of human rights.¹³⁶ It represents a semi-judicial human rights body in the country.¹³⁷ EHRC is a national body which reports to the House of People's Representatives.¹³⁸

Before the mid-2018 political transition, EHRC was criticized for lack of institutional independence.¹³⁹ The EHRC was among the institutions that were identified for reform following

¹³²Lemmesa Guddeta (n 5)

¹³³ibid

¹³⁴Mohammed Abdo (n 2)

¹³⁵ibid

¹³⁶ibid

¹³⁷ Alen Agegnehu and WorkuDibu, 'Ethiopian Human Rights System an Overview' ,(2015),Volume 9,(2015) JCSD<<https://iiste.org/Journals/index.php/JCSD/article/view/24236>> accessed May 13/2023

¹³⁸EHRC report (n 14)

¹³⁹ Mohammed Abdo (n 2)

the mid-2018 political transition in the country.¹⁴⁰ Then, EHRC recently underwent several legal and structural reforms.

3.1.1 Legal Foundation of the EHRC

The EHRC is both a constitutional and a statutory body.¹⁴¹ The FDRE Constitution authorizes the House of Peoples' Representatives (HPR) to establish NHRIs, providing the constitutional basis for the establishment of EHRC.¹⁴² As a result, five years after the promulgation of the constitution, the EHRC was established by Proclamation no. 210/2000 (hereinafter referred to as "Establishment Proclamation"),¹⁴³ as an autonomous organ that is accountable to the HPR.¹⁴⁴ Before it was enacted into law, the Proclamation went through wide discussion with members of the public at large and professionals; however, local and international NGOs were kept out of the process.¹⁴⁵ Proclamation no. 210/2000 stipulates the mandate and power of EHRC as well as its structure, appointment and dismissal procedures and detailed functions of the Commission.¹⁴⁶ Following the mid-2018 political transition of the country, Proclamation no. 210/2000 was amended by Proclamation no. 1224/2020 (hereinafter referred to as "Amendment Proclamation") in August 2020.¹⁴⁷ The Amendment Proclamation amended 13 articles out of 44 articles in the establishment Proclamation.¹⁴⁸ These articles are chosen for amendment to grant the EHRC more independence as it was criticized for lack of such institutional independence before the mid-2018 reform.¹⁴⁹

¹⁴⁰MeskeremGesset (n 11) 309

¹⁴¹LemmesaGuddeta (n 5)

¹⁴²Fombad (n 20)11

¹⁴³EHRC Establishment Proclamation 210/2000, Art 3

¹⁴⁴Ibid

¹⁴⁵Mohammed Abdo (n 2).

¹⁴⁶EHRC Establishment Proclamation 210/2000

¹⁴⁷MeskeremGesset (n 11) 309

¹⁴⁸EHRC Amendment Proclamation 1224/2020

¹⁴⁹MeskeremGesset (n 11) 337-338.

3.1.2 Structure and Composition of the Commission

Under the Establishment Proclamation, the nomination committee is composed of members of the two houses, religious leaders and one representative from the Federal Supreme Court.¹⁵⁰ The Establishment Proclamation was silent about the criteria for the membership in the nomination committee. The Amendment Proclamation, in contrast, under article 11(2) specified that members of the nominating committee should be independent and competent.¹⁵¹

Under the EHRC Establishment Proclamation, article 8 stipulated that the Commission was composed of Council of Commissioners, Chief Commissioner, Deputy Chief Commissioner, commissioners handling women's and children affairs and other Commissioners.¹⁵² The Amendment Proclamation removed the phrase "other Commissioners" and made it specific stating that there will be not less than four Commissioners heading thematic areas of human rights.¹⁵³

Under the Establishment Proclamation no. 210/2000, there are criteria specified for appointment and dismissal. These include loyalty to the constitution, upholding human rights, not being convicted of a criminal offence, being known for his or her honesty and diligence, being an Ethiopian national, having enough health to assume office and being above thirty five years of age. The Amendment Proclamation replaced the 'enough and good health' criterion by 'nominee who is not a member of political party.'¹⁵⁴

3.1.3 Mandate and Power of the EHRC

According to the Establishment Proclamation, the Commission was mandated to ensure that human rights are not violated and that laws which are promulgated by government are not in breach of nationally and internationally recognized human rights. It was also mandated to create awareness on human rights among the public, to make scrutiny upon complaint or by its own motion, to give recommendation for the government in the enactment of laws and to enhance the

¹⁵⁰EHRC Establishment Proclamation 210/2000,Article 11

¹⁵¹MeskeremGesset (n 11) 337and EHRC Amendment Proclamation 1224/2020,Art 11(2)

¹⁵²EHRC Establishment Proclamation 210/2000, Article 8

¹⁵³EHRC Amendment Proclamation 1224/2020,Art 2

¹⁵⁴Ibid Art 6

protection of human rights. Besides, it was mandated with advisory role on human rights issues.¹⁵⁵ Taking this into account, it is possible to say that the Establishment Proclamation of EHRC fulfilled the Paris Principles' broad mandate requirement.¹⁵⁶

The Amendment Proclamation also broadens the mandate of the Commission which is vaguely stipulated in article 6(11) of the Establishment Proclamation.¹⁵⁷ Article 6(11) of the Establishment Proclamation is repealed and replaced by clear mandates under the Amendment Proclamation.¹⁵⁸ The Amendment Proclamation gives the EHRC the mandate to visit and monitor detention centers or any other place where people are held in custody without prior notice,¹⁵⁹ this makes any organ whether it is governmental or non-governmental not to claim prior notice during the Commission's visit. This is an important achievement with regard to making the Commission effectively exercise its mandate. Visiting detention centers without prior notice helps to dig out any human rights violations and abuses without giving time to the officials of that specific detention center to hide them.

