

Addis Ababa University

School of Law

College of Law and Governance Studies

**Enforcement of the Recommendations of Ethiopian Human Rights
Commission: Accomplishments and Challenges**

By

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**A Thesis Submitted to College of Law and Governance Studies, School of
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Acronym

NHRNs National Human Rights Institutions

EHRC Ethiopian Human Rights Commission

EOTC Ethiopian Orthodox Tewahdo Church

HOPR House of people Representatives

EIO Ethiopian Institution of Ombudsman

UHRC Uganda Human Rights Commission

GCHAJ Ghana Commission on Human Rights and Administrative Justice

TCHGG Tanzania Commission on Human Rights and Good Governance

PPs Paris principles (Principles Relating to the Status of NHRI)

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Abstract

This thesis is aimed at assessing recommendation enforcement practice of EHRC and challenges that the Commission has faced in its endeavor to ensure implementation of its recommendations. It seeks to discover what enforcement tools the Commission employed to enforce its recommendations, how these tools are effective to ensure compliance with recommendations and to provide effective remedies for victims of human rights violations and what challenges hindered adequate enforcement of its recommendations. To achieve this purpose qualitative research approach was employed and both primary and secondary data sources were used. The primary data include data from interviews, FGD, reviews of annual reports of the Commission and investigation files and recommendations and reports of the Commissions submitted to HOPR on recommendation enforcement challenges. It also include data from analysis of relevant provisions of establishing laws of EHRC,EIO, some NHRIs of other countries, Investigations and Mediation Directives of EHRC, FDRE Constitution, PPs, and federal supreme court cassation division decision, Proclamation No.454/2005. The secondary data used in the study include reviews of relevant books, thesis and other documents related to the research problem. The thesis has finally 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. These include reporting to the HOPR, roundtable discussions, and field missions, summoning respondents to the office of the Commission and warning letter. These enforcement tools are proved ineffective to ensure compliance with recommendations when the cooperation of respondents is lacking. As a result, majority of the recommendations were left unenforced. The main challenges that hinder adequate enforcement of recommendations were resistance by respondents on different grounds such as citing legal bases for their actions, failures of the Commission to exercise its formal enforcement power which is a direct consequence of its failure to fulfill the necessary preconditions to use such power and legal gaps pertaining to the Commission's enforcement power. As result of these findings, the thesis recommends that the Commission should conduct exhaustive investigation and forward persuasive and strong recommendations; it should commence the use of its formal enforcement power upon fulfilling necessary preconditions and pending that, it should make a proposal for the amendment of its proclamation to empower it to take appropriate legal action which directly aimed at enforcing its non-complied recommendations.

Chapter One: Introduction

1.1 Background of the Study

National Human Rights Institutions (NHRIs) have crucial role in promoting and protecting human rights at the domestic level. The important role of NHRIs in the promotion and protection of human rights has been recognized by the UN from the time when the international bills of human rights were being negotiated.¹ However, it was after the approval of the 1991 Paris principles by the World conference on Human rights and with the reaffirmation of the important roles of NHRIs by the Vienna Declaration and Program of Action of 1993 that all UN member states committed to establish NHRIs.² Paris principles provide broad human rights mandates and responsibilities of NHRIs; amongst others, investigating and redressing human rights violations.³ However, the scope of the investigation mandate of the institutions varies depending on their enabling laws.

The Ethiopian Human Rights Commission (EHRC) was established as a national institution that plays a major role in enforcing the human rights and fundamental freedoms enshrined in the Constitution of the country.⁴ In its enabling proclamation, the Commission is granted a broad mandate to promote and protect human rights in the country. Its complementary mandate of human rights protection particularly investigation of human rights violations is crucial in the country's human right protection system. Investigation of human rights violations is aimed at providing effective remedies for victims of human rights violations and holding accountable those responsible for the violations.⁵ This objective can only be achieved when the recommendations of the Commission are effectively enforced within the time provided by the enabling Proclamation. However, in practice, the enforcement of the Commission's recommendations has been very poor despite some changes in recent times. The purpose of this thesis is, therefore, to explore the situation of actual enforcement of the Commission's

