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ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW GRADUATE PROGRAM

Master of Laws (LL, M) in Human Right Law

The Ethiopian Human Rights Commission's Power of Investigation of Human Rights Violations and Its Application during State of Emergencies

By

Soreti Berhanu Workneh

A Thesis Submitted to College of Law and Governance Studies, School of Law, Addis Ababa University, in Partial Fulfillment of the Requirements for The LLM in Human Rights

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Dedicated To:

Berhanu Workneh Desta, My beloved father, who helped me in all things great and small and a person who implanted the essence of humanity, self-respect, optimism and professionalism in me. Without you I would not be here.

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List of Abbreviations

AU	African Union
ACHPR	The African Charter on Human and Peoples' Rights
CSO	Civil Society Organization
ECOSOC	Economic and Social Council
EHRC	Ethiopian Human Rights Commission
EHRCO	Ethiopian Human Rights Council
EIO	Ethiopian Institution of Ombudsman
FDRE	Federal Democratic Republic of Ethiopia
HPR	House of people Representatives
ICCPR	International Covenant on Civil and Political Rights
NGOs	Non-Governmental Organizations
NHRNs	National Human Rights Institutions
OHCHR	Office of the High Commissioner for Human Rights
PPs	Paris principles (Principles Relating to the Status of NHRIs)
RFMO	Record and File management Office
SNNPR	Southern Nation Nationality and Peoples Region
SOE	State of Emergency
UDHR	United Nations Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Center for Human Rights
UNHRC	United Nations Human Rights Commission

Abstract

This study assessed the legal and practical challenges the Ethiopian Human Rights Commission has faced in the application of its mandate of investigation of human rights violation during state of emergency. By employing a qualitative approach that used both primary and secondary data, the research examined the international and national legal frameworks pertaining to the EHRC power of investigation of human rights violations during SOE; EHRC's achievement, and challenges in the investigation of human right violations during the last SOEs. The study's key finding is that, EHRC has the mandate to investigate human rights violations, the Commission hardly exercised its mandate on any of the appalling human right violations committed during the last SOEs and has not performed at expected standard. Nonetheless, the study also found that lack of independence was the central problem for EHRC.

Key Terms: Paris Principles, NHRIs, EHRC, Power of Investigation of Human Rights Violation, SOE, Mandate

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Chapter One: Introduction

1.1 Background of the Study

The protection of human rights is one of the main goals of writing human rights into international law. As party to this international law, states bear the prime responsibility to protect human rights. This obligation requires on the part of the states to consider and put in place measures to protect human rights from abuse by state establishments and by other actors.¹ One of these requirements is for States to establish National Human Rights Institutions (NHRIs).²

The status and role of NHRIs are specified in the standards prescribed in what is known as the “Paris Principles³”. One of these standards pinpoint that the handling of complaints of human rights violations is among the major tasks NHRIs are expected to perform as part of their duty to protect human rights. In effect, the Paris Principles is a marker of what NHRIs are expected to observe in the least.⁴

Thus, NHRIs are legislated with the power to investigate human rights violations. A judicious exercise of this power enables them to effectively enforce the realization of human rights by those responsible, starting with the state’s structures and authorities.⁵

Ethiopian Human Rights Commission (EHRC or the Commission), which is legislated in 2000 E.C.,⁶ is one of the country’s NHRIs. Its legislation confers EHRC or the Commission with the

¹ Chiara Altafin, Veronika Haasz and Karolina Podstawa, ‘Report Analyzing the Findings of the Research of the Other Work Packages on Policy Tools’ FRAME Project Work Package No. 14 – Deliverable No. 2.<<http://www.fp7-frame.eu>>(accessed 19 April 2019).

² UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, December 2010, p.112.

³Paris principle, General Assembly resolutions 48/134, 1993.

⁴Ibid. section 4.

⁵ UN Office of High Commissioner for Human Rights (OHCHR) National Human Rights’ Institutions: History, Principle, Roles and Responsibilities (United Nation 2010) p, 55.

⁶ Ethiopian Human Right Commission Establishment Proclamation No.210/2000.

power and duty to “undertake investigation, upon complaint or on its own initiation, in respect of human rights violations.”⁷

Investigation of human rights violations is a very demanding task that includes determining the cause of human right violations, period, and material evidence as well as tracking down the violators based on the collected evidence. Doing this effectively helps redress violations that have taken place as well as to draw and use learning from to curb similar violations from happening in the future.

In order to contain wide spread unrest, the Government of Ethiopia declared state of emergency (SOE) first in 2016 and second in 2018. Research has established that SOE puts a temporary hold on citizens’ ability to exercise certain human rights. This derogation of rights during SOE may be argued for on justifiable grounds. However, SOE can be abused by governmental agencies or actors and the practical challenges are that most grave and systematic human rights abuses and violations occur during this time.⁸

Ethiopia went through a SOE twice during the last three years and it is known that there were human right violations. One relevant major incident that began during the same period and still at large is eviction of people from different corners of the country.

Clearly, in such critical times, NHRIs have very crucial and important role to protect human rights through their mandate of the investigation according to the Paris Principles as well as the national laws of the country.⁹ EHRC has the same responsibility.

Yet, contrary to this reasonable expectation from the EHRC, human right violations during the last SOEs remain the concern of local and international communities. For example, on 05 June 2018, in its immediate response to the lifting of SOE, Amnesty International stated “...,”

⁷Ibid .art 6(4).

⁸ Shiva Datta Bhandari, *The Role of National Human Rights Institutions in Ending Impunity for Human Rights Abuses During Conflict:the Case of Nepal*page, p. 54.

⁹ Ibid.

Ethiopian authorities must now ensure justice and reparations for the prevalent human rights violations that were perpetrated during the SOE...”¹⁰

A quest for the knowledge with regard to the effectiveness and challenges of EHRC in meeting its responsibility towards the investigation of human right violations during the last state of emergencies (SOEs) in accordance with international and national laws is what motivates the researcher.

1.2 Statement of the problem

Commended by the Paris Principles, NHRIs are created to fulfill a crucial role in one of the most important duty of the state, i.e., the protection of human rights. This is because NHRIs like EHRC serve to fill “the protection gap between the rights of individuals and the responsibility of the state which includes investigating the failure of duties on the part of any public official in preventing the violations of human rights.”¹¹

Currently, human rights situation in Ethiopia may be said poor. This is so because the government itself has committed most of the human rights abuses. two year ago, the new Prime Minister has publicly admitted this fact in the parliament when he made his inaugural speech. Nonetheless, human rights violations are even worsening, one example being the unabated eviction of millions of peoples from their areas of settlement. This raises the question as to whether EHRC has been acting as per the standards that is put in the international guidelines with regard to the issue of human right and its proclaimed powers and duties.

In fact, in their study report on Ethiopian Human Rights System, Alene and Worku concluded: “the public at large doesn't fully tend to trust and regard these [EHRC and the Ethiopian Ombudsman] institutions as human rights enforcement agents”.¹²

¹⁰<https://www.amnesty.org/en/latest/news/2019/06/ethiopia-human-rights-commission-must-be-reformed-to-correct-miscarriage-of-justice/>.(accessed 22 April 2019).

¹¹ Center for Human Right Geneva: A hand book on the Establishment and strengthening of a National Institution, on the protection and promotion of Human Rights(International council on Human rights policy), 2004, p.16.

¹²Ethiopian Human Rights System: an overview Alene Agegnehu and WorkuDibu, Adigrat University, Ethiopia, Journal of Culture, Society and Development ,Vol.9, 2015,p 6.

According to the global body that accredits NHRIs, as of 5 August 2016, the “EHRC is a B-status NHRI modeled in accordance with the United Nations Paris Principle with the mandate to promote and protect human right.”¹³

One important value for the accreditation is the human rights violation investigation aspect and how actively the NHRI participates to redress it. With the B-status, EHRC’s effectiveness in conducting investigation on human rights violations and providing effective remedies to victims seems questionable. This study assessed the legal and practical challenges EHRC was faced in the application of its mandate of investigation of human rights violation during SOEs. It also intended to make objective recommendations that may contribute to EHRC’s effectiveness in the future.

1.3 Research objectives

The general objective of the thesis was to analyze the legal and practical aspect of EHRC’s power of investigation of human rights violation in reference to its application during SOEs and to explore the challenges it is facing to meet expected standards in the Paris Principles.

The specific objectives of the study were:

- To analyze the laws that mandated EHRC to investigate human rights violations;
- To examine the existing practice of EHRC with regard to the investigation of human rights violations committed during the last SOEs;
- To identify the practical challenges that hinder EHRC to exercise its power of investigation during SOEs as per expected standards in the Paris Principles; and
- To identify the gap between the law and the practice of EHRC with regard to the power of investigation of human rights violation during SOE.

¹³Charter of the Statutes of National Institution Accredited by the global alliance of national human rights institution Accreditation status as of 5 August 2016.

1.4 Research questions

The central research question the study attempted to answer is:

How effective has the legal basis for and application of EHRC's power of investigation of human rights violations during the last SOEs been consistent with the Paris Principles?

In order to answer this central research question, the study addressed the following specific questions:

- What are the international and national legal frameworks pertaining to the EHRC power of investigation of human rights violations, in general, and for during the SOE, in particular?
- What has EHRC achieved so far in the investigation of complaints relating to human right violations during the last SOEs?
- What are the challenges that hindered EHRC from meeting expected standards in practicing its power and duty of investigation of human rights violations committed during the last SOEs?

1.5 Scope and Limitation

The scope of the study is limited to the analysis of EHRC's power of investigation of human rights violations and its application during the last SOEs in Ethiopia. Human rights protection during SOE, with the exclusive focus on the practice of EHRC's legislated power of investigation of human rights violations, and the related laws agreed to and expected to be met, make up legal principles with which the research is concerned within the context of its practice by a legal body, EHRC.

The major limitation of the study emanates from its study population, which is just one institution, the EHRC, and the context (SOE) within which the phenomenon to be researched is bounded. This limited the possibility of drawing generalization from the research. In addition, changes in the leadership and expert staff, particularly those included in the research sample, required additional efforts to gain access to information on the actual practice of the Commission during the SOEs considered.

1.6 Significance

This legal research is the first with regard to the question it addressed or area of focus. As such, it makes a preliminary contribution to the knowledge of Law in the particular legal principles as well as to future similar research works in the area.

The study makes significant contribution to EHRC's future performance, in terms of practicing its legislated power of investigation of human rights violations in possible similar situations.

It also sheds light on aspects of the legal principles considered from the perspective the local context and on not only what may be of academic interest but also for improving legislations on human rights protection.

1.7 Research methodology

1.7.1 Research Approach and Type of Data

In order to effectively address the research questions and attain its objective, qualitative research approach is applied. This approach adopted because it is appropriate for a profound and detailed exploration and understanding of institutional problem from multiple perspectives, which the problem studied necessarily called for.

The study used both primary and secondary data. The primary data included data gathered through interviews, review of annual reports of the Commission on its investigation performance. It also included analysis of relevant provisions of EHRC establishing proclamations, Investigations Directives of EHRC, Constitution of the Federal Democratic Republic of Ethiopia (FDRE), human rights treaties that guaranteed the power of investigation of human right violation, Paris Principles and other relevant domestic and international legal documents. Secondary data used include data collected from relevant books, thesis and other documents related to the problem studied.

1.7.2 Sampling Technique

Purposive sampling is used because it is found as the only appropriate and feasible sampling technique for this research. The researcher selected the study participants taking into account the purpose of the study. The researcher, taking in to account the purpose of the study, selected study participants mainly form directly concerned individuals and institutions as source of data. These

included, from within the institution, EHRC the Investigation Directorate Director, Team Leader of the Investigation Directorate, team members of the Investigation Directorate and human right experts from the Ethiopian Human Right Council (EHRCO). Data from these sources enabled the thesis to meet the purpose of the study because the sources are relatively at the most strategic position to give important data about the research problem.

1.7.3 Data Collection Tool

To collect necessary data for the study, two data collection instruments are used. These are interview and sourcing and accessing document.

Interviews are administered with the help of semi-structured type of interview questions. The researcher developed topic guiding key and open-ended questions and administered to purposefully selected study participants. Accordingly, seven individuals are interviewed to gather the necessary and relevant data. They included three investigation experts of the Commission, Investigation Directorate Director, Head of the Office of Chief Commissioner, two senior human right experts of EHRCO. The researcher fixed the number of interviewees having decided that data collected from such number of interviewees is manageable for effective analysis and interpretation as it turned out. The interviews are conducted in Amharic language and, with consent from interviewees; every interview is recorded on cell phone to avoid any losses of information from each interview session.

Documents sourced and accessed for analysis include the relevant provisions in the establishing proclamation of the Commission, Investigation Directives of the Commission, the Paris Principle, FDRE Constitution, and human rights documents related with the investigation power of NHRIs. In addition, investigation files of the Commission, annual and official reports of the Commission related to its investigations performance as well as supplementary data sources such as books and thesis are gathered and organized to serve the purpose of the study.