The Paris Principles stipulate that NHRIs need to have as broad mandate as possible with clearly defined sphere of competence so they will be effective and fully functional.¹⁶⁰ The broad mandate of NHRIs incorporates the promotion and protection of human rights.¹⁶¹ Accordingly, the EHRC is established with comprehensive mandate to promote and protect fundamental freedoms and rights incorporated in the FDRE Constitution and international treaties ratified by Ethiopia.¹⁶² The mandate of the Commission includes investigation of complaints, human rights education, monitoring, advising the government concerning the human rights aspects of legislative drafts and conducting human rights research.¹⁶³ Along with article 6 of the Establishment Proclamation, the Amendment Proclamation adds three sub-articles in the

¹⁵⁵EHRC Establishment Proclamation 210/2000, Article 6

¹⁵⁶ibid

¹⁵⁷EHRC Amendment Proclamation 1224/2020, Article 6(11)(12)

¹⁵⁸ ibid

¹⁵⁹ibid

¹⁶⁰Paris Principle (n. 7)

¹⁶¹Fombad (n.20)15

¹⁶²Meskerem Gesset (n 11) 328 and EHRC Establishment Proclamation 210/2000, Art 6

¹⁶³Alen Agegnehu and WorkuDibu (n 137) 30

mandate of the Commission with regard to monitoring human rights situation during a time of election. This makes the power of the Commission broader.¹⁶⁴

The other important factor concerning the mandate of NHRIs is that their mandate should be clearly articulated to avoid mandate overlap. Since there are different types of NHRIs, the clear articulation of powers and functions avoids mandate overlap among them.¹⁶⁵In the case of Ethiopia, under article 55 sub article 14 and 15 of the FDRE Constitution, the House of Peoples' Representatives is given the power to establish the EHRC and Institution of the Ombudsman.¹⁶⁶ Unless the mandate of these two NHRIs is clearly defined, it results in mandate overlap. The Establishment Proclamation under its article 29 stipulated procedural solution to cases of mandate overlaps between the Commission and Institution of the Ombudsman.¹⁶⁷Notwithstanding article 29 of the Establishment Proclamation, there were instances which were likely to raise an issue of mandate overlap¹⁶⁸For instance, recently, a complaint was brought before the Commission in relation to land grabbing in the Gambella region. The Commission failed to investigate the case citing an absence of jurisdiction.¹⁶⁹

Regarding monitoring human rights situations during a time of election, 3 sub-articles are added in the Amendment Proclamation to stipulate the mandate of the Commission during elections.¹⁷⁰ These additional sub-articles help to avoid mandate overlap that could be raised with regard to election and it is an important step to secure the independence of the Commission.

On the other hand, the Establishment Proclamation under its article 6(11) states "...perform such other activities as may be necessary to attain its objective."¹⁷¹Such vague and general provisions might cause mandate overlap with other institutions such as the Institution of the Ombudsman

¹⁶⁴EHRC Amendment Proclamation 1224/2020,Art 2

¹⁶⁵Fombad (n 20) 14

¹⁶⁶FDRE Constitution, Arts 55(14) (15)

¹⁶⁷EHRC Establishment Proclamation 210/2000, Art 29 and Mohammed Abdo (n 22)

¹⁶⁸GetahunKassa (n 21)301

¹⁶⁹Mohammed Abdo (n 22)

¹⁷⁰EHRC Amendment Proclamation 1224/2020,Art 6(2)(3)

¹⁷¹EHRC Establishment Proclamation 210/2000 ,Art 6

and open the door to erode independence of the Commission. Despite this, the Amendment Proclamation also incorporated this sub-article without making any modification.

3.1.4 Autonomy of the EHRC

According to the Establishment Proclamation, EHRC gets its budget from the government.¹⁷² This budget is deposited in the National Bank or any bank it assigns and is administered by the financial regulation of the government.¹⁷³ The Amendment Proclamation changed this arrangement and instead made the budget to be deposited three months in advance into the Commission's bank account and provide full autonomy to the Commission with regard to its utilization.¹⁷⁴

The other important issue with regard to autonomy is the legal and operational autonomy of the Commission.¹⁷⁵ Under article three of the Establishment Proclamation of the Commission, the Commission was established as an autonomous federal organ responsible only to the parliament.¹⁷⁶ This implies that the legal autonomy of the Commission was secured by virtue of its Establishment Proclamation.

With regard to operational autonomy, it is indicated in chapter two of this study that operational autonomy is the capacity of national institutions to exercise their mandate without external influence.¹⁷⁷ Besides, as noted in the previous section, EHRC's mandate and power is not listed out in the FDRE Constitution, rather it was stipulated in the Proclamation.¹⁷⁸ In addition, the core of the autonomy of NHRIs is protecting them from governmental influence.¹⁷⁹ Autonomy of the

¹⁷²ibid

¹⁷³ibid

¹⁷⁴EHRC Amendment Proclamation 1224/2020, Article 6(11) (12) and Meskerem Gesset (n 11) 34

¹⁷⁵Fombad (n 20)12

¹⁷⁶EHRC Establishment Proclamation 210/2000, Article 3

¹⁷⁷Yemisrach Endale, 'the Roles and Challenges of the Ethiopian Human Rights Institutions in the Protection of Human Rights in Light of the Paris Principle' (LLM thesis, Central European Universities Department of Legal Studies 2010)53

¹⁷⁸EHRC establishment Proclamation 210/2000, Art 6as amended by EHRC Amendment Proclamation no 1224/2020 art 6(11)-6(13)

¹⁷⁹Fombad (n 20) 8

Commission is among the core point in maintaining institutional independence. The concept of autonomy of NHRIs takes account of legal, operational, and financial independence of NHRIs.¹⁸⁰ The following part of this study will briefly assess these issues.

3.1.4.1 Legal Autonomy

The Paris Principles require that establishment of effective and independent NHRIs should be based on a constitution or legislation.¹⁸¹ Other means of establishment of NHRIs such as presidential decree are excluded from the minimum standards of the Paris Principles. The EHRC satisfies this criterion as its establishment is provided under the FDRE Constitution¹⁸² although; the Constitution merely authorizes the parliament to establish the Commission.¹⁸³ Besides, the EHRC is established through its Establishment Proclamation enacted by the Parliament. In this respect, EHRC is established as an autonomous federal body having legal personality pursuant to article 3 of the Establishment Proclamation.¹⁸⁴ The Commission is also accountable to the parliament rather than to any executive bodies. This is a positive step to maintain institutional independence of the Commission.¹⁸⁵ It is also possible to argue that the legal autonomy of EHRC is secured. For a country which was reputed for its lack of effective human rights protection system, it is a good starting point to give recognition for the establishment of EHRC in the Constitution.¹⁸⁶ However, compared to other NHRIs established by Constitutions, Establishment of EHRC by a Proclamation can be considered as weak. NHRIs established by a Constitution have better safeguard of independence and a stable mandate since amendment of Constitution is not an easy task compared to the amendment of other legal instruments.¹⁸⁷

¹⁸⁰Ibid 12

¹⁸¹Paris Principle (n 7)

¹⁸²FDRE Constitution, Art 55(14)

¹⁸³FDRE Constitution, Art 55(14) and Fombad (n 20)14

¹⁸⁴EHRC Establishment Proclamation 210/2000, Article 3

¹⁸⁵Ibid

¹⁸⁶Mohammed Abdo (n 24).