¹ Roles and Functions of National Human Rights institutions(Raoul Wallenberg Institute 2015) 2

² Shiva Datta Bhandari, The Role of National Human Rights Institutions in Ending Impunity for Human Rights Abuses During Conflict: the Case of Nepal(2015)15

³ Paris principles, General Assembly resolution 48/134 1993, section 4

⁴ Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000 preamble, para. 4

⁵ (n 1) 5

recommendations and the challenges that hinder adequate enforcement of its recommendations, and thereafter to recommend possible solutions to address the problems.

1.2 Statement of the Problem

One of the core functions of EHRC is conducting investigations into and redressing human rights violations. If after an investigation, the findings of the Commission indicate the existence of human rights violations, the Commission has the mandate to grant recommendations. If respondents fail to comply with its recommendations or fails to justify their non-compliance with in the time fixed by the law, the Commission has the mandate to issue public reporting and/or ensure the criminal accountability of non-complying respondents.⁶ However, the Commission does not exercise these powers and as a result many of its recommendations have been disregarded by many respondents. Its failure to exercise its power to ensure the criminal accountability of refusing respondents had been linked for long time with clarity problem of article 41(2) of the Commission's establishing Proclamation. It declares that failure to comply with the recommendations or failure to state reason for noncompliance within three months from the receipt of recommendations of the Commission is a crime punishable with imprisonment and/or fine. However, it does not clearly state who initiates the criminal proceedings against non-complying respondents. Thus, it created confusion about how the Commission can ensure the criminal accountability of refusing respondents. To remove such confusion, the Commission elaborated article 41 in its Investigations and Mediation Directives which was adopted in December 2014 and the Directive contains clear procedures as to how the Commission shall ensure the criminal accountability of non-complying respondents. Though such effort of clarifying the confusion is commendable, the Commission has failed to exercise its power as per the procedure of its Investigation and Mediation Directive.

Moreover, the EIO whose enabling Proclamation of article 41(2) has the same stipulation with Article 41(2) of the Commission's establishing Proclamation, has implemented the provision by transferring the matter to the concerned police offices and thereby holding those respondents criminally accountable for their failure to complying with the institution's recommendations. The Commission would want to learn from the experience of EIO in implementing article 41(2) of its

⁶ EHRC EP 2000 Articles 39 & 41

establishing Proclamation. However, at the time of the writing of this thesis, the Commission has not shown a genuine interest in such experience sharing endeavor. This raises a question as to why EHRC is not implementing article 41(2) as EIO does. Hence, to understand what is lacking in the Commission, it is important to assess the practice of EIO in holding non complying respondents criminally accountable and to comparatively analyze the Commission's practice in that regard. The Commission has also not yet exercised its public reporting mandate, which is another operational gap that contributes to the poor enforcement of its recommendations.

The resultant effect is that the Commission is perceived as a toothless institution that is incapable of enforcing its recommendations and providing effective remedies to victims and hence it does not contribute to redressing human rights violations in the country. Thus, this thesis aims to assess the situation of actual enforcement of the Commission's recommendations, and explore the challenges that hinder adequate enforcement of its recommendations and forward feasible recommendations to solve such problems.

1.3 Research questions

In this study, the following research questions had been addressed;

- How does the Commission enforce its recommendations? or what enforcement tools does the Commission use to enforce its recommendations?
- How effective are the enforcement tools in enforcing its recommendations and providing effective remedies for victims?
- What are the challenges that hinder adequate enforcement of the Commission's recommendations?
- What would the EHRC learn from the practice of the Ethiopian Institution of Ombudsman (EIO) in ensuring the criminal accountability respondents that do not comply with its recommendations?

1.4 Objective of the study

The general objective of the study is to assess the situations of the actual enforcement of the Commission's recommendations and to explore challenges that impede adequate enforcement of

thereof. Moreover, it also attempts to assess the practice of EIO in holding accountable those who do not comply with its recommendations.