1.7.4 Methods of Data Analysis

Analysis of data from the interviews and documents involved multiple steps. First, each recorded data and rough notes are transcribed and translated into English language. Second, the data are organized along the main themes of the research for analysis. Finally, the organized data are analyzed and interpreted using thematic and narrative approaches. The reason for using these

approaches was that while the thematic approach is found appropriate to identifying the main points of the data, the narrative approach enabled the researcher to state or describes the findings in a narrative way.

1.8 Literature review

There is hardly any legal research focusing on EHRC's power of investigation of human rights violations during SOE. However, since its establishment to date, several studies have been conducted on the EHRC overall from different perspectives. For instance, Meseret (2011) studied the effectiveness of the commission's investigation work for the first five years since its establishment. However, most of the chaos and unrests happened during the last 5 or 4 years. Helina (2014) conducted research on the effectiveness of EHRC in light of the Paris principle; however, her study covered the overall functions of commission up until 2013. Yemesrach (2010) assessed the role and challenges of the Ethiopian NHRIs in the protection of human right in light of the Paris Principles. Her study assessed establishment proclamations in relation to attainment of the minimum standard of the Paris Principles. Zewdnesch (2016) done her paper on the appraisal of the effectiveness of EHRC to promote and protect human rights with particular emphasis to Hawassa branch. The study is limited to a specific branch of the Commission. The most recent study is that of Ayalnesch (2018) Enforcement of the recommendation of the EHRC: accomplishments and challenges. Here too, she found that despite its failure to exercise its formal enforcement power, the Commission has employed different non-confrontational enforcement tools to ensure implementation of its recommendations and The main challenges that hinder adequate enforcement of recommendations were resistance by respondents on different grounds. An inquiry into the EHRC's power of investigation of human rights violations during SOE was outside the domain of her research.

1.9 Organization of the thesis

The thesis is organized into five chapters. The first chapter introduces the thesis with a background note, statement of the problem, research objective, scope and limitation of the research and the research methodology. The second chapter presents the literature review with a focus on the international and national legal frameworks on the Commission's power of investigation of human right violations during SOEs. The third chapter shares a review the

human rights situation of Ethiopia for the last five years. Chapter 4, being the main body of the study, presents the data and analysis of the performance and deeds of the Commission and challenges it faced in executing its power of investigation of human right violations during the SOEs studied. The last chapter devoted to the summary of the thesis and the recommendations put forth by the researcher.

1.10 Ethical Considerations

The study is fully undertaken with due observance of the requirements stated in the Thesis Guidelines of the School of Law of Addis Ababa University. For example, the researcher asked for the consent of each interviewee prior to making the audio recording of each interview proceeding. In addition, the researcher maintained a clear communication of purpose during the interviews including confidentiality in using data and or information supplied by respondents.

Chapter Two:

The Legal Framework on the Commission's Power of Investigation of Human Rights Violations

2.1 The Emergence of National Human Rights Institutions: Historical Remarks

There is a consensus on the general conception of human rights as basic and essential rights and freedom to which every human being is entitled to since birth and without any discrimination.¹⁴

This is better elaborated by the quote below:

“Human rights are commonly understood as the inalienable rights to which each person is entitled by virtue of being human. In other words, these rights are inherent in human beings (i.e. they do not have to be earned or granted); they are inalienable (i.e. they cannot be forfeited), and they are equally applicable to all. At this very abstract level, there is nearly universal recognition of the human rights concept.”¹⁵

In essence, this conception of human rights underscores the international (universality) nature of human rights. Perhaps, this is why the issue of human rights was one of the pillars with which the United Nations (UN) is born in 1945. This happened with the recognition that advancing the ideals of human rights having universal application entails international cooperation.

Although the Universal Human Rights Declaration that gave the international dossier to the human rights became public in 1948, the urge to take human rights forward began two years earlier, in 1946, when the Economic and Social Council (ECOSOC) first addressed the issue of the national human right institution.¹⁶ In the same year, ECOSOC made a recommendation to member state “to consider establishing information group or local human rights committees within their respective countries to further the work of the commission on the human rights

¹⁴Ibid (n 2), p.88.

¹⁵Alexandra Timmer, Concepts of human rights, democracy, and the rule of law: a literature review, Utrecht University,2017,p22.<http://www.fp7-frame.eu/wp-content/uploads/2017/03/Deliverable>-accessed 22 April 2019.

¹⁶ Linda C.Reif. Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection. Harvard Human Right Journal,vol.13.2000.p.3

(CHR).”¹⁷ Later, the UN considered these structures and gave it a generic name: the National Human Rights Institutions (NHRIs). Evidently, the issue of NHRIs began right from when the UN is formed and this further led to its emergence as an important player in the promotion and protection of human rights at the national level while maintaining at the same time communication with international human rights bodies.¹⁸

Regional level uptake of human rights issue varies. For example, while European’s were far ahead as several member States already had their respective NHRIs, in Africa, the “awareness” about human right had yet to increase to the level required among the African States to secure their recognition of NHRIs. It was exactly four decades later since the issue of NHRIs is first addressed by the UN in 1946 that the African States, through their regional system then named Organization of African Unity (OAU), ratified the “African Charter on Human and Peoples’ Rights” in 1986. As stated in its art 26, the Charter which was then otherwise referred to as the *Banjul Charter* or the *African Convention on Human and Peoples’ Rights* “, “encourages the Member States to establish appropriate national institutions entrusted with the promotion and protection of the rights and freedoms granted” by the Charter.¹⁹

This developments in many parts of the world called for shaping and guiding NHRIs as entities that operate locally while at the same time are part of the international human rights system. It was to this end that the international workshop was held in Paris in October 1991. This workshop on the NHRIs came up with an outcome that transformed the effort to promote and protect human rights to a more structured and systematic level, that is coined in “the principles relating to the status of NHRIs, which became to be known as the Paris Principles”.²⁰

The Paris Principles provide solid international normative standards to orient NHRIs formation and guide their operation and measurement. Hence, the Paris Principles came as the key to the standardization of NHRIs and, by derivation, transformed the international cooperation by

¹⁷ Economic and Social Council Resolution 2/9 of 21 June 1946 on Commission on Human Rights, Section 5.

¹⁸ Human Rights Commission Resolution 2/9 of 21 June 1946, para. 5.

¹⁹ Peter, Chris Maina, ‘Human Rights Commissions in Africa – Lessons and Challenges’, in Bösl, Anton and Diescho, Joseph (eds.), *Human Rights in Africa, Legal Perspectives on their Protection and Promotion* (Macmillan Education Namibia, Windhoek, 2009), p. 355.

²⁰ Economic and Social Council E/C4/1992/43 and General Assembly resolution 48/134 of 20 December 1993.

furnishing the means to more and better systematize and measure engagements. This, together with the adaption of the Paris Principles by the UN Human Rights Commission and The UN General Assembly, marked a significant historical juncture in NHRIs emergence. Indeed, it is more so as almost all subsequent events in the emergence of NHRIs used to make unequivocal reference to the Paris Principles.²¹

For example, the Vienna Declaration (an outcome of the World Conference for Human Rights) in 1993, recommended the UN member States to “strengthen their” NHRIs “based on Paris Principles”.²² In Africa’s context, it was at the Yaoundé Declaration²³ in 1996 that member States of the then OAU “agreed to create the Coordinating Committee” with the intention to “work in close collaboration with the international coordinating committee and UN Commission for Human Rights”.²⁴ In its resolution 2005/74, the UN Commission on Human Rights “affirmed the importance of establishing and strengthening independent, pluralistic” NHRIs “consistent with the Paris Principles and of the strengthening of cooperation among them”.²⁵ At the international level, historical remarks on the emergence of NHRIs have come this long.

At the national level, major advancements in NHRIs followed the framing of institutional and legal frameworks by the Paris Principles. As a result, it was during the 1990s that many States across the globe took the steps necessary and set up their respective NHRIs. The Federal Democratic Republic of Ethiopia first incorporated the obligation to set up NHRIs into the Federal Constitution in 1995 and then established the institutions, namely; Ombudsman and the EHRC, in 2000.

²¹Centre for Human Rights Geneva: A Hand book on the Establishment and Strengthening of a National Institutions on the Protection and Promotion of Human Rights (Professional Training Series # 4), (1995)para 18.

²²Vienna Declaration and Program of Action, UN Doc. A/CONF.157/23 of 12 July 1993, part I, para. 36.

²³ The first conference held in Africa with respect to NHRIs, held Yaounde, Cameroon, 5th -7thFeburary, 1996.

²⁴ Ibid.

²⁵ Office High Commission for Human Rights. Human Rights Resolution .2005/74.para, 3.

2.2 The Legal Framework for NHRIs

2.2.1 The International Legal Framework for NHRIs

Since it is the UN that conceived and coined the name NHRIs, a discussion on the legal framework for NHRIs may need to begin from the definition of NHRIs. The United Nation has forwarded its definition of NHRIs, which is quoted below:

“A body which is established by the government under the constitution or by law, or decree the function of which are specifically defined in terms of the promotion and protection of the human right.”²⁶

From the definition, it is apparent that NHRIs come to being and exist as national level legal entities, established or to be established by their respective governments and having the responsibility for promoting and protecting human rights. Further, the definition seems to suggest that the NHRIs should have a constitutional base and that they are part of the state structure.

It is the Paris Principle as international law, though non-binding, that provides the legal framework that orient, guide, and support in both setting up and operationalizing NHRIs by the governments, member States of UN who are a party to the Paris Principles. These Principles are complemented by the OHCHR's (Office of the United Nations High Commissioner for Human Rights) Handbook, which provides comprehensive guidance on establishing and strengthening of NHRIs.

In fact, the Principles are important for the practice of international law. To this end, many international binding instruments recognize the normative role of the Paris Principles when they require the setting-up of human rights-related monitoring mechanisms. For example, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 2002, obliges State Parties to designate or establish an “independent national preventive mechanism” to prevent torture and stipulates that this shall be done with “due consideration” to the Paris Principles (Article 18 (4)). In addition, the Convention on the Rights of Persons with Disabilities, adopted in 2006, obliges State Parties, as stated in its

²⁶ UN Fact Sheet No.19, (1993), p, 4.

Article 33 (2), to consider the Paris Principles when designating or establishing an “independent mechanism” to promote, protect and monitor the implementation of the Convention.²⁷

According to the Paris Principles, this is primarily considered from whether NHRIs are vested with the “broad mandate as possible” and that such to be clearly set forth in a constitution or legislative text of the country. It further states that this broad mandate as referring to the range of legal basis necessary to protect and promote human rights and the range of related responsibilities. In effect, the “mandate” pillar of the international legal framework sets the measure that a national institution to be deemed a NHRIs should have “a statutory legal basis and particular legal responsibilities as part of the state apparatus”. In other words, while NHRIs has the duty to “comply with the general principle of justice and the rule of law” they should be able to function “with a legally defined framework” that empower and enable them to perform to the expectations of all stakeholders.²⁸

The “independence” pillar sets out the vital role the independence of NHRIs has in carrying out their function effectively and inconsistent with the expectations of citizens, the larger public and all stakeholders. The Paris Principles explain what is meant by the term: “It means independence from interference, obstruction or control by government or any public or private entity”. NHRIs independence is considered from accountability, authority and operational autonomy measures. In terms of accountability, NHRIs independence can be legally established “by making the institution directly answerable (accountable) to the parliament or to the head of state”. The “legal authority to compel the cooperation of others” may be achieved through incorporating such in the law that established the institution. “The actual independence” of a NHRI is one that relates to the operational autonomy.²⁹ This is elaborated in the next paragraph.

In order for the NHRIs to have “freedom from control or influence of another entity”, it should be autonomous and able to carry out duties without interference or obstruction from any branch of government or any public or private body or person. To this effect, the NHRI “should thus be

²⁷Pohjola, Anna-Elina, *The Evolution of National Human Rights Institutions: the Role of the United Nations* (Danish Institute for Human Rights, Denmark, 2006), pp. 9-12.

²⁸ UNHCHR, *National Human Rights Institutions Human rights: History, Principles, Roles, and Responsibilities*, Professional Training Series No. 4 (Rev. 1). United Nations, New York, and Geneva: 2010. P,31.

²⁹ Ibid.

given adequate funding, operational autonomy, and powers to perform its functions.” Thus, the “independence” pillar sets the standard with which a NHRI can be measured on both legal and operational parameters.³⁰

2.2.2 The National Legal Framework for NHRIs

A reference to the national legal framework for NHRIs points to a legal framework of a particular State or country being reviewed or considered. This, in the case of the current study, is Ethiopia.

It is perhaps, informative to start the review of the national legal framework by placing the national institutions (NHRIs) within the broader context of the national human right system. A country’s national human rights system is composed of the government structures including NHRIs and civil society. Put differently, the various parts of the government are involved together with the national institutions and civil society to advance the promotion and protection of human rights in the country. The judiciary, law enforcement agencies, the legislative bodies, and educational system are among public structures that constitute a country’s basic national human right system. All of these have a stake and take part in the human rights program at all levels within a given country. This implies, while the governance of human rights is complex, it is NHRIs, from among all the bodies at the national level, that occupies a distinctive position in the country’s national human right system.