¹⁸⁷Fombad (n 20)11

The reason forwarded for selected amendment of the Establishment Proclamation is that most of the articles of the Proclamation are in line with international standards.¹⁸⁸ The amendment was made in provisions which have direct impact on the independence and effectiveness of the Commission, such as mandate and power, financial administration, appointment and dismissal procedure and members of nominating committee of the Commission.¹⁸⁹ Hence, the Amendment Proclamation of the EHRC is more effective with regard to securing institutional independence and autonomy of the Commission.

3.1.4.2 Financial Autonomy

Adequate funding and special procedures to use the allocated fund is vital for preserving the institutional independence of the EHRC. In this regard, the Paris Principles also expect governments to provide adequate fund for NHRIs in order to make them effective.¹⁹⁰ The Amendment Proclamation of the EHRC essentially made amendment with regard to securing its financial autonomy. The Proclamation amended both the procedures of requesting its budget and the utilization of the allocated budget. The amendment was made in a way which secures financial autonomy of the Commission.¹⁹¹ The Commissioner directly presents the budget request to the HPR.¹⁹² The concerned executive organ which is the Ministry of Finance and Economy, is involved in the budget of the Commission only for the purpose of depositing the quarterly budget in advance in the bank account of the Commission.¹⁹³ In contrast, according to the Establishment Proclamation of the EHRC, the Ministry of Finance and Economy had the power to determine the amount of budget of the EHRC and used to deposit the quarterly budget in the National Bank or any other bank which EHRC selected.¹⁹⁴ Besides, before the mid 2018 institutional reform, the procedure of using the budget of the Commission was exposed to stringent bureaucratic financial system and procedure of the government. This effectively puts the Commission under

¹⁸⁸Meskerem Gesset (n 11) 337

¹⁸⁹EHRC Amendment Proclamation 1224/2020

¹⁹⁰Paris Principle (n 7)

¹⁹¹EHRC Amendment Proclamation 1224/2020, Art 11(3)

¹⁹²EHRC Amendment Proclamation 1224/2020, Art 36(2)

¹⁹³Ibid art 11(3)

¹⁹⁴EHRC Establishment Proclamation 210/2000, Article 6

the influence of the executive organ.¹⁹⁵ Following the institutional reform, the Commission is allowed to adopt internal financial rules.¹⁹⁶ In practice, the Commission is making use of its own internal financial rule. This plays a significant role in the Commission's financial autonomy and helps it to utilize the finance to fulfill, for instance, its need for infrastructure.¹⁹⁷ Internal financial rule of the Commission also helps the Commission to use its budget according to its priority.

Despite the fact that the Ministry of Finance and Economy is responsible for depositing three months' budget in advance to the bank account of the Commission, in practice the Ministry does not comply with this requirement. The Commission's request for the release of funds is on a monthly basis like other government offices. This creates problems to the day-to-day work activity of the Commission¹⁹⁸ and threatens its financial autonomy. Accordingly, the Ministry needs to put the budget of the Commission three months in advance to maintain the Commission's financial autonomy.

In relation to this, data collected regarding the amount of budget of the Commission shows that there is improvement in the sum of budget allocated to the Commission and the Commission's salary scale has improved compared to other government offices. This helps the Commission to attract qualified and independent personnel.¹⁹⁹ Even though there is progress, the amount of budget allocated by the government is still not sufficient. More than 55 % of the Commission's budget is obtained from external donors. This entails that the Commission's budget is not sustainable since donor-based funds are not sustainable.²⁰⁰ The Commission requests its budget based on the budget ceiling of the government before the start of the fiscal year.²⁰¹ This is another practical problem which erodes the financial autonomy of the Commission. The amount of budget allocated is also one way of evaluating the commitment of the government to the

¹⁹⁵GetahunKassa (n 21)303

¹⁹⁶EHRC Amendment Proclamation 1224/2020,Art 36(2)

¹⁹⁷Interview with AlemayehuJemal , Finance and Budget Coordinator in Ethiopian Human Rights Commission, (Addis Ababa, on April 25, 2023)

¹⁹⁸ibid

¹⁹⁹Interview with Hayget Adhana, director talent management and human resource service of Ethiopian human rights commission,(Addis Ababa, April 25/2023)

²⁰⁰Alemayehu Jemal (n .197)

²⁰¹ibid

institutional independence of the Commission. Along with fulfilling other aspects of the financial autonomy of the Commission, allocating a sufficient budget also plays an important role in securing the institutional independence of EHRC. Most of the work done by the Commission is based on funds obtained from donor organs, not the government.²⁰²

3.1.4.3 Operational Autonomy

Operational autonomy is another important measurement of the existence of independence of NHRIs. According to Fombad, before the recent institutional reform, the EHRC faced the highest level of interference and lack of operational autonomy.²⁰³ Operational autonomy is the level of freedom of NHRIs to accomplish their mandate.²⁰⁴ Operational autonomy also includes deciding freely on what investigations to carry out, on the preparation of reports and on what to recommend based on the investigation conducted.²⁰⁵

The Establishment Proclamation stipulated broadways of receiving complaints; it is possible to provide individual or group complaints. The complaint can also be communicated to the Commission in person or through representatives such as family members, spouses or any third party.²⁰⁶ The complaint can also be made orally or in written form.²⁰⁷ The Commission is also mandated to conduct investigations based on the complaint received or by its own initiation. Similarly, in practice, the Commission receives complaints in different forms such as by telephone, email or social media.²⁰⁸ Along with the above-mentioned means of receiving complaints, the Commission also assigned an officer who follows up reports of human rights violations in the country from the media.²⁰⁹ This helps to increase the accessibility of the Commission.