Specific objectives of the study are:

- to identify tools that the Commission has employed to enforce its recommendations;
- to evaluate the effectiveness of enforcement tools utilized by the Commission
- to identify the challenges that impede the adequate enforcement of the Commission's recommendations;
- to look into the practice of EIO in holding accountable those respondents that refused to implement its recommendations.

1.5 Significance of the study

The Commission has broad mandate to investigate and provide remedies to any human rights violations committed in the territory of Ethiopia. However, because of its ability challenge in ensuring adequate enforcement of its recommendations, the Commission has failed to discharge this responsibility effectively. As a result, many of its complainants who have spent their time in following up their cases before the Commission have been finally left without remedy.

Therefore, the study have much significance in that it deeply investigates and identify challenges that hinder adequate enforcement of the Commission's recommendations and suggest appropriate recommendations to remove such challenges. Hence it has particular significance to the Commission and its actual and would be complainants. It also contributes towards making the Commission an effective complement of other institutions that are mandated to adjudicate and redress human rights violations in the country.

1.6 Scope of the study

The study comprises both legal and practical analysis on the enforcement of recommendations issued by the Commission. Thus it does not include assessment on the types of cases brought before the Commission and their admission or rejection. It only explores as to, after the end of investigations, how those recommendations that are provided by the Commission have been

enforced to redress the violations. The scope of the study does not include the recommendations enforcement practice of the Commission at its branch offices. It only limited to recommendations issued by the head office of the Commission. The assessment of the enforcement practice of the Commission is limited to those recommendations that were issued between 2014 and the end of 2017. Shortage of time is the main reason to limit the study to cases investigated by the head office. The existence of more literatures (researches, and journals articles) on the Commission's works in general in the pre-2014 period is the reason why the practical assessment is limited to the post 2014 period.

1.7 Research Methodology

1.7.1 Research Approach and Types of data

Selection of research approach is dependent on the nature of the research problem or issues being addressed in the study.⁷ Hence, based on the research problems intended to be addressed in this study, qualitative research approach was applied since this approach is crucial for an in-depth and detailed exploration and understanding of a social or institutional problem from multiple perspectives.⁸

For the study, both primary and secondary data had been used. The primary data include data gathered through interviews, focus group discussion, review of annual reports of the Commission on its investigation performance, purposively selected investigation files and recommendations and official reports of the Commission submitted to HOPR on the enforcement challenges of its recommendations. It also include analysis of relevant provisions of EHRC and EIO establishing proclamations, Investigations Directives of EHRC, FDER Constitution, establishing acts of few selected NHRIs, human rights treaties that guaranteed the right to effective remedies, PPs, and federal supreme court cassation bench decision and other domestic and international legal documents. Secondary data used in the study include data collected from relevant books, thesis and other documents related to the problem under study.

⁷ John W. Creswell, *Research design, Qualitative, Quantitative and Mixed Approaches*, (4th ed. 2014) 32

⁸ *Ibid*

1.7.2 Sampling type

In this research purposeful sampling technique was used. Because it is effective to deeply understand the research questions through collecting data mainly from participants that have best knowledge and important data about the research problem.⁹ In this sampling technique the researcher selects the study participants taking in to account the purpose of the study.¹⁰ The purpose of this study is examining recommendations enforcement practice of the Commission and challenges that hinder adequate enforcement of its recommendations. Thus, to achieve this purpose, the researcher selected mainly directly concerned individuals and entities as source of data and the data from these sources enable 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 tools

To collect necessary data for the study, three data collection instruments were used which include interview, focus group discussion and document analysis.