Ethiopia’s national legal framework for NHRIs emanates from the country’s constitution, the FDRE Constitution. Article 55 sub-article 14 and 15 of the Constitution is dedicated to stipulate the NHRIs that will be established and the organ of the state responsible to proclaim them as well as to which organ they are answerable. The intent to establish the NHRIs is put forth as the promotion and protection of human rights enshrined in the constitution.³¹

In the interest of the objective of the current study, a further review of the national legal framework is better served if it is focused on the particular NHRI being studied and that is the Ethiopia Human Right Commission (EHRC).

³⁰ Smith, Anne, ‘The Unique Position of National Human Rights Institutions: A Mixed Blessing?’, *Human Rights Quarterly* (2006), p. 912

³¹ Federal Democratic Republic of Ethiopia Constitution, art 55(14) &(15).

The FDRE Constitution article 55 sub-article 14 states: “The house of people Representatives shall establish a human right commission and determines by law its power and function.” Accordingly, the House of People’s Representatives established the EHRC by means of proclamation in 2000. This is Proclamation no 210/2000 which set up the EHRC or the Commission “as an autonomous organ of the Federal Government accountable to the House of People’s Representatives”.³²

With regard to the extent of its mandate, the proclamation vested the Commission with the extensive mandate. The proclamation appears to have sufficiently taken into account and considered the most notable benchmarks available with regard to the foundation and operation of NHRIs, which is principally the Paris Principles.³³

The Commission’s main objective, as stated in its enabling proclamation is “To ensure that the national statues of the right are protected, respected, fully enforced and the necessary measures are taken when they are found to have been violated”.³⁴ The Commission is vested “with the power and duties” that gives it an “express mandate on the protection of human rights and ensure the rights and freedom provided under the FDRE Constitution are respected by all citizens, organs of the State, political organization and other associations as well as by their respective official”.³⁵

EHRC’s broader mandate include ensuring compatibility of law, regulations, directives as well as government decisions (with fundamental human rights and freedom contained in the FDRE Constitution), educating the public, undertaking investigation (when human rights are found to have been violated), making recommendation on existing laws, on enactment of new laws, and provide consultancy service. These functions of the Commission are a statutory mandate captured at article 6 of proclamation no 210/2000.

With regard to independence, the EHRC is established as an autonomous organ of the Federal Government having its own juridical personality and the Commission is an independent

³²Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000, art 3.

³³Ethiopian Human Rights Commission, (2011), Inaugural Report of the Ethiopian Human Rights Commission,p.8.

³⁴Supra notes 19, art 5.

³⁵ Ibid .art 6(1).

autonomous institution accountable to Parliament. This legal framework is further strengthened by the proclamation's article 3.

2.3 The Legal Framework for the NHRIs Power of Investigation of Human Rights Violations

Every legal framework may have certain principles or standards that must be observed or followed under all circumstance or irrespective of the specific situation in which the particular law may be practiced. Taking into account this fact, although the current study focuses on EHRC power of investigation of human rights violations during a SOE, in order to maintain the logical coherence of the study, an attempt is made here to first review the international and national legal framework for NHRIs power of investigation of human right violations.

2.3.1 The International Legal Framework for NHRIs power of investigation of human right violations

NHRIs emerged as national institutions having not only a central place in their respective country's national human rights system but also an important relation and interaction with international institutions, and hence, a vital role in the international human right system.

This is perhaps better and more clearly comprehended with NHRIs human rights protection role. Protection is one of the major, if not the major, roles NHRIs play. International human rights bodies within the UN system strongly acknowledge NHRIs protection role for it positions the national institution to play an active role in preventing and combating all violation of human rights. This indeed confirms that NHRIs are one of the key components of the international and national human right protection system.³⁶But what is protection? How do NHRIs protect human right? How is an investigation of human right violation related to the protection role of NHRIs?

Defined in terms of their two roles, promotion and protection of a human right, the ranges of NHRIs functions may include research and advice; education and promotion; monitoring; investigating, conciliating and providing remedies; cooperating with other national and

³⁶ UN, National Institutions for the Promotion and Protection of Human Rights, Human Rights Council. A/HRC23/L.15. 7 June 2013. P, 67.

international organizations; and interacting with the judiciary. The term protection could possibly mean different things to different people. For these reasons, it needs to be explained with respect to the issues at hand or contextually. Protection is one key role of NHRIs. Translating a role in the function or activities should explain what is meant by the term.³⁷ Looked at from this context, although broad, the meaning of protection well suited to the current study defines it as a term that encompasses a wide range of possible activities, which is further reviewed in subsequent paragraphs.

National institutions protect the human right, for example, by handling an individual complaint of the human right violation, identifying protection gaps in national human rights system and providing recommendations on how to address them as well as connecting national laws to regional and international human rights treaties.³⁸

From the above, it may be clear that there is a direct link between protections related activities and the power of investigation of human right violations. Indeed, protection work is comprehensibly focused on the power to investigate. In fact, a NHRI entrusted with the power to investigate is expected to engage in the protection of human rights in a way that addresses and seeks actual human rights violation. Generally, the national institution does this through engaging in activities that include monitoring, inquiry, investigating and reporting on human rights violations.

In other words, protection function encompasses the examining and taking actions on the petition of an alleged violation of human rights, which implies the taking of measures to securing respect for (those) human rights. Within the international legal framework, a stronger emphasis is placed on the importance of the investigation and complaint handling function of NHRIs. This has led to the recognition of the investigative work of NHRIs as one of their core function within the ambit of the protective role entrusted to them.

³⁷Burdekin, Brian, assisted by Naum, Jason, *National Human Rights Institutions in the Asia-Pacific Region* (MartinusNjihoff, Lieden, 2007), P. 23.

³⁸ Ibid p.30.

A succinct review of the investigative function of NHRIs gives a prelude to what is meant by how these national institutions are expected to exercise their power of investigation of human rights violations.

In a country where fundamental human rights are written into the Constitution and effective national human right system exist, individual citizens who complain that their human rights are abused may seek redress. To protect is to effectively address a proven human right violation so that future such abuses may not happen. This is squarely dependent on the investigative power of NHRIs. Among functions of NHRIs that fall under their protective role, handling individual citizenscompliant like the ones mentioned here are considered most common. This function begins when NHRI receives a complaint from the complainant. It then proceeds to gather information about allegations of human right abuses. Based on the evidence the NHRI is able to collect, it seeks to reach a determination about what actually occurred and whether the allegations are well founded. It is important to note that these processes must be a “neutral processes” which implies that neither the processes nor the NHRI’s favor the complainant or respondent.” Further, this also implies that NHRI’s power of investigation of human right violation should empower them to compel the cooperation of anybody, be it governmental body or otherwise, including individuals for the investigation and perform the function with the requisite operational autonomy.³⁹

Then it follows that for a NHRI an effective investigation presupposes an adequate legal capacity, organizational competence on a defined and appropriate set of priorities and a political will to pursue its work. In connection to this, although the Paris Principles calls for a broader mandate of NHRIs, the Principles are commented for failing to demand NHRIs primary and non-optional status when it comes to their investigation mandate.⁴⁰ This comment was mounted because the Paris Principles leaves the granting to NHRIs compliant handling and investigation mandate to the discretion of States. In making up for this statues gap, United Nation High

³⁹Ibid (n 27).p,77.

⁴⁰ Paris principles, General Assembly resolution 48/134 1993, section 4

Commissioner for Human Rights has added adequate complaint handling as a minimum standard that all NHRIs should have and today, this element is at the center of all effective NHRIs.⁴¹

Yet, the Paris Principles do not only make an inquiry into specific human rights violation and to hear and consider complaints one of the responsibility to be fulfilled by NHRI but the Principles also “set a standard with respect to the nature of the investigation itself that should be clearly defined and legally entrenched in the legislative by the state”. This standard is directly related to emphasis and focus on NHRIs power of investigation of human right violations. They include:

- “The power to compel the production of documents and witnesses;
- The power to conduct on-site investigations as necessary, including powers to visit detention facilities, etc.;
- The power to call parties to a hearing; and
- The power to hear and question every individual (including experts and Representatives of government agencies and, if appropriate, private entities) who, in the opinion of the investigating body, has knowledge concerning the issue under investigation or is otherwise in a position to assist the investigation.”⁴²

The enactment of this power and its exercise by a competent NHRI with necessary operational autonomy play a vital role in the protection of human rights. This is because effective investigation of human rights violation or the function of hearing and considering complaints is essential for an NHRI as it helps to protect the rights of individuals.

Examination of facts being the basic principle of investigation in all legal systems, the investigation into human rights must begin with an examination of facts of individual cases in which human rights might have been violated. One’s this is done then its outcome serves to assess and determine whether human rights have been violated in the particular case under investigation. In order to ensure that the victim is protected, every circumstantial matter related to a particular case has to be exhausted and established with no room left for ambiguity. A case in which government is implicated may be handled with speed while an individual case that may

⁴¹ James Gomez and Robin Ramcharan, *The protection capacity of National human rights institutions in Southeast Asia* (2016).p.172

⁴²Ibid (n 27). p,77

involve an issue of the political debate may demand the NHRI must contribute to finding a solution that is in accordance with human rights principles.⁴³

Not only does NHRIs handle complaints from the individual citizen, they also deal with complaints from the population. In either case, NHRIs receive and investigate claims and try to work with the competent authorities to find a solution. In connection to the efficacy of dispute resolution, although not of immediate interest for the current study, it is enlightening to note that experience with alternative dispute resolution in many countries shows that, through them, the problem can often be resolved quickly, efficiently and cost effectively for all parties concerned.⁴⁴

NHRIs are not expected to only wait until complaints come from an individual citizen or from a group of people. They also have a duty to initiate an investigation and respond to a wide range of national (human rights) violations. An investigation initiated by a NHRI is strongly expected to accord primacy to heinous human right violations that affect the right to life and security of the person, the right to physical and mental integrity. The latter implies such rights as the right not to be tortured and the right not to be arbitrarily arrested or detained.⁴⁵

This makes the power to initiate investigation an all too important component of the NHRIs power of investigation of human rights violations. It is so because NHRIs can exercise such power to ensure that vulnerable groups are given a public voice and that human right violations, wherever they occur, become a matter of general knowledge and concern, an important measure that is considered “a requisite step” in the effect to address clearly established violations. In fact, the most acclaimed usefulness of this power is the profound implication it has “for the disadvantaged and vulnerable group”, who face resource constraint or other impediments to “inform” NHRI of their case(s).⁴⁶

⁴³Lindholt, Lone et al. ‘Jurisdiction and Subject Matter of Complaints: A General and Comparative Perspective’, in Lindsnaes, Birigt (eds.), National Human Rights Institutions, Articles and Working Papers, Input to the Discussions on the Establishment and Development of the Functions of National Human Rights Institutions (Danish Centre for Human Rights 2000), pp. 27.

⁴⁴ Ibid.

⁴⁵National Human Right Institution: Amnesty International Recommendation for effective protection and promotion of human right, 1 October 2001.AIINDEX.IOR 40/007/2001.P 11.

⁴⁶Ibid (n 27).P, 79.

The international legal framework represented by the Paris Principles established a detailed measuring yardstick or standards on the extent to which NHRI is vested with the power of investigation of human rights violation and hence enabled to be responsive to the plight of those most affected by the human rights violation. The Principles set out to what a NHRI power of investigation entitles or should entitle the national institution. These include the right and duty to request information from government institutions and to actively investigate specific cases including specifically, the right to call and question witnesses, to take affidavits, to demand access to records, to request the submission of documents or to inspect non-public places without prior notice.⁴⁷

It is marked that the legal possibilities allow the institution to investigate a case, even if this interferes with the individual right. For this reason, some who, although they are outside the UN system, arguably contend that a “crucial measure of the effectiveness of NHRI’s” is whether they were able to respond to the needs of those who were the most at risk of suffering violation.⁴⁸

This is important for it highlights a NHRI competence related to the particular point under review. In initiating an investigation, a national institution may have to access indicative information from various sources and such information could be numerous in the sense that several issues may pop up. While the requirement that NHRI needs to prioritize the “dreadful human rights violations” is to be observed, for they could be several in number as and when they happen, the selection of the issue to be investigated calls for the ability to ‘identify’ issues that need or demand “attention”. Doing this may require knowledge of and skill in various techniques or tools. Identifying issues that deserve priority attention can be done through trend analysis of incoming complaints, a systematic media scanning, following a strategic planning exercise (a situation analysis and or strength, limitation opportunity and threat analysis) or through (regular or ongoing) monitoring. Among sources of information related to human rights violation are a community, civil society organizations and of course, the “media”. These sources respectively

⁴⁷Kjaerum, Morten, ‘The Experience of European National Human Rights Institutions’, in Lindsnaes, Birigt (eds.), National Human Rights Institutions, Articles and Working Papers, Input to the Discussions on the Establishment and Development of the Functions of National Human Rights Institutions (Danish Centre for Human Rights 2000), p. 57.