²⁰²Interview with Yonas Mulugeta ,Investigation Director of Ethiopian Human Rights Commission, (Addis Ababa on 25 April 2023)

²⁰³Fombad (n 20) p 11

²⁰⁴Ibid 12

²⁰⁵Ibid

²⁰⁶EHRC Establishment Proclamation 210/2000, Article 22

²⁰⁷Ibid art 23

²⁰⁸YonasMulugeta (n. 202)

²⁰⁹Ibid

Practically, the Commission has the mandate of selecting cases for investigation based on admissibility criteria and a complaint-handling manual.²¹⁰ The Commission makes sure whether the complaint fulfills the Commission's admissibility criteria before starting its investigation on an issue.²¹¹ The admissibility criteria of the Commission includes elements such as making sure the existence of a violation of human rights, that the case is not pending before a court, and that the Commission has the mandate to entertain the case.²¹² All the admissibility criteria are in line with the Paris Principles and legislations of the Commission. According to the investigation coordinator, the Commission uses a complaint-handling manual to handle complaints brought before the Commission. Existence of admissibility criteria and a complaint-handling manual reassures transparency and helps to have formal and measurable means of selection of cases for investigation. Before the institutional reform, the Commission was criticized for not fully using its power of investigation particularly in politically sensitive issues.²¹³

The Commission has full discretion to select cases for investigation based on the admissibility - criteria and the complaint handling manual.²¹⁴ This is crucial to maintain operational autonomy of the Commission and investigate cases by its own initiation without the interference of the executive. Before the institutional reform, investigations were conducted first by receiving the willingness of higher officials of the Commission particularly if the issue is related to the government.²¹⁵ Moreover, the Commission was criticized for failure to investigate politically sensitive cases.²¹⁶ After the reform, however, the EHRC showed its independence and credibility by investigating cases without differentiating them by political sensitivity and presented recommendations in its reports and press releases. The Commission continuously exposed and condemned the human rights violations committed by the government.²¹⁷

²¹⁰ibid

²¹¹ibid

²¹²ibid

²¹³Mohammed Abdo (n 24).

²¹⁴Yonas Mulugeta (n 202)

²¹⁵Ibid

²¹⁶Mohammed Abdo (n 24)

²¹⁷Report in the Official website of EHRC (n 14)

The other important point regarding operational autonomy is the commitment of the government bodies during the investigation process. The Establishment Proclamation obliged any organ to cooperate with the work of the Commission. After the institutional reform, it is observed that operational autonomy of the Commission has been better in head office than in the branch offices of the Commission.²¹⁸ In practice, though there are gaps especially in regional areas, there are encouraging signs on the government side as its organs are showing a willingness to cooperate with the Commission during its investigation process.²¹⁹ The data collected in this study shows that there is relative progress in the cooperation of the government organs with the work of the Commission and in their acceptance of the Commission's recommendations as well. However, it is not possible to say that the Commission has gained its full operational autonomy. Rather, the operational autonomy of the Commission is threatened based on the case type and the specific situation surrounding a case.²²⁰ For instance, in the Gambella region, the coordinator of the regional branch office and other staff faced life-threatening conditions and the office of the Commission located in the region was attacked as a result of the report the Commission released subsequent to its investigation conducted on the death of civilians in the region.²²¹

Related to this, the avoidance of prior notice requirement plays an important role in securing the operational autonomy of the Commission since previously some government organs asked for prior notice when the staff of the Commission went to visit or investigate an issue.²²² Even if the Amendment Proclamation avoids the need for prior notice, in practice, the Commission is facing problems in accessing places as some government bodies still claim prior notice.²²³

The other progress with regard to operational autonomy of the Commission is that the government sends draft legislations to the Commission in order to receive the Commission's comment. Also even if there are gaps in fully applying the comment forwarded by the

²¹⁸Yonas Mulugeta (n.202)

²¹⁹Ibid

²²⁰Ibid

²²¹EHRC official website (n 13) and YonasMulugeta (n. 202)

²²²Interview with Mizanie Abate Tadesse (PhD), Senior Director, Human Rights Monitoring ad Investigation, interviewed in (Addis Ababa, 16 August 2023)

²²³Mizanie Abate (PhD), (n .222)

Commission, there is an encouraging trend of using them as inputs to improve the draft legislation.²²⁴ For example, the government accepted and applied most of the Commission comments on the draft criminal procedure code and sends it again to the Commission for additional comment.²²⁵ In addition, the Commission also gave comments on different policy documents and other draft legislations.²²⁶

There is also an important progress in the reports released by the Commission where the Commission clearly criticizes the government for its failure to protect human rights. For instance, in its October 24/2022 reports, the Commission blamed the government for failing to fulfill its duty to protect human rights emanating from the Kampala Convention and recommended the government to protect the human rights of internally displaced people (IDPs).²²⁷ Besides, in its report released on July 8/2022, the Commission recommended the government to fulfill its duty of promotion, protection and prevention of human rights violation of citizens all over the country.²²⁸ The Commission also recommended the government to take accountability measures against security forces who were accused of using excessive force against protestors during the celebration of Adwa victory.²²⁹ These examples show the improvement of the operational autonomy of the Commission.²³⁰

On the other hand, the Commission doesn't have well equipped safety and security instruments. This entails risk for staff of EHRC who engages in the monitoring and investigation work in areas where there are ongoing conflicts.²³¹ In this regard, the Commission is mainly assisted by the advanced safety and security instruments of international partners.²³² But it is better to have its own safety and security instrument to make the Commission more independent and strong.

²²⁴ ibid

²²⁵ Interview with unanimous, official in Ethiopian Human Rights Commission, (Addis Ababa ,Aug 16,2023)

²²⁶ Mizanie Abate (PhD) (n .222)

²²⁷ EHRC report (n 14)

²²⁸ Ibid

²²⁹ Ibid

²³⁰ Mohammed Abdo (n 24)

²³¹ Mizanie Abate (PhD) (n .222)

²³² ibid

Presently, the main gap the Commission faces is a lack of strong enforcement power of its findings. In this regard, the Commission, as a quasi-judicial organ, lacks strong enforcement mechanism.²³³The main enforcement mechanism of the Commission is amicable means of conflict resolution.²³⁴The Amendment Proclamation of the Commission also did not address this problem. Hence, the enforcement mechanism of the Commission could be considered as one of the biggest challenges for the Commission's effectiveness and independence. The Commission plans to work in connection with the HPR for the purpose of establishing strong enforcement mechanism in the near future.²³⁵

3.1.5 Investigation and Enforcement Power of EHRC

Based on the Establishment Proclamation,²³⁶ the Commission has the power to receive complaints and conduct investigation.²³⁷ According to this power, the Commission can deal with issues of human rights abuse whether it was committed by the government or non-governmental bodies.²³⁸ The investigation can be conducted based on the complaint the Commission received or by its own initiation.²³⁹The Commission has the power to order the production of evidence for the purpose of the investigation.²⁴⁰ Failure to cooperate with the Commission in the production of evidence entails punishment with fine and/or imprisonment.²⁴¹ And the Commission does not have power to investigate cases which are pending before a court.²⁴²

The Amendment Proclamation made an effort to strengthen the investigation power of the Commission by adding provision which gives protection for witnesses who will give testimony before the Commission like those of serious criminal case witnesses who appear before court to

²³³Yonas Mulugeta (n .202)

²³⁴Mohammed Abdo (n 22)

²³⁵Yonas Mulugeta (n.202)

²³⁶EHRC Establishment Proclamation, Article 6(4)

²³⁷Ibid

²³⁸ibid art 6(1)

²³⁹ibid art 6(4)

²⁴⁰ibid art 25

²⁴¹ibid art 41

²⁴²ibid art 7

give their testimony.²⁴³This is an important achievement with regard to strengthening the investigation mandate of the Commission.