Interview

In this study semi structured type of interview was used. This is because it allows the researcher to develop and ask key open-ended questions that address the research problems.¹¹ These face-to-face interviews are also giving the opportunity to the researcher to clarify the questions to the interviewees and to observe them physically while they give data which is important to ensure the truthfulness of the data they give.¹²

The researcher developed key and open-ended questions (topic guide) and administered to purposefully selected study participants. Accordingly, 10 individuals were interviewed to gather the necessary and relevant data. They include 4 investigation experts of the Commission, investigation directorate director, head of the office of chief commissioner, monitoring directorate director, head of the office of the institution of Ombudswoman, senior investigation expert of the same institution, Coordinator of Democratic, Human Rights and Administrations

⁹ Ibid

¹⁰ Ibid

¹¹ Michael Quinn et al, A Guide to using qualitative Research Methodology (2002) 12

¹² Id 13

affairs Standing Committee of HOPR. The process of interview was conducted in Amharic language and recorded by mobile in order to reduce the losses of audio information.

The researcher fixed the number of interviewees in the above manner using two criteria. These are, the interviewees have relatively better knowledge of the research problem—high possibility to get most important data and data manageability. In other words, they are directly concerned about the research problem and relatively, they are in better position to give relevant and necessary data to address the issue under the study and the data collected from such number of interviewees was manageable for effective analysis and interpretation.

Focus group discussion (FGD)

FGD was also conducted with six complainants of the Commission. This tool was used to collect data which could not be covered by semi structured interviews or unobserved by individual interviewees.¹³ It is also important to create collective memory of the participants which saves the possibility of forgetting relevant information and to validate the information obtained from individual interviewees.

In qualitative research the researcher has discretion to select study participants that can give necessary data to achieve the purpose of the study.¹⁴ Taking this in to account, the researcher selected six complainants in whose favor the Commission issued recommendations, but only one of the participants got effective remedy by the Commission. The aim of making almost all the participants to be those who did not get effective remedies by the Commission because of the commission's inability to enforce its recommendations is to generate necessary data on enforcement related challenges and to fill the gaps of other source of data in that regard. The other points taken in to account were willingness to participate, and the ability to communicate experiences and opinions in an articulate, expressive, and reflective manner.

The FGD was conducted in Amharic language and recorded by mobile in order to reduce the losses of aural information.

¹³ Id 14

¹⁴ Yalew Endaweke, *Fundamental Principles of Research and their Application*, 3rd ed. (2011) 132

Documents Analysis

The other data collection tool that was used in this study is document analysis. Analysis of relevant provisions of establishing proclamations of the Commission and EIO, Investigation directives of the Commission, FDRE constitution, Federal Supreme Court cassation bench decision, selected countries NHRIs establishing acts, and human rights documents that guarantee the right to effective remedies had been analyzed. Moreover, assessment of the investigation files of the Commission, review of annual and half year reports of the Commission on its investigations performance, and purposefully selected investigation report and recommendations analysis had been conducted to generate necessary and supplementary data for the study. Almost all of these documents are unpublished and official reports. Furthermore supplementary data sources such as books, thesis and other countries' NHRIs experience on the subject matter had been used.

1.7.4 Data analysis and interpretation

Data that had been collected through interviews and FGD had been recorded and each recorded data and rough notes were transcribed and translated into English and changed into organized notes. Data from interviews, FGD and document analysis had been analyzed and interpreted using thematic and narrative approaches. The reason for using such approaches is that while the thematic approach is appropriate to identifying the main points of the data, the narrative approach enables to state/describe the findings in a narrative way.¹⁵ The relevant legal documents' provisions had also been analyzed using principles of legal interpretation or legal reasoning.

1.7.5 Ethical Considerations

All participants of the study were given a full description as to the objective of the study and the fact that the information they gave used only for the study purpose before they decided to participate. Hence, all participations in this research were voluntary. The information collected was kept confidential. The study was conducted in a straightforward manner and all the data analyzed was reported in the study.