⁴⁸ Ibid.

could bring urgent local issues to the attention of and provide an indication to an empowered NHRI that there is a potential problem to be acted on by initiating an investigation.⁴⁹

The review so far may have emphasized individual case. It is now important to review and thereby pinpoint the peculiar requirements when a complaint is by a group of people. A complaint by a group of people is where “an individual affected by human rights violation is able to complain not only on his or her own behalf of others who are similarly affected. Although a complaint by a group of people which is otherwise termed a “class action” or “Representatives compliant” avails the advantage of addressing a “widespread problem” as a single case, there are technical preliminary requirements” that such complaint must satisfy in order to be considered by and stand for a trial at a competent court.⁵⁰ Representative’s complaints should satisfy certain conditions to be accepted as a class action. They are:

- “ The complainant must be a member of the class affected or likely to be affected;
- The complainant must personally have been affected by the alleged violation;
- The class of persons affected or potentially affected is so numerous that it is impossible to deal with the matter simply by joining a number of specified individuals to the complaint;
- There are questions of law or fact common to the members of the class, and the claims of the complainant are typical of the claims of the class; and
- Multiple complaints would be likely to produce inconsistent results; and the grounds for action appear to apply to the whole class, making it appropriate to grant remedies to the class as a whole”.⁵¹

A more profound institutional competency is required when procedural matters are considered vis-à-vis investigation of human right violation by NHRI. A national institution is expected to “develop standards and guideline including rules of procedures to be applied to investigations”.

⁴⁹ Ibid (n 27).p, 78.

⁵⁰ Ibid. p.82.

⁵¹ Ibid, p, 80.

In addition, the international legal framework requires that these “guideline and standard for investigation of complaints should be made public” for reasons of transparency on the “investigation process” and with the hope that doing so may improve public confidence in the institution as a competent body for receiving and acting an allegation of human rights violation. To this effect, the Paris Principles have outlined the “general principles” that apply in the development and operationalizing human rights violation investigation procedures or process steps.⁵² They are:

- “ Guidelines should reflect and be consistent with the responsibilities the institution has been given and the powers it has been granted to discharge these responsibilities;
- While providing the necessary operational flexibility, they should also establish a fixed procedure which is not deviated from except in clearly defined circumstances;
- They should set measurable goals of efficiency and timeliness; and
- They should be fair to all sides of the dispute.”⁵³

Of the two pillars of the international legal framework discussed in the previous section, for most the focus up until now is on the mandate of NHRIs given or they should be given with regard to their power of investigation of the human right violation. Although the mandate of investigation is vital or a legal priority, the other pillar i.e., independence is a necessary condition for a national institution to effectively perform in carrying out its mandate of investigation. On the other hand, a NHRI’s independence is a concept that should not be considered to mean a total lack of connection with the state. Rather it entails operational autonomy not only in the sense the national institution carries its duties without interference, obstruction, or control by government or public or private entity but also the legal authority to compel the cooperation of others as well as having the requisite financial and related another resource to perform its functions. This is extremely important for a national institution whose capacity to take on sensitive human right issues is constrained without such powers or in the absence of these powers can hardly command credibility and public confidence.⁵⁴

⁵² Ibid, p, 81.

⁵³ Ibid.

⁵⁴International Council on Human Rights Policy, Assessing the Effectiveness of National Human Rights Institutions (International Council on Human Rights Policy, Versoix Switzerland, 2005), p. 10.

The implication is that whether there is a possibility to effectively investigate human rights violation in one country is directly linked with the concept of how the NHRIs are dependent on the political climate in the State. In a nutshell, independence is one of the pillars for the effective functioning of a NHRI. It is more so if the national institution is the one entrusted with the power of investigation of human rights violations.⁵⁵

Perhaps the above assertion is justified by what is expected of national institutions as an avenue outside of the judicial mechanism of the State. NHRIs can provide quick access to justice through less complicated and less expensive processes that ultimately secure remedies for violations. Thus where a national institution is able to demonstrate operational efficacy in the delivery of justice employing simplified and comparatively (compared with the mainstream judicial system) low-cost processes, then the national institution, a NHRI is not only having independence but also one that demonstrates its capacity emanating from this independence by holding the State accountable.⁵⁶

2.3.2 The National Legal Framework for EHRC Power of Investigation of Human Rights Violations

In this sub-section, the focus of the review will be on the breadth and depth of the mandate and the notion of independence as both provided in the legal authority accorded as part of operational autonomy and any legal instrument developed by the Commission.

To begin with, the core purpose of setting up EHRC is to ensure that the human rights are protected, respected, fully enforced at national level and the necessary measures are taken when they are found to have been a violation. While this objective may suffice to identify EHRC as a quasi-judicial body, most importantly, it indicates the mandate of protection given to the Commission, which by implication give the mandate of investigation of human rights violation an all too important place in the human rights protection system of the land.⁵⁷

⁵⁵ Ibid (n,29) p.917.

⁵⁶ Roles and Functions of National Human Rights institutions, Raoul Wallenberg Institute, 2015, p.5.

⁵⁷ Mohammed Abdo, 'The Ethiopian Human Rights Commission: Challenges Confronting Its Effective Functioning', Chinese Year Book of Human Rights, Vol. 4, 2006, p, 16.

What sheds more light on the importance of this national institution's mandate of investigation of human rights violation is the point that the Commission has accountability duties over public authorities. EHRC is established by proclamation passed by House of People's Representatives, the legislative branch in the check and balance power structure of the State. Then, even as a quasi-judiciary body, EHRC serves to check the exercise of the government and thereby hold it to account on behalf of this legislative body to which the Commission itself is answerable.

As per Art 6 of EHRC establishing Proclamation, the Commission shall have the power and duties to undertake investigations in respect for human rights violation upon complaint or on its own initiative. This is an important statutory mandate indicating that EHRC's power of investigation of human rights violation is written into legal text making plain clear that the Commission may exercise this power upon receiving complaints or by its own initiative.

As a general note, EHRC's power to investigate a complaint submitted to it includes:

- The power to inquire, which gives it theoretically adequate powers necessary for the examination of a complaint; and
- The power to compel the attendance of a witness to give testimony or force the production of evidence by those in possession of them.

A detailed account of each of the above power follows. According to the power vested in the national institution to investigate complaints as stipulated the EHRC establishment proclamation:

- A complaint may be instituted by a person who alleges that his /her right is violated or by his /her spouse or family member or Representatives or a third party.⁵⁸
- A complaint may be submitted orally or in writing form or in any other manner.⁵⁹
- The commission may also receive anonymous complaints given the gravity of alleged human rights violation.⁶⁰
- A complaint may be lodged free of charge, in the working language of the commission which is Amharic, or in any other language.⁶¹

⁵⁸Art.22 (1) of the proclamation.

⁵⁹ Art 23(3) of the proclamation.

⁶⁰ .Art 22(2) of the proclamation.

The above makes the rules of filling a compliant easy and the simplicity is intended to mitigate the formality of procedures that could limit the ability of those who need access to courts.

In support of the Commission's power to compel those who should give testimony or produce evidence in their possession, there is a penalty clause, which counts the following acts of a as an act against the law:

- (a) A summoned person who failed to appear without good cause,
- (b) Who obstruct evidence and cause harm to witnesses,
- (c) A person having a document produced before it, who failed to favor appropriate measures, or
- (d) A person or physical body who failed to give a response to the commission reports, recommendation and suggestion within three months.⁶²

EHRC has adopted its Investigation and Mediation Directive on 27 December 2014. The Directive laid down the thematic frameworks and detail producers for the investigations producers, compliant handling and resolving compliant amicably. Next, the directive categorizes investigation in three types, namely; normal, systematic and special need. A normal investigation is regular type of investigation. Systematic investigation type is a type of investigation undertaken on policies, laws and producers enacted by government. Special need investigation type is a type of investigation in to priority issues pertaining to matters of dreadful human rights violations and special need of women, children and disabilities. The directive also discusses in detail about the Commission's stakeon investigation of human right issues it may pursue by its own initiation⁶³.

As mentioned earlier, Ethiopia has two NHRIs. They are EHRC and Ombudsman. This review learned that there is an overlap in the jurisdiction of these national institutions with regard to the mandate in the investigation of the human rights violation. This is noted as a practical challenge.

In addition, the jurisdiction of EHRC has limited the Commission from exercising its power of investigation of human rights violations on the decisions that may be made by House of People

⁶¹ Art.22 (4) &23(3) of the proclamation.

⁶² Art.41. of the proclamation.

⁶³Investigations and Mediation Directives and the Directive, No. 2/2014,

Representatives, and by the Security and Defense Force. Further, on the grounds that is solely accountable to the people, the Commission is legally under the obligation not to interfere on matters being handled by the court.⁶⁴

2.4 NHRI's, EHRC's Power of Investigation of Human Rights Violations during the SOE

2.4.1 State Of Emergency

What is a state of emergency? Criddle and Fox-Decent give sufficient answer to this question:

“A state of emergency is a situation in which a government is empowered to perform an action that it would normally not allowed to do.”⁶⁵

The objective at the core of the law is the protection of human rights for all. In general, under normal circumstances, the realization of this objective with consistency is expected. When such circumstances change due to “extraordinary situation posing a fundamental threat to the country”,⁶⁶ a state may declare a SOE. Execution of the SOE carries significance from both ideas of the law and practice of human rights protection. This is evident from what the Security Sector Governance and Reform established as to why the issue of the SOE is important:

“The implementation of emergency law invariably leads to restrictions on normal economic, civil or political activity and rights in order to address the extraordinary circumstances that have given rise to the emergency situation. Certain restrictions may be fully justified.”⁶⁷

At the same time, there is a danger that a government will take advantage of a SOE to introduce unwarranted restrictions on human rights and civil liberties, to neutralize political opponents, to

⁶⁴ Art 7 of the proclamation.

⁶⁵Evan J. Criddle& Evan Fox-Decent, Human Rights, Emergencies, and the Rule of Law, Human Rights Quarterly, The Johns Hopkins University Press, p 13.

⁶⁶David Dyzenhaus, the Constitution of Law: Legality in a Time Of Emergency .2006, P.12.

⁶⁷Ibid, p, 15.

postpone elections, or for other self-serving purposes that would be more difficult to pursue under normal circumstances.⁶⁸

A SOE is said to be declared by the government when a state or a society, in part or as a whole, is faced with a fundamental threat to its very survival. Such a threat could be caused by the disaster, civil unrest, or armed conflict. Thus, a SOE is a governmental declaration made in response to extraordinary situation posing a fundamental threat to the country.⁶⁹

A critical note to be made with regard to the current study is that any such SOE can be used as a rationale for suspending rights and freedoms guaranteed by a country's laws.

2.4.2 State of Emergency and Human Rights

At the international level, it is the International Covenant on Civil and Political Rights (ICCPR) that expressly recognize that there can be an emergency situation in which derogation from ICCPR rights can be justified. So the relationship between the SOE and human rights has been considered although it obviously represents one in which the former causes some or certain reduction on the status of the latter.⁷⁰

Cognizant of this and the need to regulate it, international law does not only provide the procedure under which the declaration of a SOE may take place but also the right and freedom that can and cannot be derogated during such state. This review, however, focuses on the rights that can and cannot be suspended during a SOE for the sole reason that this is the concern within the scope of the current study.

There are certain rights that cannot be suspended during a SOE and these rights are called non-derogable rights. These non-derogable rights are listed under article 4 of the ICCPR and include the following:

- Article 6 (right to life and freedom from arbitrary deprivation of life);
- Article 7 (freedom from torture and other forms of ill-treatment);

⁶⁸David Dyzenhaus, *Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?* 2006, p.27.

⁶⁹ *Ibid*, p.31.

⁷⁰International Covenant on Civil and Political Rights, adopted 16 December, 1966, entered in to force 23 march 1976)999 UNTS171 (ICCPR) Article 4.

- Article 8(1 and 2) (freedom from slavery and servitude);
- Article 11 (freedom from imprisonment due to failure to fulfill contractual liability);
- Article 15 (freedom from non-retroactive application of criminal law);
- Article 16 (right to recognition before the law); and
- Article 18 (freedom of thought, conscience and religion).

In addition, the UN Human Rights Committee, in its General Comment Number 29, identified other non-derogable provisions such as Article 2(1) (non-discrimination); Article 3 (the right to an effective remedy); Article 14 (right to fair trial); and the right to take proceedings before a court to challenge the lawfulness of detention (Article 9(4) on habeas corpus).

It is important to note that ICCPR obliges a state declaring a SOE to clearly incorporate and notify the public about the specifics of the rights that are derogated during a SOE. This is part of the requirements in line with the internationally well-known principles about the SOE including Principle of Legality, Proclamation, Notification, Time Limitation, Exceptional Threat, Proportionality, Non-Discrimination, and Compatibility.