Based on the Establishment Proclamation, with regard to enforcement power, the Commission, as general rule, has the mandate to settle issues amicably²⁴⁴ and to follow up the implementation of the remedies provided.²⁴⁵ Article 26 of the Establishment Proclamation did not give power to the Commission to provide a legal remedy to the aggrieved party. Similarly, the Amendment Proclamation does not make revision with regard to the issue of strengthening the enforcement power of the Commission. This has an adverse effect on the Commission's enforcement power given the fact that amicable settlement of disputes by itself is not sufficient for the effectiveness of the Commission. Hence, providing EHRC with strong enforcement mechanism is required. This can be done, for instance, by giving EHRC the power to intervene in court cases which involve human rights violation.

3.1.6 Appointment and Dismissal Procedures

The role of transparent, inclusive, and participatory appointment procedures of staff, particularly higher officials of NHRIs, is indisputable to maintain institutional independence. The establishment legislation of NHRIs should specify interval of appointment, re-appointment, if any and the appointment process should also ensure pluralism.²⁴⁶ The Amendment Proclamation requires the nominating committee to follow transparent appointment process and undertake public participation in the process. Article 11(3) of the Amendment Proclamation also requires the nominating committee to consider pluralism in the appointment process.²⁴⁷This is an important step for realizing the Commission's independence. Even if the Amendment Proclamation played a great role for making the appointment process transparent, it failed to address another aspect of the appointment process. This is because, after public consultations are conducted, the power to select nominees is given to the nominating committee and the

²⁴³EHRC Amendment Proclamation 1224/2020, Art 25(4)

²⁴⁴EHRC Establishment Proclamation 210/2000, Article 26(1) and Mohammed Abdo (n 2)

²⁴⁵AlenAgegnehu and WorkuDibu (n 137)15

²⁴⁶Fombad (n 20)13

²⁴⁷EHRC Amendment Proclamation 1224/2020 , Art 2(7)

committee could use its own means to select among the nominees and it is not required to reveal the criteria employed to select among the nominees.²⁴⁸ This has an adverse effect in the transparency of the appointment process.

The Establishment Proclamation of the Commission does not require the nominating committee to be directed by clear procedures.²⁴⁹ In this regard, the criteria stipulated under the Establishment Proclamation of the Commission were criticized for lack of transparency and vagueness, and for opening the door for abuse.²⁵⁰ To build effective and independent human rights commission, appointment procedures of officials should be transparent and politically neutral.²⁵¹ Before the reform, selection of politically affiliated officials to the EHRC eroded its institutional independence.²⁵² The Amendment Proclamation made important amendments and prohibited political party members from being nominees.²⁵³ In practice, in the process of appointment of other staff of the Commission, sufficient care is made to prevent politically affiliated candidates from joining the EHRC.²⁵⁴ This has an importance to maintain the Commission's independence.

In addition, the Amendment Proclamation made some modifications regarding the composition of the nominating committee. It decreases the number of government representatives and create space for NGO representation in the nomination committee.²⁵⁵ The decrease of the involvement of the government in the nomination committee plays an important role in maintenance of independence.

The Amendment Proclamation also included important points regarding the composition and qualification of the nominating committee for which the Commission was previously criticized. According to the Amendment Proclamation, members of the nominating committee should be

²⁴⁸ibid 13(3)

²⁴⁹Getahun Kassa (n 21)303

²⁵⁰Lemmesa Guddeta(n 5)

²⁵¹Ibid

²⁵²Ibid

²⁵³EHRC Amendment Proclamation 1224/2020 , Art 12(7)

²⁵⁴Higet Adhana (n .199)

²⁵⁵Meskerem Gesset (n 11) 344

independent and fulfill the criteria stipulated for Commissioners.²⁵⁶ This is an important step for assuring the independence and effectiveness of the Commission as the Establishment Proclamation is silent in this regard. Before the institutional reform, the composition of the nominating committee was raised as another reason for eroding independence of the Commission. Article 11 of the Establishment Proclamation stipulated the composition of members of the nominating committee.²⁵⁷ The Proclamation did not require participation of NGO and civil society member in the nominating committee. This in turn hampered the inclusion of well qualified and independent officials to the post.²⁵⁸

The Establishment Proclamation stipulated criteria for removal of an appointee. The fulfillment of the criteria stipulated for removal of an appointee required evaluation by special inquiry tribunal. Therefore, the independence and the composition of members of these tribunals highly mattered in the quality of their decision. The members of the special inquiry tribunals had high affiliation with the government.²⁵⁹ With the exception of the vice president of the Federal Supreme Court, other members of the special inquiry were selected from the two houses. Since the seat of House of Federation and House of Peoples ‘Representatives are dominated by members of the ruling political party,²⁶⁰ it is impossible to consider that the decision they made is independent from their political view.²⁶¹ Unless members of the tribunals are independent, the fairness of the decision they make risk being, or being perceived to be politically motivated. The Amendment Proclamation does not, however, make any amendment in this regard. Like that of the appointment of Commissioners and other officials, their dismissal should also be accompanied by independent and qualified special inquiry tribunal in order to realize full institutional independence of the EHRC.