¹⁵ Ibid

1.8 Literature review

So far, various researches have studied the effectiveness of the Commission, yet there are gaps which need to be filled by this study. For example, Yemsrach (2010)¹⁶ has assessed the roles and challenges of the Ethiopian national human rights institutions in the protection of human rights in light of the Paris principles. Her study mainly focused on assessing the provisions of the establishing Proclamations of the Commission and the intuition of Ombudsman in light of the minimum standards provided in the Paris principles. As to their investigation functions, she concludes that during investigations of human rights violations, many entities are not willing to provide requested evidence and that the institutions cannot give prompt solutions due to the disappearance of witnesses and documentary evidence. Hence, the thesis did not cover the problem that is intended to be addressed in this study. The research done by Meseret¹⁷ looked only at effectiveness of the investigative works of the Commission in the first five years since its establishment. Thus, it did not cover the investigation performance and enforcement of recommendations in the later period. Helina (2014)¹⁸ conducted research on ‘the effectiveness of EHRC in light of the Paris principles’. She evaluated the effectiveness of the Commission in the performance of its overall functions. Regarding the investigation function of the Commission, she find out that the Commission has failed to investigate human rights violations that are committed by politicians and powerful government officials; it also failed to give timely solutions for complainants and to publicize its investigation reports for naming and shaming of the respondents who unlawfully refused to comply with its recommendations. However, her study did not adequately address the achievements and failures of the Commission in enforcement of its recommendations and the challenges it faced in that endeavors. Moreover, her study is limited to the performance of the Commission until 2013. Derege¹⁹ also assessed the effectiveness of the Commission’s performance in Addis Ababa. As to the investigation function of the Commission, his finding states that less awareness of the public about the Commission’s roles and functions, and absence of prosecutorial power of the Commission makes its investigation activities ineffective. From the outset his study is limited to the Commission’s work

¹⁶ Yemsrach Endale, The Roles and Challenges of Ethiopian National Human Rights Institutions in the protection of human rights in light of Paris principles (2010)

¹⁷ Meseret Mamo, The effectiveness of Ethiopian Human rights commission in implementing its investigative Mandate(2011)

¹⁸ Helina Azeze, The Effectiveness of Ethiopian Human Rights Commission in light of the Paris principles(2014)

¹⁹ Derege Sisay, The Effectiveness of Ethiopian Human rights Commission in Addis Ababa (2014)

in Addis Ababa, but the present study includes recommendations issued by the head office of the Commission on alleged human rights violations committed in any place within the country. Moreover, in his study, there are limitations in identifying factors that contribute for ineffectiveness of the Commission's investigation activities and it did not specifically explore the recommendations enforcement practice and identify challenges encountered by the Commission in that endeavor which are the central aim of this study. Recently Zewdnes²⁰ had conducted research on ~~an~~ appraisal of the effectiveness of the Ethiopian Human Rights Commission to Promote and Protect Human Rights: with Particular Emphasis to Hawassa, Branch". Her study is limited to the Hawassa branch of the Commission and hence, the study area and the problem intended to be addressed under this study are outside the ambit of her research.

This thesis therefore intends to adequately examine the situation of the actual enforcement of the Commission's recommendations, the effectiveness of the enforcement tools employed by the Commission, the challenges that hinder adequate enforcement of the Commission's recommendations.

1.9 Organization of the Thesis

This thesis has four chapters. The first chapter is the introduction part which includes the background of the study, statement of the problems, research questions and research methodologies and others. The second chapter deals with brief overviews on the roles of NHRIs. It focuses on the mandate and responsibilities of NHRIs, investigations mandates and enforcement powers of NHRIs in general and EHRC in particular. Chapter three is about accomplishment of the Commission in enforcement of its recommendations and its challenges. Mainly it includes the enforcement tools that the Commission has employed, their effectiveness, challenges that impede adequate enforcement of its recommendations. The fourth chapter contains conclusion and recommendations.