A government declares a SOE based on special emergency powers granted to it by virtue of the country's constitution or other legislation. Yet, the SOE is critically looked at from the perspective of human rights because the suspension of a legal order or important aspects thereof during emergency often paves the way for systematic violations. Further, from the behavior of states that have gone through a SOE, the possibility that it can be misused and abused by incumbent administration or ruling party to suppress internal opposition without having to respect human rights is emphasized as a valid concern. Indeed, it is found out that many of the grand and systematic human right abuses occur during public emergencies when the states employ extraordinary power to address threats to public order.⁷¹

Nationally, Ethiopia ratified the ICCPR in 1993 and therefore the State has the obligation to observe the ICCPR procedures to effect the SOE declaration as well as the limits on derogation of rights during such period. Under article 93 of the FDRE Constitution, the Council of Ministers has the power to declare the SOE under three conditions: during the foreign invasion, during a

⁷¹Oren Gross & Fionnuala Ní Aoláin, *Law In Time Of Crisis: Emergency Powers In Theory And Practice*, 2006, p.31.

natural disaster or natural epidemic, and when there is a breakdown of the country's law and regulation which will endanger the constitutional order.

2.4.3 NHRI's Power of Investigation of Human Rights Violation during the SOE

It is well recognized that investigations are absolutely necessary for the period of the SOE. Internationally, it is recognized that NHRIs need to be proactive and crucial during a SOE period. This is because the political landscape may change during such times as many human rights are limited by law and, at the same time, those all limitations are directly related to the issue of political participation. Then it may be reasonable to argue that the crucial measure of the effectiveness of NHRI's during such times had to do with whether they were able to respond to the needs of those who were the most at risk of suffering violations.⁷²

2.4.4 EHRC power of investigation of human rights violation during a SOE

Ethiopia went through a SOE twice during the last three years and it is known that there were human rights violations. One relevant major incident that began during the same period and still at large is the eviction of people from different corners of the country.

Clearly, "in such critical times, NHRIs have a very crucial and important role to protect human rights through their mandate of the investigation according to the Paris Principles as well as the national laws of the country."⁷³ EHRC has the same responsibility.

Yet, contrary to this reasonable expectation from the EHRC, human right violations during the last SOEs still remain the concern of local and international communities. For example, on 05 June 2018, in its immediate response to the lifting of the SOE, Amnesty International stated "..., Ethiopian authorities must now ensure justice and reparations for the prevalent human rights violations that were perpetrated during the SOE..."⁷⁴

⁷²Jaime Oraá, Human Rights in States of Emergency in International Law Don Mills: Oxford University Press, 1992, P.195.

⁷³ Ibid p.197.

⁷⁴ Ibid (n 10)

Chapter Three

The Ethiopian Human Rights Situation during SOE

3.1 Introduction

After the Ethiopian millennium, Ethiopia declared states of emergencies twice and suspended heaps of human rights and freedoms. This study demonstrates the extensive protection that international law provides to human rights even in the most serious of emergencies when they are particularly vulnerable. However, the question of to what extent emergencies declarations were compatible with Article 4 of ICCPR is outside of the scope of the current thesis. Rather, the thesis considers the declarations made, and how EHRC has been exercising its power of investigation of human rights violations during those emergency periods. This chapter succinctly discusses the Ethiopian human rights situations during the SOE.

In present-day world, SOE seems common international experience as, perhaps, opposed to what the term suggests. What is important though is that in most cases serious violations of human rights often accompany the emergency situations that became common practice in today's world.⁷⁵

Long before invocation of SOE, from 2015 on protests vented across Ethiopia since the first protest began in November that year in Oromia Region and later in Amhara region. The protests were initially in response to government's plan to extend the capital city, Addis Ababa, under the scheme named Addis Ababa 'Master Plan', into Oromia region's administrative boundary. The government announced the cancellation of the Addis Ababa 'Master Plan' in January 2016, but by then the protesters' demand had evolved to include release of prisoners of conscience, administrative autonomy of the Region, and political and economic justice. During this time many human rights violations occurred. Throughout the protests, mass arrests were very common. Even a week before the declaration of the first SOE there were huge loss of life at the

⁷⁵.Special Rapporteur for States of Emergency, the Administration of Justice and the Human Rights of Detainees: Question of Human Rights and States of Emergency: Tenth Annual Rep., June 23, 1997.

Oromo annual cultural festival, Irecha's celebrations held at Hora Aarsed in Bishoftu on the 2nd of October 2016.⁷⁶

3.2 Human Rights Situation during the First SOE

In response to the protests, the Ethiopian government declared a SOE for a period of six months effective from 9 October 2016.⁷⁷ However, the SOE remained in effect for a ten months period because of an extra 4 months extension.⁷⁸ The government lifted the SOE in August 2017. The SOE Declaration outlined broad restrictions on a range of human rights, including non-derogable rights such as the prohibition on the retroactive application of criminal law. Further, it established a new structure named Command Post with the powers to determine the specific measures, restrictions and areas for implementation of the SOE. At its apex, Command Post had the Prime Minister as its chair and the Minister of Defense as its Secretary.⁷⁹

During the 10-month period, there were sound reports that federal and regional security forces injured, killed or detained thousands of protestors during the SOE.⁸⁰ Many would agree that the Ethiopian "government had a record of harassing, arresting, and detaining political opponents, journalists, human rights advocates, protesters and other actual or perceived critics and their family members. Multiple sources report that detainees have been subjected to torture and other

⁷⁶ Human Rights Watch, "Fuel on the Fire": Security Force Response to the 2016 Irecha Cultural Festival, 6-9, September 2017, <https://www.hrw.org/report/2017/09/19/fuel-fire/security-force-response-2016-irr>; (accessed 26 September 2019)

⁷⁷ State of Emergency Proclamation for the Maintenance of Public Peace and Security, Proclamation No.1/2016.

⁷⁸ Ethiopia extends SOE by four months, REUTERS (March 30, 2017), <<https://www.reuters.com/article/us-ethiopia-security/ethiopia-extends-state-of-emergency-by-four-months>>; (accessed 26 September 2019)

⁷⁹ Amnesty International, 'Ethiopia's State of Emergency Violates Human Rights', 1-3 March 2017, https://www.amnesty.org.au/wpcontent/uploads/2018/02/Amnesty_International_State_of_the_worlds_human_rights>; (accessed 26 September 2019)

⁸⁰ HUMAN RIGHTS COUNCIL – HRCO (Ethiopia), 142nd Special Report: human Rights Violations committed during the SOE in Ethiopia: Executive Summary 6 – 11. May 28, 2017.

abuses while in detention in Ethiopia”. This was either to punish, or to obtain information or confessions.⁸¹

International human right institutions and regional national institutions as well reported that the major highlights of the SOE were arbitrary killings and mass arrests that were carried out indiscriminately in both peaceful and protest prone areas as well as patterns of denial of access to justice.⁸² The detainees, all of them detained without charges, were in mass detention facilities that lacked adequate food, water and toilets. Because of the forceful investigations, the detainees were victims of temporary and long-term psychological and physical harm. Even after their release, the detainees were compelled to live under economic troubles and fear.⁸³

As reported by the Ethiopian Human Rights Council, with regard to the case of arbitrary killings, the government acknowledged that 19 deaths have occurred during the period from October 2016 to May 2017. Out of these, 15, 3 and 1 deaths were reported as have happened in Oromia, Amhara and SNNP regions respectively. However, most outside the then incumbent government maintain that the death toll could even be higher than what is acknowledged by the government.⁸⁴

Not only access to information about human rights conditions during SOE was difficult to obtain in Ethiopia, even government failed to avail the official text of the SOE Declaration in an accessible form by that time. This has its own implication in the protection of human right in the country. More so, the Ethiopian government has subdued local human rights advocates and organizations, and restricted access for international human rights observers.

3.3 Human Right Situation during the Second SOE

On 15th of February 2018, the then Prime Minister Hailemariam Dessalegn announced his decision to resign from office, which came just days after the release of hundreds of prisoners. The next day, on 16th of February 2018, the Council of Ministers declared a SOE, which it said,

⁸¹. Association for Human Rights in Ethiopia, Ethiopia: Political Prisoners and Their Accounts of Torture: Part I (October 28, 2017), p.16-22.

⁸²Ibid (n 79).

⁸³Ibid.p.26.

⁸⁴ Ibid (n77).

was necessary to forestall the complete breakdown of law and order threatening the constitutional order. However, renewed protests flared up in many parts of Oromia region within two weeks after the end of the first SOE period.⁸⁵

Again, by January 2018, the protests had spread to other regions like Amhara and SNNPR causing fatal human rights violations. For example, seven people were killed in Woldiya town, Amhara Regional State when security forces opened fire on worshippers attending the annual Epiphany holiday on 20 January 2018.⁸⁶ In February 2018, mass protests were staged in Wolkite, the capital of Gurage Zone in SNNPR, demanding the government to take measures against corruption and deliver on its development promises. At the same time, students in several universities in Oromia also went on strike echoing the various demands they have been raising since 2017.⁸⁷

Following the roaming protests across the country, more than 6,000 prisoners were released, most of them imprisoned for political activity, in what the government claimed as an effort “to establish a national consensus and widen the political sphere.” Shortly after, on 5 June 2018, the second SOE is lifted, two months earlier before its planned period. The government lifted the SOE in June and released thousands of political prisoners from detention, including journalists and key opposition leaders.⁸⁸

Perhaps, compared to the first one, human rights situation has improved during the second SOE. While an objective account of human rights violations during the two SOEs remains in the gray, it may be hard to deny that the human rights landscape transformed since April 2018 after Dr. Abiy Ahmed became Ethiopia’s new prime minister.

⁸⁵Ethiopia Declares SOE, ETHIOPIAN NEWS AGENCY, (February 17, 2018), <http://www.ena.gov.et/en/index.php/politics/item/4308-> (accessed 27 October, 2019).

⁸⁶. Amnesty International, <https://www.amnesty.org/en/latest/news/2018/06/08/. March> 2018.(accessed 2.November , 2019).

⁸⁷. Paul Schemm, Under a new SOE, Ethiopia is on the brink of crisis, again (March 3, 2018), https://www.washingtonpost.com/world/africa/under-a-new-state-of-emergencyethiopia-is-on-the-brink-of-crisis-again/2018/03/03/5a887156-1d8f-11e8-98f5-ceecfa8741b6_story.html.(accessed 17,septembr,2019).

⁸⁸. Ethiopia’s new PM pledges reforms to end violence, REUTERS (April 2, 2018), <https://af.reuters.com/article/commoditiesNews/idAFL5N1RFOPP>.(accessed 2, Novemer,2019).

CHAPTER FOUR

An Assessment of the Application of EHRC's Power of Investigation of Human Rights Violations during State of Emergency

4.1 Introduction

This chapter presents the main work of the thesis, answering the central research question, which is, how effective is the legal basis for and application of EHRC's power of investigation of human rights violations during the last SOEs and its consistency with the Paris Principles. It does so by assessing and analyzing the practice of EHRC in exercising its power of investigation of human rights violations during the last two periods of SOE in Ethiopia against five critical variables drawn from the theoretical legal frameworks discussed in preceding chapters. The variables include, mandate and the pillars of effective human rights investigation: independence, accessibility, cooperation and public image, operational ineffeciance.

The presentation of the results and discussions of the study follows from a combined analysis of information gathered through interviews conducted with EHRC's officials and human rights experts and from consultation of EHRC's official documents for the period October 2016 - June 2018. In addition and for the enhanced understanding of the issue, the researcher considered different reports made by the international and regional human rights institutions and documents published by different human rights organizations.

4.2 The Mandate and Duty of EHRC

Among key roles and responsibilities entrusted to the NHRIs, EHRC being one, under the Paris Principles, which is at the core of this thesis, is human rights protection. Of the roles and responsibilities in the protection of human rights, the mandate for investigation of human rights violations is central.

Viewed from a legal framework that gave it existence, the EHRC is granted broad investigation mandate as can be comprehended from the cumulative reading of Articles 6 (4), 7 and 24 of its establishing Proclamation. How may EHRC exercise its investigation mandate to protect human rights during SOE?

In general, EHRC has the duty to protect human rights in the country through addressing alleged human rights violations submitted to it by citizen complainant as well as through taking own initiative as a response to a wide range of nation-wide human rights violations.

The Commission has three distinct mechanisms or ways to provide remedies for alleged human rights violations submitted to it by citizens. First, as stipulated under article 26(1) of its establishment proclamation, the Commission attempts to settle complaints amicably. Secondly, the Commission may provide remedies at preliminary stage of its investigation if the allegation involves simple cases; most of the time these are employment cases. Cases settled through this mechanism ends with a statement that states ‘the violations have been redressed’ and ‘the file is closed’. The mechanism reliefs the Commission from writing recommendation, a necessary measure had the case or cases are neither simple nor amicably addressable. Lastly, the Commission provides remedies by conducting full investigations and after that by issuing appropriate recommendation.

4.2.1 The Practice of EHRC in Exercising Its Mandate during The Last Two SOEs

From the assessment of investigation files available in EHRC’s Record and File Management Office (RFMO) and the Commission’s Annual Report, it is found that a total of 2,090 complaints have been submitted to the Commission from the fiscal year of October 2016 - August 2017 (first SOE) using different methods (as in person, telephone). Of these, 1,086 (52%) of the complaints submitted are judged inadmissible due to want of jurisdiction and rejected by giving advice to complainants to lodge their complaints at the competent court or organ having the jurisdictions to deal with their cases. Among 2,090 cases only 1,004 or 48% of the complaints were held admissible and of these 186 (18.5%) cases were deemed to be redressed amicably and 514 (51%) are resolved through preliminary investigation and advices. The remaining 304 (about 30% of admissible complaints) are those cases that have been investigated by the Commission.