²⁵⁶EHRC Amendment Proclamation 1224/2020 , Art 11(2)

²⁵⁷EHRC Establishment Proclamation 210/2000 ,Art 6

²⁵⁸Mohammed Abdo (n 24)

²⁵⁹Lemmesa Guddeta (n 5)

²⁶⁰ ibid

²⁶¹ ibid

3.1.7 Composition of the EHRC

Pluralism in NHRIs is one of the mechanisms to maintain institutional independence. Pluralistic composition of NHRIs can be shown through composition of staff by gender, ethnicity, and collaboration of NHRIs with NGOs and CSOs.²⁶² It is the other important mechanism of ensuring independence. The Amendment Proclamation of the Commission under article 11(3) gives consideration in this regard.²⁶³ The nominating committee is required to give emphasis for gender diversity and representation from different segments of the society.²⁶⁴

The nomination process is also expected to be participatory and transparent. This also helps to attract independent and well qualified Commissioners and higher officials to the Commission. The Establishment Proclamation has lacunae in this regard and did not stipulate each specific criterion for ensuring pluralistic composition and transparent means of appointment. Clear quota should be included to make pluralistic composition of nominees real and measurable.²⁶⁵ In practice, the Commission makes its vacancies accessible to the public as much as possible and encourages candidates who are female, persons with disabilities and employees who speak different languages and who are from diverse backgrounds to apply for the posts to maintain pluralistic composition.²⁶⁶

According to the human resource director, 40% the staff of the Commission are female. The Commission also gives priority for qualified personnel rather than pluralistic composition.²⁶⁷ As a result, it has gaps with regard to composition of the staff from different segments of the society who speaks different languages.²⁶⁸ Even though qualification of candidates should not be compromised, the Commission should also give the necessary attention for language diversity as complaints may come from segments of the society that speak different language. The Commission's work with regard to gender diversity is encouraging. However, more work is

²⁶²Fombad (n 20) 8

²⁶³EHRC Amendment Proclamation 1224/2000, Art 11(3)

²⁶⁴ibid

²⁶⁵Meskerem Gesset (n 11) 352

²⁶⁶Higet Adhana (n .199) and Mizanie Abate (Dr) (n .222)

²⁶⁷ibid

²⁶⁸ibid

expected on the inclusion of staff from different ethnic groups as this helps it to be effective and independent.

The other means of showing pluralistic composition is through collaboration with members of the civil society through, among others, making joint investigations and facilitating financial as well as technical support (including qualified personnel). The development of the Commission's engagement with other stakeholders following the reform is one reason for the reaccreditation of the Commission with "A" status.²⁶⁹ The Commission works in partnership with other national and international stakeholders in all areas as far as it helps it to accomplish its mission and vision and in a way which respect the Commission's independence.²⁷⁰ Since institutional independence should be secured not only from the government but also from any other external organ, the Commission has a partnership strategy guideline in order to avoid unnecessary intervention in the Commission's work in the name of donation or partnership.²⁷¹ There is also a coordination platform which the Commission uses to work with national stakeholders.²⁷² Program and Partnership department of the EHRC uses its guideline as an instrument to avoid unnecessary intervention which EHRC might face in the name of partnership and the guideline was designed in a manner which protects the Commission's independence in this regard.²⁷³

The Commission obtains 55 % of its finance from external donors²⁷⁴ and more than half of the Commission's activities are funded by this financial support. Even if the Commission gains more than half of its budget from external donors, the partnership strategy guideline helps to protect unnecessary intervention of donors in the autonomy of the EHRC since the guideline was formulated in a way which protects the institutional independence of the Commission.²⁷⁵ The Program and Partnership department of EHRC selects its national and international partners freely based on its partnership guidelines without external influence.²⁷⁶ The Commission also

²⁶⁹Interview with unanimous official in Ethiopian Human Rights Commission, (Addis Ababa ,Aug 16,2023)

²⁷⁰ibid

²⁷¹ibid

²⁷²ibid

²⁷³ibid

²⁷⁴Alemayehu Jemal (n .197) and Yonas Mulugeta, (n .202)

²⁷⁵interview with unanimous,(n 272)

²⁷⁶Ibid

rejects funds from donors if it is likely from the circumstances that this would pose treat to the Commission's independence.²⁷⁷ Besides, the data collected in this study indicates that the Commission's partnership with stakeholders is in an encouraging level. For instance, the joint investigation and report of the Commission with the Office of the United Nations High Commissioner for Human Rights (OHCHR) is among the recent achievements of the Commission regarding partnership.²⁷⁸ In addition, the Commission works in partnership with, for instance, the Danish Institute for Human rights, EU, USAID and different embassies such as Ireland and Switzerland embassy in Ethiopia. Nationally, EHRC also works with, among others, Ethiopian Women Lawyers Association and Ethiopian Lawyers with Disabilities Association.²⁷⁹

²⁷⁷ *ibid*

²⁷⁸ Joint investigation of EHRC with UNHCR,(n

²⁷⁹ interview with unanimous,(n 272)

Chapter Four

4. Conclusion and Recommendation

The main findings of the thesis are presented in the conclusion part and recommendations are provided on areas which need further reform in order to enhance the EHRC's independence.

4.1 Conclusion

The establishment of EHRC was expected to bring about an improved human rights protection and promotion in the country. However, the reality on the ground was far from the expectation until a reform has been undertaken on the Commission following the mid-2018 change in political leadership in Ethiopia. In this regard, absence of institutional independence was the main reason that contributed significantly to the deficit between the Commission's goals and its practical engagements. The Commission's effectiveness was hindered by governmental interventions. The presence of government affiliated officials within the Commission also complicated its efforts towards protection and promotion of human rights. Low level of operational autonomy was also observed in the Commission. Besides, reports released by the Commission lacked credibility and the Commission was constantly criticized for lack of institutional independence by international human rights organizations. Moreover, inadequate budget is one of significant challenges which hinder NHRIs' institutional independence.²⁸⁰ In relation to this, the EHRC was adversely affected by budget inadequacy, before the reform. These factors necessitated the EHRC's institutional reform.

The EHRC is going through institutional reform since 2018. This reform played an important role in providing institutional independence to the Commission and in elevating its institutional status to meet international minimum standards set out in the Paris Principles for NHRIs. In this respect, the Amendment Proclamation of the Commission played an important role for the improvement of the Commission's independence because it made amendment on several important matters which have direct impact on securing institutional independence. The most important amendments, in this regard, include changes made in relation to financial autonomy (both the procedures of requesting its budget, increment in the amount of budget and

²⁸⁰Fombad (n 20) 896

independence in utilization of the allocated budget), appointment procedure of officials of the Commission and composition of the nomination committee in EHRC. In recognition of these important amendments pertaining to the institutional reform, the EHRC has also been reaccredited with “A” status by the valuation of Accreditation Committee of the Global Alliance of National Human Rights Institutions (GANHRI).²⁸¹ However, despite these encouraging changes, the amount of budget allocated by the government is still not sufficient. And more than half of the Commission’s financial sources are external donors.²⁸² Financial support which is obtained from external donor sources is not sustainable since it is based on discretion of the donors. So it means more than half of the Commission’s finance is gained from unstable source and it is not also in line with the fact that government by itself is the primary duty bearer on providing sufficient fund for NHRIs.²⁸³

Besides, with regard to the criteria for removal of an appointee, according to article 16(2) of the Establishment Proclamation, the Special Inquiry Tribunal was mandated to investigate the matter that could result in the removal of chief Commissioner for human rights, deputy chief Commissioner, Commissioner for women and children affairs, and Commissioners heading different thematic areas appointed by the House and present its findings to the HPR. The composition of the Special Inquiry Tribunals was listed out under article 17 of the Establishment Proclamation. Among the total of 7 members, 6 of them are members of House of Federation and House of People’s Representatives. Hence, the neutrality of their decision was put in to question as a result of their political position and this by itself has adverse effect on the independence of officials.