²⁰ Zewdnes Zegeye, An appraisal of the effectiveness of the Ethiopian Human Rights Commission to Promote and Protect Human Rights: with Particular Emphasis to Hawassa, Branch(2016)

Chapter Two: Brief Overviews on the Roles of NHRIs

2.1 Mandate and Responsibilities of NHRIs

2.1.1 Mandate

The Paris principles advocate ‘broad mandate’ for NHRIs which includes **the subject matter jurisdiction** – covering all human rights, i.e. civil and political rights, economic, social and cultural rights,²¹ **the object matter jurisdiction**- which refers to groups or entities over which NHRIs have jurisdiction and it should include the state and private sector,²²and **the temporal jurisdiction**- which relates to the time when the violations were committed and the jurisdiction of the institutions should include violations which occurred before and after they were established.²³ However, in reality, the scope of the mandate of the existing NHRIs varies widely depending on their empowerment in their respective enabling laws.

2. 1. 2 Responsibilities

According to Section A (1) of the Paris Principles, NHRIs have two main responsibilities, namely promotion and protection of human rights. Human rights promotion aims to create a national culture of tolerance, equality and mutual respect.²⁴ NHRIs inform people of their human rights under international, regional and national law, and encourage government institutions and the community to understand and respect the rights of others by giving advice on human rights issues; contributing to state reporting to international and regional bodies and undertaking human rights education and awareness-raising activities.²⁵

On the other hand, protection of human rights mainly focuses on ensuring that those responsible for human rights violations are held accountable and effective remedies are provided to people whose rights have been violated.²⁶ Protection of human rights can be conducted through making recommendations on administrative provisions; conducting inquiries; hearing individual

²¹ National Human Rights Institutions: History, principles Roles and responsibilities (United Nation 2010) 50

²² Ibid

²³ Ibid

²⁴ (n 1) 4

²⁵ Ibid

²⁶ Id, 5

complaints and transmitting them to other competent authorities; mediating conflicts and seeking amicable settlements.²⁷

These two responsibilities complement each other and they do require NHRIs to collaborate with government and to challenge its actions if necessary to strike balance between them.²⁸ In reality, those NHRIs that are vested with binding powers to enforce their decisions are best performing in confronting or challenging government actions and holding state organs and other respondents accountable for their human rights violations²⁹ and can strike balance between their promotional and protection responsibilities.

2.2 Investigation Mandates and Enforcement Powers of NHRIs

2.2.1 The right to effective remedies

The right to an effective remedy for violations of human rights is fundamental human rights guaranteed in human rights documents. Article 8 of Universal Declaration on Human Rights provides for a right to an effective remedy for acts violating the fundamental rights guaranteed by the law. Article 2(3) ICCPR imposes duty on states to ensure effective remedies for any one whose rights have been violated through establishing independent and competent institutions that can render enforceable decisions. More over the duty to provide effective remedy has been widely expounded upon by the Inter-American Court of Human Rights, and many other treaty bodies.³⁰ For instance, General Comment 31 of the Human Rights Committee noted that individuals must have access to remedies to vindicate their rights and that NHRIs should be endowed with appropriate powers and should be able to contribute to that end.³¹

Hence, the investigation mandates of NHRIs is aimed at granting effective remedies for victims of human rights violations and NHRIs with investigation mandate and that meet the criteria for independent and effective operation provided in the Paris principles can meaningfully contribute

²⁷ Ibid

²⁸ Ibid

²⁹ Polo Evodia Chabane, *Enforcement powers of National Human rights Institutions: A case study of Ghana, South Africa and Uganda* (2007) 7

³⁰ James Gomez and Robin Ramcharan, *The protection capacity of National human rights institutions in Southeast Asia* (Working Paper Series # 172) (2016)21

³¹ UN Human Rights Committee General Comment 31, paragraph 12

in the provision of effective remedies and have a central place in the national human rights protection system.

2. 2. 2 Investigation Mandates of NHRIs

Though the Paris Principles refer to a broader mandate of NHRIs, it leaves granting to NHRIs complaint handling and investigation mandate to the discretion of states.³² However, in recent times, the principles have been criticized as inadequate especially for giving secondary and optional status for investigation mandates of NHRIs.³³ As a result, the United Nations High Commissioner for Human Rights has added adequate powers of investigations and complaints handling as a minimum standard that all NHRIs should have³⁴ and today this element is at the center of all effective NHRIs.³⁵

As envisaged in the Paris principles and the enabling laws of NHRIs, they are required to exert utmost efforts to resolve complaints of human rights violations amicably as this is constructive problem-solving approach and enables to resolve complaints expeditiously.³⁶ However, when it became unsuccessful or the violation is not amenable for amicable settlement they proceed to investigation to redress the violation.