Although the Commission received many complaints related to cases of human right violation during the emergency time, it investigated none of them.⁸⁹ This fact remains so even after more than two years, i.e., up until last November 2019 when the researcher had the last contact with the Commission. Rather, most of the investigations carried out by the Commission were on cases

⁸⁹Interview with Yosef Girma, Investigation directorate of EHRC team leader (Addis Ababa, 10 October 2019)

related to employment such as the abuse of labor rights by employer, suspension, demotion, transfer to places far away from family and low salary, compensation for the damage occurred in work places and denial of access to grievance mechanisms. The remaining others relate to complaints about denial of medical treatment in prison and land disputes.

As already recalled, NHRI, hence EHRC also have a duty to initiate an investigation and respond to a wide range of human rights violations. There is a strong expectation from an investigation initiated by a NHRI like EHRC to accord primacy to heinous human right violations that affect the right to life and security of the person, the right to physical and mental integrity.⁹⁰

EHRC has the power for investigation of human rights violations through its own initiation as can be seen from the cumulative reading of Articles 6(4), and 24 of its establishing Proclamation. Thus, the Commission is supposed to undertake investigation through its own initiation at any time including during the SOE based on the information it may gather from Medias', magazine, and other reports and even unanimous sources. Nonetheless, this study found that the Investigation Directorate of EHRC has not taken any such initiative by itself in response to violations of human right that happened during the first SOE.

Although the second SOE covered only a period of four months, from 16February 2018 to 5 June 2018, for the purpose of inclusiveness, the researcher attempted to study the whole year data.

Accordingly, data gathered from the EHRC's RFMO and its Annual Reports indicate that the Commission received 1,488 complaints during the period from October 2017 - August 2018.

About64% (or 954) of the complaints are judged by the Commission as inadmissible due to want of jurisdiction and rejected by giving advice to complainants to lodge their complaints to competent organ having jurisdictions.

The rest of the complaints, i.e., the remaining nearly 36%, are held admissible. Of this 534 complaints, 299 (56%) cases are deemed to be redressed amicably and 86 (1.5%) are resolved through preliminary investigation and advices while the remaining 149 (28%) are investigated.

⁹⁰.Amnesty International, NATIONAL HUMAN RIGHTS INSTITUTION: Amnesty International's recommendations for effective protection and promotion of human rights (Amnesty International, October 2001), p.44.

During the same period, the Commission investigated two other cases by its' own initiation. These are the Gedio zone, SNNRP, riot and the conflict along the shared administrative borders by the regions of Oromia and Somalia.

Nonetheless, similar to the first SOE, there Commission carried out no investigation on any of the human right violations that occurred during this second SOE.

There is a gap between the theoretical legal framework granting EHRC the power of investigation of human rights violations during SOE and the practice of EHRC. Simply put, this gap is that EHRC has not investigated any of the human right violations that occurred during the two SOEs.

What does this gap between the theory and the practice of the NHRI, EHRC mean? Why does this gap exist? How may this gap bridged? The remainder of this chapter and the next or the last chapter of the research attempted to answer these questions as they make up the central question of the thesis.

4.3. The Practical Challenges of the EHRC to Investigate Human Right Violations during the SOE

4.3.1. Pillars for Effective Investigation of Human Right Violation

The Ethiopian Human Rights Commission is the sole national authority specifically mandated to protect human rights in Ethiopia. The commission is clearly empowered to investigate and redress any human rights violations committed in the territory of the country.⁹¹

An effective investigation mechanism presupposes an adequate legal capacity, organizational competence on defined and appropriate set of priorities and a political will to pursue its work. This function may include, effective compliant handling mechanism, investigating cases involving human rights violations, awarding compensation to victims, forwarding, and injunction

⁹¹ EHRC Establishment Proclamation, Article 4.

order, public shaming, holding perpetrators responsible before a competent justice organ and awarding recommendations.⁹²

In principle, the EHRC is empowered to deal with claims of human rights abuses perpetrated by the government authorities and its agents (vertical application of human rights) as well as allegation of violations in the private sector (horizontal application of human rights). These include activities dealing with filed complaints, sensitive or priority cases, systemic or group issues; ensuring the application of remedies.

To undertake this function, the EHRC is expected to monitor potential areas for human rights violations such as police detention centers, prisons, rehabilitation centers, as well as health and educational institutions and protest areas. These supervisions examine the compatibility of these sectors with the minimum standard of human rights treatment and enjoyment imposed by national as well as international human rights instruments. Such supervisions are carried out with the purpose of proposing for improvement, recommending for better human rights friendly facilities.

For performing both meaningfully and successfully the activities listed above, NHRIs like EHRC needs independence that extend to operational autonomy; its services should be easily accessible to those who need it most; it should have cooperation with various stakeholders including the civil society and the media; and it should have earned a good public image. These critical variables determine the level or degree of effectiveness of any NHRI like EHRC in its duty of investigation of human rights violations at all times, and, more so, during SOE.

In view of the assessment discussed in the preceding sections, the practice of EHRC appears too far from being effective; in fact, the Commission's practice in investigation of human right violation during the last two periods of SOEs amounts to ineffectiveness. Is this ineffectiveness conclusive? Other things remaining at par, it is conclusive if only EHRC has the advantage of being independent, accessible to the public at large, networked through cooperation with all stakeholders of the national human rights systems, and trusted by the public across the country. Subsequent sections assess each of these critical variables in relation to the practice of EHRC

⁹² Ibid (n 20) Para.61.

and within the boundaries of the theoretical legal framework for a NHRI power of investigation of human rights violations during SOE.

4.3.2. Independence

From a conceptual legal point of view, independence is one of the most important factors for the effective functioning of NHRIs and it has a direct link with the investigation of human right violation. The UN provides an important legal technical description of the term independence. According to the UN Centre for Human Rights, independence has four layers: independence through legal and operational autonomy; independence through financial autonomy; independence through good appointment and dismissal procedures; and independence through composition.⁹³

An independent NHRI is acting independently of government, of party politics and of other entities that may be in a position to affect its work. However, independence for a NHRI can never mean a total lack of connection to the state since it will always have a link and will remain linked to the state by law. NHRI should enjoy qualified independence and restrictions on its independence, both of which should bar any attempt to interfere with the ability of a NHRI to discharge its mandate effectively.

As Ato Genanaw Gobena, a Senior Investigation Expert at EHRC whom the researcher interviewed stressed that in order to address the issue of independence; addressing the appointment procedures of the Commissioner is the first and foremost point to be dealt with because the Commissioner represents the institution, EHRC, as a whole.

“As we know, the Commissioner of the institution [EHRC] during the SOEs came directly from and used to serve as the Director of the National Electoral Board. As is known, this institution [the National Electoral Board] was not effective. Indeed, the national election conducted under his directorship was ineffective. In spite of this, this person is appointed to lead EHRC. While it known that human right is a very sensitive and complex issue, yet, this person is appointed to lead the institution [EHRC]. Then, how is this institution [EHRC] expected to be

⁹³.ibid, paras. 68, 70, 73, 77 and 82.

effective at all [during normal times] let alone during such difficult and tough times [like the times of SOE]?”⁹⁴

As stated under its section headed “Composition and Guarantees of Independence and Pluralism”, the Paris Principles recommends that the processes through which heads of NHRIs are appointed should be transparent and politically neutral and should ensure independence from the executive.⁹⁵ Thus, the method of appointment is an important legal marker in assessing the extent to which a NHRI is set to be independent from the theoretical base or the written legal framework and, upon a reality check, the extent to which the NHRI practice confirms its institutional independence. For this reason, advocates strongly voice the conferring of the task of appointing head of a NHRI to a representative body such as the parliament. Perhaps a more inclusive voice is that commends: to enhance independence, the selection and appointment process should, to the extent possible, involve the civil society through the representatives of human rights defenders, NGOs, opposition leaders, trade unions, social workers and journalists, all of who should also be able to nominate candidates in order to ensure a broad representation.⁹⁶

From a theoretical point of view, the EHRC establishment proclamation confirms that Ethiopia has to some extent taken into account recommendations mentioned above. For example, the parliament or the House of Peoples Representatives appoints the chief, deputy and other commissioners of NHRIs from among the nominees presented to it through voting that confers the appointment to those who secure two-third majority vote.⁹⁷ Yet, who is involved in and how does the nomination happen are important questions to establish whether the process of nomination presupposes and hence in alignment with the intent of the law that NHRIs should be independent institutions. Most importantly, does the composition of the nomination committee allow the process and its outcome to be free in the first place? Does this independence extend to the NHRI, in this case to the EHRC?

A nomination committee makes the nomination of potential appointees to head NHRIs. The committee is composed of Speakers of the House of Peoples Representatives and the House of

⁹⁴.Interview with GenanawGobena, Senior investigation expert in EHRC (Addis Ababa, 7 October ,2019)

⁹⁵.Paris principles, section 2.

⁹⁶.Ibid (n 29) p. 923.

⁹⁷. EHRC Establishment Proclamation, Articles 10(1)

Federation, five member elected by the house or the parliament from its members, the President of the Federal Supreme Court and two members elected by the joint agreement of opposition parties having seat in the House or parliament. Representatives of the Ethiopian Orthodox Church, Ethiopian Islamic Council, the Ethiopian Evangelical Church, and the Ethiopian Catholic Church are also members of the nomination committee.⁹⁸

A closer scrutiny into the nomination committee composition discloses several important points relevant to the independence of NHRIs, among which EHRC is one. First, majority of the committee members are from the government, which is in our context the leading political party. The news that the incumbent ruling party won 100% of the votes during the last election may deserve mention here. This gives credit to the fact that the government holds the majority seat sufficient to influence the nomination process and its outcomes. More so, it confirms the next point. Second, no opposition party has a seat in the parliament as the incumbent ruling party won every single vote during the last election. This makes the scheme that two of the committee members are those elected by the joint agreement of opposition parties having seat in the House or parliament null and void. Third, there is not any engagement of civil society in the nomination procedure, as the framework itself does not include them. Nonetheless, to let civil society be part of the appointment committee could reduce the risk for politicization of the process while it could enhance national legitimacy and credibility. The combined effect of these three facts is that the process of potential appointees' nomination is not free from political manipulation by the government.

Independence through composition should also extend to how the Commission sources its other staff members. This is because the institution should have to have the competence to appoint its personnel without any interference from the government. Moreover, EHRC should be composed of individuals with strong integrity that have knowledge and preferably, practical experience in the field of human rights, appointed based on qualifications and not because of political connections. Then investigation of human right violations can be done with prudence in a reasonable and thoughtful manner that should lead to effectiveness, if not efficiency.

⁹⁸.Ibid.article.11.

In practice, this means a lot with regard to the independence of the institution because if the independence of the EHRC through its composition is under the treat of the government influence so does the Commission's ability to exercise its power of investigation of human right violations during such momentous time like SOE, if not at all times. Interviews revealed that the Commission has never enjoyed the level of independence it should have in either appointing or recruiting its personnel for key positions below the positions that are appointed by the country's Parliament.

On the other hand, independence through operational autonomy is significant in the operational effectiveness of NHRIs. Operational autonomy also implies that institutions conduct their day-to-day affairs independently of any other individual, department, organization or authority and it has direct relation with operational efficiency.⁹⁹ The following quote from one of the interviews conducted by the researcher captures well the extent to which EHRC has operational autonomy in the investigation of human rights violation during the last two SOE.

“...it is one thing to say the Commission has the power to investigate human right violations in the territory of Ethiopia. That saying alone does not give you the power to do the job. What enables you to exercise this power, to do the job, is the political culture within the Commission's environment. If the political culture is prejudiced, the investigation of politically related human right violation is difficult to undertake, then it does not matter what that Paris Principles or the establishment proclamation says, you will not be able to do that...”¹⁰⁰

However, operational autonomy is another mechanism to grant the Commission the requisite independence to function effectively. Yet, this study found that EHRC investigation team did not have the kind of autonomy, a situation that prevailed throughout the last two tough times of the SOE, periods during which many human right violations happened.

⁹⁹.UN Handbook, (n 3), para.71.

¹⁰⁰.Interview with Yosef (n 89)

Indeed the violation that happened during SOEs has linked to the political matter and by that time we understand that there are some buttons that we just don't push.¹⁰¹ And it was very tough to think about professional autonomy whatsoever.

*"I personally have had face different problems with the fall of my career among them, one day during state of emergency. I was ordered to do investigation in the area which is the protesters involve in conflict with the government then after my investigation I came back with the findings and presented the results to the superintendent, but my order was permanently erased from my laptop, I was surprised at the time but destroyed it for my life."*¹⁰²

In many international literatures of NHRIs fathom that the most important indicator of operational independence of NHRIs linked with its power to make an autonomous investigation. But then again those illustration made us to conclude that it is clear that a solid legal base solely, does not provide the Commission with operational autonomy, hence a good law cannot be an end itself. There needs to be political will, and knowledge and understanding of the importance of human rights and why they should be respected. Only then can an institution with such mandate be able to carry out its functions effectively.