The Commission’s cooperation with other national and international partners is based on the Commissions guideline. This is encouraging because the guideline has been developed in a way which safeguards the Commission’s independence.²⁸⁴ The guideline requires the Commission, among others, to reject funds from donors if it is likely from the circumstances that this would

²⁸¹ Global alliance of National Human Rights Institution, ‘Report and Recommendation of virtual session of the Sub- Committee of Accreditation(SCA)’(8-19 October 2021)

²⁸² Alemayehu Jemal (n 197)

²⁸³ NHRIs in the EU Member States (n 62) 61

²⁸⁴ Program and Partnership Department(n 272)

pose treat to the Commission's independence. The improvement of collaboration of the Commission with other stakeholders is also evident from the fact that more than half of the Commission's fund is obtained from non-governmental organs. However, the Commission relies on making use of information which is gained from international NGOs about the safety and security of areas in which it intends to undertake monitoring and investigation.²⁸⁵ Hence, though the progress in the Commission's partnership with stakeholders is encouraging, there are instances which reveal the fact that this partnership is not being done in a way which could build the Commission's own capacity and bring about its independence in a permanent manner from relying on stakeholders.

4.2 Recommendations

EHRC is going through institutional reform to guarantee its institutional independence and rebuild its reputation as a credible institution. The study finds out that despite the positive impacts of the amendments made in this regard, there are gaps and needs for further reforms to enhance the Commission's institutional independence. Hence, the following recommendations are presented.

- **EHRC needs to make sure that the majority of its budget is obtained from stable financial sources:-**The government needs to be the primary duty bearer to fund the Commission because more than half of the Commission's finance is currently obtained from funds from external donors and that is not sustainable as it is based on the discretion of the donors. This recommendation is also recognizing that such source of funds is not in line with the fact that government is the primary duty bearer on providing sufficient fund for NHRIs.
- **Make sure that legally attained financial autonomy of the Commission is fully exercised;-** Enforcement mechanisms should be employed to avoid the failure of the Ministry of Finance and Economy from depositing the three months budget of the Commission in advance to the Commission's bank account.

²⁸⁵Mizanie Abate (PhD) (n .223)

- **Improve pluralistic composition of the Commission;**-Even though the qualification of candidates should not be compromised, the Commission should give the necessary attention for language diversity of its staff to cultivate a diverse workplace as complaints of human rights violations may come from different segments of the society. Given the nature of the mandate of the Commission, language diversity of its staff should be strong like that of its gender composition.
- **Make government organs to be accessible to the Commission's work:-** The challenge EHRC faces (in some governmental organs) not to visit and monitor detention centers without giving prior notice needs to be addressed. The provision of the Amendment Proclamation which gives the EHRC the mandate to visit and monitor detention centers or any other place where people are held in custody without prior notice needs to be implemented through, among others, having continuous deliberation and awareness creation for the officials of the concerned governmental organs.
- **Enrich the monitoring and investigation department of the Commission with the necessary safety and security assessment equipment and mechanisms:-**EHRC needs to work to equip itself with adequate and advanced safety and security assessment instruments and mechanisms not to be dependent on the security and safety information which is obtained from other international organizations and to conduct monitoring and investigation as the Commission deems necessary. This recommendation is taking in to account the fact that currently the Commission's monitoring and investigation department is dependent on the safety and security assessment instruments and mechanisms of international organs because the EHRC's safety and security assessment instruments and mechanism are not sufficient.
- **Composition of the committee of special inquiry tribunals should be reconsidered:-** The nomination of committee members of special inquiry tribunal needs to be reconsidered to enhance the Commission's institutional independence because the removal procedure of officials has a significant impact in maintaining the Commission's independence like that of the appointment procedure of the nomination committee. The composition of the committee needs to prioritize academia and professional qualification as well as neutrality as opposed to political position or loyalty. Hence, politically affiliated members should be excluded from assuming a role in the special inquiry

tribunal and it should be composed of members from CSOs and high profile professionals with a good reputation with regard to human rights.

- **Strengthen the Commission's enforcement power;**- As conducting investigation and giving recommendation is insufficient to the Commission's effectiveness, further amendment should be made to strengthen the Commission's enforcement power. In this regard, measures should be taken to strengthen the Commission's enforcement capacity through joint efforts involving the judiciary by taking lesson, among others, from the Human Rights Commission of Scotland which intervenes in civil court cases where the case appears to raise a matter of public interest in terms of promotion and protection of human rights.²⁸⁶EHRC needs to have a mechanism which enables it to work jointly with the judicial organ, for instance, by presenting cases which involve human rights issues to the judiciary to get judicial remedy.

²⁸⁶ Scotland human rights commission official website <[Scottish Human Rights Commission - Wikipedia](#)>accessed On 27 Dec/2023

Bibliography

➤ **Legislations**

1. Constitution of federal democratic republic of Ethiopia 1955
2. Proclamation no 210/2000, establishment proclamation of Ethiopian human rights commission.
3. Proclamation no 1224/2022, amendment proclamation of Ethiopian human rights commission.