NHRIs cannot replace but complement ordinary courts in the protection of human rights and redressing of human rights violations.³⁷ Thus a complainant does not waive his or her right to bring a judicial action by invoking the procedure of NHRIs and the final jurisdiction belongs with the courts.³⁸ Many of the existing NHRIs have investigation mandate, including, among others, the NHRIs of Uganda, Malawi, Ghana, and Tanzania.³⁹

However it is also important to acknowledge that powers to receive and investigate human rights violations are of little utility without a corresponding ability or enforcement power to provide

³² Paris principles, General Assembly resolution 48/134 1993, section 4

³³ Chabane(n 29) 8

³⁴ Ibid

³⁵ James and Robin(n 30)

³⁶ Ibid

³⁷ Centre 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)33

³⁸ Ibid

³⁹ Ibid

remedies for violations.⁴⁰ The lack of such ability or power is likely to undermine the credibility of the complaints procedure of NHRIs⁴¹

2.2.3 Enforcement powers of NHRIs

NHRIs can meaningfully contribute to the provision of effective remedies when the outcome of their investigations—decisions or recommendations can be enforced within the time provided by the law. Hence they should be vested with effective enforcement power to properly discharge this responsibility. The Asia Pacific Forum guidelines on the best practice of NHRIs cited in James and Robin noted that NHRIs “must be able to provide effective remedies for violations of human rights”.⁴² To achieve this, existing NHRIs have vested with enforcement powers ranging from granting binding decision to taking court action to seek enforcement of their recommendations.⁴³ However, the most important measure of effectiveness of enforcement powers or enforcement tools employed by NHRIs is its ability to provide satisfactory and effective remedies to the victims.⁴⁴ This is because securing effective remedy is a fundamental aspect of human rights law.⁴⁵

Therefore, while vesting enforcement power to NHRIs, states should duly consider that the proposed power enables the institutions to ensure effective remedies to victims of human rights violations. However, as the reality shows, states may establish them as false positives – commitments made without any intention to make them effective human rights watchdog⁴⁶ rather to use them as means to appease the international communities.⁴⁷

Enforcement powers of existing NHRIs to provide remedies following the conclusion of an investigation vary widely.⁴⁸ Some institutions have been granted power to make binding and enforceable decisions.⁴⁹ For instance, the UHRC has the power of a court.⁵⁰ The Commission has

⁴⁰ Performance and legitimacy: National Human rights Institutions (International Council on Human Rights Policy: (2004)11

⁴¹ Ibid

⁴² James and Robin (n 30) 20

⁴³ Ibid

⁴⁴ Id, 21

⁴⁵ Ibid

⁴⁶ Shiva(n 2)14

⁴⁷ James and Robin(n 30) 21

⁴⁸ Professional training Series # 4 (n 37)33

⁴⁹ Ibid

⁵⁰ Constitution of Uganda , Article 53(1)

its own tribunal and, if it is satisfied that there has been a violation of human rights, it can order the release of a person from detention, payment of sufficient compensation and any other remedy.⁵¹ Any person or authority dissatisfied with a decision made by the Commission has the right to appeal to the High Court.⁵² Therefore, the decisions/orders of the Commission are binding, and like court decisions they enable the Commission to provide effective remedies for victims of human rights violations.