Finally independence through financial autonomy, EHRC's funding mainly being allocated by the government does not make it subject to financial control which might affect its independence says the EHRC investigation directorate director Zewdneshe Zegeye. Actually financial independency can be seen as the nature and source of funding should be guaranteed and specified in its founding legislation. The budget should be adequate and continuing and should not be arbitrarily cut its activities curtailed by the instrumentality of budget constraints.¹⁰³ So that the researcher conclude that even though the funding is from the government this couldn't be alone can't be the reason for the commission for lack of independence.

All together lack of independence is one of principal problem that hinder the EHRC from effective investigation of human right violation during state of emergency. Moreover; as we have discussed under this section the investigation records of the office is highly limited upon complaints and no experience of investigation upon its own motion. There is no kind of

¹⁰¹Interview with Genanaw (n 94).

¹⁰² Ibid

¹⁰³UN Handbook, (n 3),para. 74.

investigation related to the systemic issue such as systems, laws that give rise to gross human rights violations.

4.3.3. Accessibility Problem

Accessibility to the public is core feature of effective national human rights institutions, a marker recognized under the Paris Principles as well. Accessibility has to be viewed from two aspects: familiarity of the public about and physical accessibility of the institution. Accessibility is especially important when NHRIs handle complaints. The Paris Principles emphasize that NHRIs should strongly use all the necessary means to make themselves known to individuals that would benefit from their activities. They should enhance their visibility especially to groups of individuals that are susceptible to human rights violations.¹⁰⁴ With respect to this, EHRC has been trying to create awareness through different means such as by media, brochures and its website with the aim of ensuring the public's awareness about its existence and functions. However, there is hardly any evidence to tell whether its campaigns are satisfactory or effective.¹⁰⁵

It is supposed that publicizing the Commission's activities, releasing information on investigations conducted by the institution and on measures taken has a contribution to increase its accessibility and public awareness on human rights issues and develop the public's trust in turn. However, experience of the Commission in this regard mirrors that it is more of indisposed.

Even though physical accessibility is very challenging in geographically large countries like Ethiopia, since such the NHRIs like EHRC is design to protect the population at large, the Paris principle strongly recommends that it is essential to make sure their physical accessibility to the beneficiary by opening regional or local offices. Such offices must be located in major population areas because it has a great deal with regard to the investigation of human right violations. If the NHRI is accessible to the population then when human right violation happen people or the victims can easily log their complaint.¹⁰⁶

¹⁰⁴. UN Handbook, (n 3), para. 98-105.

¹⁰⁵. Interview with Yosef (n 89).

¹⁰⁶. Amnesty International, (n 1), pp. 20-21.

To curtail the problem of accessibility, the EHRC had opened nine regional offices, i.e. one office in every region of the country. Yet, it is not still enough to ensure accessibility in a vast country like Ethiopia. The situation during the last two periods of SOE provided a vivid case why the one office for one region, irrespective of their respective geographic size and spread, to mention at least one factor, does not ensure the Commission's services availability to citizens.

Oromia, Amhara and SNNRP are the three regions where numerous serious problems occurred during the last two periods of SOE. However, accessibility of the Commission's service are limited in all this regions. For instance, in Oromia, which is the second biggest region in its geographic area, EHRC's only office for the region is located in Jimma city. However, according to various international and national human right institutions reports, the protests and human right violations for most took place in Ambo, Wolaga, and Hararege areas. The same is true in the Amhara region since the Commission has only office, which located in Bahir-Dar city while protests and related human right violations happened in Gonder and northern Wollo areas. In both Oromia and Amhara regions most of the people who need EHRC's service the most had difficulty to access the Commission. The Commission physical accessibility has not also duly considered the size of the total populations of these regions, a fact that indicates EHRC is not accessible to all sections of the society. This has direct effect on the effectiveness of the Commission during SOE with respect to its duty to protect human right through the investigation of human right violations. In a nutshell, the problem of inaccessibility of the Commission during SOE to the people who are exposed to human rights violations or to the non-fulfillment of their rights marks how the disavowal of human rights may be perpetrated by the very institution set up to protect it.¹⁰⁷

4.3.4. Cooperation

According to the Paris Principles, a well-organized and strong communication has a great significance to magnify the operational degree of national institutions. It says that they should use this opportunity to exchange expertise, experience and information on different human rights violations. Establishing good relations particularly with NGOs is believed to be fundamental as it

¹⁰⁷.Interview with Zewdneshe Zegeye, Investigation directorate director of EHRC (Addis Ababa, 12 October 2019).

facilitates information exchange on human rights issues, providing feedback on the performance of national institutions and benefit from knowledge and expertise of NGOs.¹⁰⁸

National human rights institutions need to maintain cooperative relationship with national institutions and with intergovernmental organizations. Collaboration with intergovernmental organizations like the United Nations helps national institutions tap into the expertise as well as both technical and financial resources available. Concerning the assessment of the state of cooperation and the assistance EHRC is able to garner from in service of its duty to protect human right by means of investigating human rights violations particularly during state of emergence, the following quote from an interview conducted with a staff of Ethiopian Human Rights Council (HRCO) may partly describe it well.

“EHRC’s collaboration with human right NGOs was very weak, in fact better to say it was almost non-existent. In particular, to forge this cooperation when the SOE invoked was simply unthinkable. The political environment then signaled everything [that opposes any such effort]. In my personal view, this is one reason why EHRC was not effective during [the last two periods of] the SOE. For example, has it had good relationship with us [HRCO], we used to conducted many investigations then [during the SOE]. We have published and released findings during that period [the SOE]. Thus, had there been cooperation among us [EHRC and HRCO], we would have shared information and experience. The Commission [EHRC] would benefit from having cooperation not only with us [HRCO] but also with others as well.”¹⁰⁹

Cooperation with NGOs, international and national institutions is instrumental in sharing best practices and experiences, to exchange reports and publications and address issues of common interests. Especially in a country like Ethiopia with enormous population and large geographic expanse, to cooperate with these organizations is an effective means to offset the accessibility challenge due to limited regional offices, as is the case with EHRC. In addition, as the EHRC cannot improve on its own or by itself alone the human rights situation of Ethiopia, it needs to

¹⁰⁸.Ibid (n 29). p. 934-936.

¹⁰⁹.Interview with Dan Yirga, Human Rights Council HRCO’s Human Rights High Officer, (Addis Ababa, 25 September 2019).

practically recognize the necessary complementary roles of NGOs, international, national institutions of human rights.

4.3.5. Public Legitimacy

The population of a country must perceive that the institution can provide it with real benefits e.g. through its right to complain about human rights violations, to obtain an impartial investigation of the matter, and to see positive results if violations are found.¹¹⁰ On the important points of trust and legitimacy, as consistently seen throughout the assessment and discussions of almost all other variables, EHRC exists with a chilling level of legitimacy mainly due to its political affiliation since birth. According to one interviewee:

“I cannot say that we [EHRC] have no any public trust. We have been addressing many complaints on almost every day basis. That shows people still trust us. However, on cases related to political matters it is hard to say that we have public trust and public legitimacy because of different reasons among which the political affiliation [of the institution] is the main one.”¹¹¹

In fact, reports done by the Commission on the SOE made its politically affiliation a public secrete and subsequently EHRC has almost lost its public legitimacy. The institution appeared to side with the powerful against the powerless. Then it is of even more important to show that the institution stands up for the rights of the powerless against powerful interests.

4.3.6. Operational Inefficiency

The idea of operational efficiency is very broad. According to the Paris Principles, operational efficiency has complicated link with the availability of adequate funding and sufficient human resources. Obviously, for NHRIs to live up to the expectations of their stakeholders by delivering on the goals they are set up for, operational efficiency plays an indispensable role. The personal capacity and efficiency of their staff members is critical. This means that NHRIs should also

¹¹⁰.UN Handbook, (n 3), para, 89.

¹¹¹.Interview with Genanaw (n 94).

highly rely on continuous training for the staff to ensure efficiency. The training should involve developing staff members' knowledge relating to human right issues.¹¹²

The EHRC is supposed to undertake investigation upon complaint or through own initiation based on the information gathered from medias', magazine, and other reports and unanimous sources. Nonetheless; although there are numerous issues from during the SOE that demand the Commission's initiative, the EHRC' investigation experience does not show that it did investigation on its own initiation. Even most of the complaints lodged during the past periods of emergency are still as held by the Commission for want of consultation by the Government.¹¹³

Certainly, EHRC is highly dependent on government fund. This creates a serious challenge to accomplish its goals. EHRC has faced staff turnover because of low salary scale and this forced the Commission to work with insufficient number of professional staff members who can properly and effectively discharging their duties.¹¹⁴ This research has confirmed this and indeed found not only that there was the lack of sufficient professionals but also that many of those that are working at EHRC are not human right specialists.

¹¹².James Gomez and Robin Ramcharan, The protection capacity of National human rights institutions in Southeast Asia (Working Paper Series # 172), 2016, p. 21.

¹¹³.Interview with Yosef (n 99).

¹¹⁴.Interview with Genanaw (n 93).

Chapter Five

Conclusion and Recommendations

5.1 Conclusion

International development of NHRIs goes back to 1946 where ECOSO recommends member states to consider the establishment of local Human Rights Committee to further work of the commission for human rights. After numerous contests, in 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights took place in Paris. A key outcome was the Principles relating to the status of national institutions which commonly known as the “PARIS PRINCIPLE”. This is the landmark achievement towards determining the status of NHRIs all over the globe. The Paris Principles are the principal source of normative standards for NHRIs which are developed principally to promote and protect human right at a domestic level. NHRIs enable States to meet their international responsibility to take all appropriate action to ensure that international obligations are implemented at the national level.

The main concern of the Paris Principle is the mandate and independence of NHRIs. The Principles clearly put that “mandate as broad as possible” should be accorded to those institutions. Essentially, mandate refers to legal basis and range of responsibilities. And the “independence” pillar sets out the vital role the independence of NHRIs has in carrying out their function effectively. NHRIs are vested with investigation mandate to contribute to the provision of effective remedies for victims of human rights violations. According to the Paris Principle national institutions on human rights, especially human rights commissions are entrusted with the duty of investigating human right violation. The Paris Principles established a detailed measuring yardstick or standards on the extent to which such NHRI is vested with the power of investigation of human rights violation.

In line with the above stated international experiences, the FDRE Constitution is the first efficacious document, which provides the basement for the establishment of EHRC under article 55-sub article 14. Based on this Constitutional ground, EHRC is established by proclamation 210/2000 by the House of Peoples Representatives with a view to promote and protect human rights. The Commission’s main objective is to ensure that the national status of rights is

protected, respected, and fully enforced and the necessary measures taken where they are found to have been violated. One of the core mandates of EHRC is investigation of human rights violations and contributing to the provision of effective remedies to victims of human rights violations. With regard to the extent of its mandate, the proclamation vested the Commission with extensive mandate.

The Ethiopian government declares a SOE based on special emergency powers granted to it primarily by the country's Constitution. Ethiopia declared SOE twice in October 2016 and February 2018. SOEs should be critically looked at from the perspective of human rights because the suspension of a legal order or important aspects thereof during emergency often makes the way for systematic violations. Consistent international and national human rights institutions reports reveal that there were several human right violations during the two periods of SOE.

As a NHRI vested with broad mandate to investigate human rights violations, the EHRC is expected to check on the exercise of government and thereby hold the government to account at any time whether it is the time of SOE or otherwise. However, the practice, as this research found out, indicates that the Commission is far from meeting expected standards during the SOE. As far as its investigation role goes, the Commission was not able to exercise its mandate on any of the appalling human right violations committed by either providing solution to cases submitted to it or by taking own initiation though its statutory obligation and the factual situations of the SOE periods demand.

The central challenge for EHRC not to perform at expected standard during SOE was mainly lack of independence, which severed from political influence. The strongest view about the Commission from within the institute is that it is perceived to be weak and not truly independent of the government on its investigation of human right violation as well as in its operation. EHRC suffered the critical shortcoming that left it 'incompetent' for having a political affiliation with the then ruling party. Although the UN Centre for Human Rights has identified four layers of independence: independence through legal and operational autonomy; independence through financial autonomy; independence through good appointment and dismissal procedures; and independence through composition to be satisfied for NHRIs to be effective, EHRC's Commissioners appointment procedure failed to assure such. This, according the current research result, is because majority in the nomination committee were the government or members of the

ruling party, a fact that possibly stifled efforts to base commissioners nomination and appointments on merit rather than on would-be nominees or appoints past or present allegiances to government or political party and with no civil society and opposition parties representation. In other words, the method of selection and appointment of the members of the Commission was not fair and transparent, to afford all necessary guarantees of independence.