➤ **International instruments**

1. General Assembly Resolution 48/134, Concerning Principles Related to The Status of National Human Rights Institutions, [1993], (Paris Principle),

➤ **Journals and articles**

1. Mohammed Abdo, Ethiopian Human rights Commission and its contribution in the protection of human rights and building of good governance, challenges and prospects
2. Lemessa Guddeta, Ethiopian human rights commission critical analysis of its roles in protecting human rights
3. Alenagegnehu and Workudibu, Ethiopian human rights system an overview, an international peer review journal volume 9, 2015
4. Mohammed Abdo, the human rights commission of Ethiopia and issues of forced eviction a case oriented study of its practice.
5. International Council on Human Rights, Performance and Legitimacy of National Human Rights Institution, 2004
6. International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights, Report and Recommendation of Sub-Committee of Accreditation, 22 March 2007,
7. Anna Smith, "The Unique Position of National Human Rights Institution: A Mixed Blessing?" (2006), Vol. 28, Project Muse Scholarly Journal Online

8. The Institute for International Law and Human Rights With the assistance of the University of Virginia School of Laws Human Rights Law Clinic, comparative look at implementing human rights commission laws

➤ **Thesis**

1. Yemisrach Endale, the roles and challenges of the Ethiopian human rights institutions in the protection of human rights in light of the Paris principle, in partial fulfillment of the requirement of LLM in human rights law, central European universities department of legal studies,2010

➤ **Books**

1. Anna-Elina Pohjolainen(DR),the evolution of national human rights institution; the role of the united nation, Danish institution for human rights,2006, available on, https://www.humanrights.dk/files/media/migrated/evolution_of_nhris_2006.pdf,accessed in march 6/2023.
2. Charles M Fombad (ed.), Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa, Pretoria university law press, (2019)
3. Legal Reform towards Building an Effective National Human Rights Commission in Ethiopia'. In SisayA.Yeshanew and Abadir. M. Ibrahim (eds), Righting Human Rights through Legal Reform, Ethiopia's contemporary experience, Addis Ababa University School of Law , Vol. XI, (2020)
4. Office of the United Nations high Commissioners for Human Right, National Human Rights Institution, History, Principle, Roles and Responsibilities, United Nation's Publication, 2010,
5. Office of the united Nations High Commissioner for Human rights,(Assessing the Effectiveness of National Human Rights Institutions)

➤ **Interview**

1. Ato Alemayehu Jemal, finance and budget coordinator in Ethiopian human rights commission, interviewed in April 25,2023
2. AtoYonas Mulugeta, investigation director of Ethiopian human rights commission, interviewed in April 25/2023

3. Hyget Adhana, director talent management and human resource service in Ethiopian human rights commission, interviewed in April 25/2023
4. Mizanie Abate Tadesse, Senior Director, Human Rights Monitoring and Investigation, interviewed in August 16/2023
5. Program and partnership department, interviewed in August 16/2023
6. Law and policy department, interviewed in August 16/2023

➤ Internet source

- Joint report of Ethiopian Human Rights Commission with United Nations Office of High Commissioner for Human Rights, on Tigray conflict, available at <https://ehrc.org/tigray-conflict-report-calls-for-accountability-for-violations-and-abuses-by-all-parties/>, accessed April 15, 2023
- Press release of Ethiopian Human Rights Commission, October 6, 2022, available in <https://ehrc.org/regions/gambella/> accessed in April 28, 2023
- Ethiopian Human Rights Commission report, July 8, 2022, available at <https://ehrc.org/category/report/> accessed in April 20, 2023
- October 24, 2022, Ethiopian Human Rights Commission Report, available at <https://ehrc.org/category/report/> accessed in April 20, 2023
- Press release of Ethiopian Human Rights Commission, October 6, 2022, available in <https://ehrc.org/regions/gambella/> accessed in April 28, 2023
- Ethiopian Human Rights Commission Reports, Sep 28, 2022, <<https://ehrc.org/category/report/>>, accessed on April 15, 2023
- **Asian Pacific Forum, a manual on national human rights institution**, available on https://ganhri.org/wpcontent/uploads/2020/07/Manual_on_NHRIs_Oct_2018.pdf, accessed in March 6, 2023.
- Global Alliance on National Human Rights Institution, A Practical Guide to The Work On The Sub Committee On Accreditation (SCA), (2018), <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/GANHRI_Manual_online.pdf>, Accessed in April 6, 2023

- Ontario Human Rights Commission, V. Guiding principle,(<https://www3.ohrc.on.ca/en/discussion--reviewing-Ontario's-human-rights-system/v-guiding-principles>), accessed on May 13, 2023
- National Human Rights Institutions article and working Papers (<https://www.humanrights.dk/files/media/migrated/nhribook.pdf>), last visited on May 13, 2023
- Toolkit For Collaboration Of National Human rights Institution,(<https://www.ohchr.org/en/publications/policy-and-methodological-publications/toolkit-collaboration-national-human-rights>), last visited on May 13,2020
- Rules of Procedures for GANHRI Sub-Committee on Accreditation, (https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/ENG_GANHRI_SCA_RulesOfProcedure_adopted_04.03.2019_vf.pdf), last visited on May 13,2023
- FactSheet3,TheImportanceofIndependence,(<https://www.asiapacificforum.net/members/what-are-nhris/independence/>), last visited on May 13, 2023
- Scotland human rights commission official website <[Scottish Human Rights Commission - Wikipedia](#)> accessed On 27 Dec /2023

ANNEX

❖ Respondent Profile

1.1 Name of Respondent _____ 1.2 Sex: Male ___ Female ___

1.3 Educational Background: ----- 1.4 Official capacities -----

1.5 Duration of engagement in EHRC before the transition ----- after the
Transition-----

➤ Interview question for Monitoring and Investigation department of the Commission

1. How do you assess the complaint receiving and investigation work of the commission after the recent transition compared to the past experience?
2. Often time peoples criticize the commission focusing on cases which are viral on the media. How the commissions choose cases for investigation? Has its investigation based on strategic direction?
3. How do you asses the willingness of government officials to cooperate with the investigation of the commission and its onsite visit? How do you asses their cooperation to comply with its findings and recommendation?
4. Has the commission used its back up power against government authorities to get its recommendation enforced by government authorities?

❖ Respondent Profile

1.1 Name of Respondent _____ 1.2 Sex: Male ___ Female ___

1.3 Educational Background: ----- 1.4 Official capacities -----

1.5 Duration of engagement in EHRC before the transition ----- after the
Transition-----

➤ Interview question for finance department

1. Do you think the amendment law increased financial autonomy of the commission?
2. Has the commission getting enough budgets for its activities? Has it been getting finding from donors?
3. Has it been any practice employed by government that negatively affects its financial operation?

❖ Respondent Profile

1.1 Name of Respondent _____ 1.2 Sex: Male ___ Female ___

1.3 Educational Background: ----- 1.4 Official capacities -----

1.5 Duration of engagement in EHRC before the transition ----- after the
Transition-----

➤ Interview question for human resource department of the commission

1. By looking up its current composition is it possible to say the commission is pluralistic (in terms of gender, linguistic, religious diversity) in its key leadership?
2. Is the commission pluralistic in composition in its various unites department.
3. Do you think appointment and dismissal procedure of the commission allow access to pluralistic composition?