The Paris Principles recognize cooperation of national institutions like EHRC with different organization such as international and non-governmental organizations. The same concept is also embodied under EHRC establishment law. However, this research found the other practical challenge impeding the effective functioning of the investigation of human right violation during SOE was the nonexistence of cooperation with international and national institutions of human right particularly with NGOs. Lack of cooperation with NGOs has blocked the Commission from sharing best practices and experiences, exchange reports and publications and address issues of common interests.

According to the Paris Principle, the notion of accessibility incorporates two main points. The first one is connected to the awareness of the existence of the NHRI while the second is linked to physical accessibility of NHRI. It is found that EHRC is neither adequately physically accessible to citizens across the vast expanse of the country nor is the awareness on its existence properly circulate in the minds of the public. It appears that intensive work is required from the Commission to be accessible and inform its existence.

The Commission lost public trust and legitimacy because of its failure to investigate human rights violation occurred during SOE. Then it is of even more importance to show that the commission stands up for the rights of the powerless against powerful interests. In fact the researcher acknowledged that there is a remarkable change in political environment even the government has admitted that there were massive human right violation that was committed by the government in different places and at different levels. Indeed, since April 2018, the government has been trying to uplift its commitment of protection of human rights by strengthening democratic and human right institutions among which EHRC is one – for example, the recently appointed Commissioner is someone who has served in international and regional human rights institutions and who has extensive experience with respect to human rights issues.

5.2 Recommendations

After closely examining the critical problems faced by Ethiopian Human Rights Commission with regard to exercising its power to investigate human right violations during SOE, the researcher recommends the following solutions. The presumption in making these recommendations is that, the Commission can only deploy and leverage the independence, capability, resources and relationships it is able to possess and develop under normal situations for discharging its duty during SOEs. Thus, the recommendations, which are put forth to be implemented in normal situations, are believed to aid the Commission to logically, objectively and systematically address the challenges of SOE times in ways that ensure compliance with the Paris Principles and thereby the protection of human rights of every citizen of the country. The recommendations are:

- The Commission must gain, maintain and sustain its independence by all legal means. The system of appointing Commissioners should be redesigned to that the institution acquires the best staff possible if human rights are to be properly promoted and protected. This is essential, as only members of staff acquired this way will be able to maintain their neutrality and independence even in the toughest situations and under intense pressure to like SOE.
- The appointment procedures of the commissioners and other officials should be based on merit and reputation, and it should be done through direct involvement of the public and allowing members of civil society to nominate possible candidates with due consideration of opposition parties as a candidate.
- EHRC must tend to identify priority human rights issues and approach them in a systemic manner, rather than working in a piecemeal fashion or being primarily driven by complaints received.
- The Commission should ensure that its existence is known by and accessible to all sector of the society. This can be done, through establishing new branch offices in potential areas for the human rights violations and by setting up or devising a number of mobile offices in regional or local offices which should be expanded to cover remote areas of the country.

- The Commission should create a strong bond with potential governmental and non-governmental stakeholders for the realizations of its mandated obligations of investigating human right violation.
- The Commission should work hard to drive funds from other sources and more trainings and exchange forums should be organized to avert lack of experience and execution capacity.

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Appendices 1

Appendix 1: Interview Guide Questions

For Investigation Directorate Team Members of Ethiopian Human Rights Commission

I am Soreti Berhanu and a graduating student at Addis Ababa University post-graduation program at School of Law, in Human Rights Law Stream. I am working my graduating thesis on the research entitled “**The Ethiopian Human Rights Commission’s Power of Investigation of Human Rights Violations and Its Application during State of Emergencies**”. I believe it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality.

1. Respondent Profile

1.1 Name of Respondent _____

1.2 Sex: Male ___ Female ___

1.3 Educational Background: -----

1.4 Official capacity -----

1.5 Duration of engagement with the institution (the Commission) represented -----

2. Interview Guiding Questions

- 1 How effective is the legal basis for the application of EHRC’s power of investigation of human rights violations during the SOE?
- 2 How effective has EHRC been in carrying out its power of investigation of human rights violations during the last SOEs?
- 3 How consistent has EHRC’s application of its power of investigation of human right violations during the last SOEs been with the Paris Principles?
- 4 Was there a difference in EHRC’s experience, in the application of its power of investigation of human rights violations during the first and the second SOE? If yes, what exactly was the difference? And, what are the major factors (legal, institutional or others) that explicitly contributed to the difference?
- 5 What mechanism does the Commission use to investigate human rights violation during SOE?

- 6 Did the Commission have a time framework for the investigation of human right violation during SOE? Is the time frame observed as planned? If the answer is no, then what was/were the reason/reasons?
- 7 How long does solving a (one) case of human rights violation take the Commission during ordinary or normal time? Is it different in the time of SOE? If yes, how would you explain the difference and factors that contributed to?
- 8 How did the Commission handle and process human rights violation complaints during SOE? Does the Commission follow different mechanisms in handling and processing such complaints during normal, ordinary time? If yes, what is/are the implication/implications of the difference? If no, how do you compare the Commission's effectiveness during both times? During which time does the Commission appear more effective? Other than the obvious differences attributable to the unique character of the times, what important reasons might explain the effectiveness during the particular time?
- 9 What kind of recurrent cases does the Commission entertain/entertained during SOE?
- 10 Was there any instance whereby the Commission on its own motion or initiation began investigation of human right violation during SOE?
- 11 What were the major interventions made by EHRC during SOE?
- 12 How do you evaluate the perceived public legitimacy of the Commission from the perspective of human rights violations during the last two SOEs?
- 13 What has EHRC achieved so far in the investigation of complaints relating to human rights violations during the last two SOEs?
- 14 What are the main legal, practical and operational factors that hinder the Commission not to perform to the expected level in investigation of human right violation during the last two SOEs?
- 15 In general, how do you assess the Commission's power of investigation on human right violation during SOE?
- 16 What has EHRC been able to learn from relevant (on protecting human rights and investigation of human rights during SOEs) practices and experiences of similar national human right institutions (NHRIs) of other African states?
- 17 In your opinion, considering the possibility that extraordinary situation may force the country or any of its parts to be under a SOE, what must be done to foster the competence

of the Commission to protect human rights and effectively carry out its power of investigation of human right violation during the period of SOE?

18 After completing investigation process, if the Commission is of the opinion that there exist human rights violations, it forwards appropriate recommendations to provide effective remedies for the victim of the violations.

- How do you see the level of compliance of the institutions with the recommendations of the commission?

19 If they are not compliance with the recommendation of the EHRC what kinds of grounds non-complying respondents raise to resist the compliance of the Commission's recommendations? Or how they justify the fact of disregarding the Commission's recommendations?

20 Do you have other opinion you want to share

Appendix 2

Interview Guide Questions

For Investigation Directorate Director of Ethiopian Human Rights Commission (EHRC):

I am Soreti Berhanu and a graduating student at Addis Ababa University post-graduation program at School of Law, in Human Rights Law Stream. I am working my graduating thesis on the research entitled “**The Ethiopian Human Rights Commission’s Power of Investigation of Human Rights Violations and Its Application during State of Emergencies**”. I believe it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality.

1. Respondent Profile

1.1 Name of Respondent_____

1.2 Sex: Male ___ Female ___

1.3 Educational Background: -----

1.4 Official capacity -----

1.5 Duration of engagement with the institution (the Commission) represented -----

2. Interview Guiding Questions

1. How do you assess the Ethiopian human right record during the times of the last two State of Emergencies (SOEs)?
2. How do you assess the Commission’s role of protecting human rights and investigation of human rights violation in the time of SOE?
3. How do you compare the capacity of EHRC in carrying out its power of investigation of human rights violations during SOE with regard to the total number of population?
4. How do you appraise the Commission’s capacity to respond to the needs of those sections of society at risk of human right violation in time of SOE?
5. How do you evaluate the effectiveness of all mechanisms and procedural aspects (tools of investigation) used so far by the Commission to ensure the protection of human rights with respect to the investigation of human right violations during SOE?

6. Could it be said that the Commission is established so as to be competent enough to effectively entertain its protective function as to investigation of human right violation during SOE? If yes/no, in your understanding, what would explain why it is so?
7. Do you think that the Commission discharges its utmost responsibility or mandate of investigation of human right violation in a period of SOE in particular and in assisting the government to discharge its obligation to protect human right of the citizens, in general, during this time?
8. Was there any instance whereby the Commission on its own motion or initiation began investigation of human right violation during SOE?
9. What were the major interventions made by EHRC during SOE?
10. What was the situation of human rights protection in the prisons & correctional camps during the last two SOEs? How frequently have you visited and listed these facilities during those times?
11. Does the country's political and democratic experience allow the Commission to independently perform its mandate of investigation of human right violation during SOE and to the expected standard?
12. Do you think the political affiliation, i.e., that it is answerable to the House of Peoples Representatives, affects the independence of the Commissions? How may it affect/not affect the Commission?
13. How do you evaluate the perceived public legitimacy of the Commission from the perspective of human rights violations during the last two SOEs?
14. How do you assess the Commission's collaboration with the civil society during the last two SOEs? What legal and or political factors have contributed to the state of collaboration between the two during the SOEs?
15. What has EHRC achieved so far in the investigation of complaints relating to human right violations during the last two SOEs?
16. What are the main legal, practical and operational factors that hinder the Commission not to perform to the expected level in investigation of human right violation during the last two SOEs?
17. In general, how do you assess the Commission's power of investigation on human right violation during SOE?

18. What has EHRC been able to learn from relevant (on protecting human rights and investigation of human rights during SOEs) practices and experiences of similar national human right institutions (NHRIs) of other African states?
19. In your opinion, considering the possibility that extraordinary situation may force the country or any of its parts to be under a SOE, what must be done to foster the competence of the Commission to protect human rights and effectively carry out its power of investigation of human right violation during the period of SOE?
20. During the last two SOEs, how effective has the Commission been in coordinating with other institutions making up the country's national human rights system? How fruitful was its effort in coordinating with these other institutions during the period?
21. After completing investigation process, if the Commission is of the opinion that there exist human rights violations, it forwards appropriate recommendations to provide effective remedies for the victim of the violations.
 - How do you see the level of compliance of the institutions with the recommendations of the commission?
22. If they are not compliance with the recommendation of the EHRC what kinds of grounds non-complying respondents raise to resist the compliance of the Commission's recommendations? Or how they justify the fact of disregarding the Commission's recommendations?
23. Do you have other opinion you want to share

Appendix 3: Interview Guide Questions

For Members of Ethiopian Human Right council

I am Soreti Berhanu and a graduating student at Addis Ababa University post-graduation program at School of Law, in Human Rights Law Stream. I am working my graduating thesis on the research entitled “**The Ethiopian Human Rights Commission’s Power of Investigation of Human Rights Violations and Its Application during State of Emergencies**”. I believe it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality.

1. Respondent Profile

- 1.1 Name of Respondent_____
- 1.2 Sex: Male ___ Female ___
- 1.3 Educational Background: -----
- 1.4 Official capacity -----
- 1.5 Duration of engagement with the institution represented -----

2. Interview guide questions

- 1 How do you assess the Ethiopian human right record during the times of the last two State of Emergencies (SOEs)?
- 2 How do you assess the Commission’s role of protecting human rights and investigation of human rights violation in the time of SOE?
- 3 Do you think that the commission has been established so as to be competent enough to entertain its protective function as to investigation of human right violation during state of emergency effectively?
- 4 How do you examine the effectiveness of the EHRC in protect Human Rights in Ethiopia during state of emergency?
- 5 How do you compare the capacity of EHRC in carrying out its power of investigation of human rights violations during SOE with regard to the total number of population?
- 6 Do you think that the Commission discharges its utmost responsibility or mandate of investigation of human right violation in a period of SOE in particular and in assisting the

government to discharge its obligation to protect human right of the citizens, in general, during this time?

- 7 How do you see the effectiveness of all mechanisms and procedural aspect or investigations tool so far used by the commission to ensure the protection of human rights with respect of investigation of human right violations during SOE?
- 8 How do you assess the Commission's collaboration with the civil society during the last two SOEs? What legal and or political factors have contributed to the state of collaboration between the two during the SOEs?
- 9 How do you observe the working relationship of EHRC with the Human Right Council in protection of the human rights during the two SOE?
- 10 Do you think the country's political and democratic experience allow the Commission to perform its mandates independently and in line with this how do you see EHRC's power of investigation of human right violation during SOE?
- 11 In general, how do you assess the Commission's power of investigation on human right violation during SOE?
- 12 How do you evaluate the perceived public legitimacy of the Commission from the perspective of human rights violations during the last two SOEs?
- 13 In your opinion what are the main legal, practical and operational factors that hinder the Commission not to perform to the expected level in investigation of human right violation during the last two SOEs?
- 14 In your opinion, considering the possibility that extraordinary situation may force the country or any of its parts to be under a SOE, what must be done to foster the competence of the Commission to protect human rights and effectively carry out its power of investigation of human right violation during the period of SOE?
- 15 EHRCO published different reports about the type and number of violated human rights during the last two SOE, with in those reports how do you asses the role of EHRC power of investigation of human right violation during SOE?
- 16 Do you have other opinion you want to share?