Other NHRIs are vested with power to make recommendations and follow-up the enforcement of their recommendations which are transmitted to parliament or to the appropriate government agency for further action.⁵³ In this regard, the GCHAJ is vested with the power to make recommendations.⁵⁴ If the respondent does not honour the recommendations within three months, the Commission is empowered to take the matter to court for enforcement of its recommendations.⁵⁵ The CHGG also has the authority either to report its recommendations to the concerned authority or to bring legal action by itself before any court for the enforcement of its recommendations when respondents failed to take actions to comply with its recommendations.⁵⁶ In addition, public reporting is the other means envisaged under the Paris principles and in most NHRIs constituting laws to be utilized by them for the same purpose.

Moreover, in practice some NHRIs employed different non-confrontational enforcement tools to ensure compliance of their recommendations. For instance, the Malawi Human Rights Commission periodically organizes respondents meeting to discuss issues and obstacles for respondents to comply with the Commission's recommendations and to forward solutions together to avoid such obstacles and facilitate the easy compliance of its recommendations.⁵⁷ It also conducts physical follow up to facilitate implementation and to see the level of compliance of its recommendations.⁵⁸ Nepal Human rights Commission on the other hand has the practice of conducting confidential dealings—for certain sensitive human rights violations which negatively

⁵¹ Chabane (n 29)14

⁵² Ibid

⁵³ Professional training Series # 4 (n 37)

⁵⁴ The Ghana Commission on Human rights and administrative Justice establishing Act 455, section 18

⁵⁵ Ibid

⁵⁶ The Tanzanian Commission on Human rights and Good governance establishing act Article 28(3)

⁵⁷ Regional Blended Learning Foundation Course on the Role of NHRIs in Human Rights Protection and Promotion in Africa organized by Networks of African NANHRIs and experience sharing with well qualified human rights experts- Conducted Nairobi, Kenya from 23-27 November 2015, unpublished

⁵⁸ Ibid

impacted on the image of the government if exposed on media— by which the respondents may agree to comply with the recommendations and then the Commission refrains from exposing the respondents on media.⁵⁹

NHRIs required to share relevant information and best practice with each other.⁶⁰ Hence, in relation to enforcement, the power of UHRC to grant binding decision by its tribunal, and the power of GCHAJ to bring court action to seek enforcement of its non-complied recommendations are relevant for EHRC because unlike the enforcement power of EHRC, such powers are targeted to enforce decisions or non-complied recommendations and to provide remedies to victims. However, both of them require the Commission to recommend for the amendment of its establishing proclamation and the political commitment of the government to grant such type of enforcement power to the Commission. EHRC can also share and apply the practice of confidential dealings, however for such dealings; the Commission should conduct investigations on sensitive human rights issues.

In general, in reality, though they are legally authorized to take legal action to seek the enforcement of their recommendations, NHRIs are criticized as institutions that are incapable of enforcing their recommendations⁶¹ and this resulted loss of public confidence in NHRIs and deter victims from looking to NHRIs for redress.⁶²

2.3. Investigation Mandate and Enforcement power of EHRC

2.3.1 Investigation Mandates of the Commission

The Commission has broad investigation mandate which covers violations of all categories of human rights committed by government bodies and the private actors.⁶³ Put it differently, it is empowered to investigate any human rights violations except those alleged human rights violations pending before the House of People’s Representatives, the House of Federation, Regional Councils or courts of law at any level.⁶⁴ It conducts investigation upon complaints or

⁵⁹ Human rights investigation and monitoring training by UN Office of High Commissioner for human rights-East Africa regional office and experience sharing- Conducted Adama, Ethiopia from 22-26 August 2016, unpublished

⁶⁰ General Observations of the ICC Sub-Committee on Accreditation (2009)para. 1.5

⁶¹ Professional training Series # 4 (n 37)92

⁶² Ibid

⁶³ EHRCEP Articles 6 and 7

⁶⁴ EHRCEP Article 7

on its own motion when information of human rights violation comes to its attention and if it finds that conducting such investigation is necessary.⁶⁵

After ascertaining its jurisdiction over a complaint, the Commission first tries to resolve it amicably if the case is amenable for amicable settlement.⁶⁶The Commission proceeds to investigation⁶⁷ when the process of amicable settlement has failed or when the complainant is one that cannot be resolved amicably. The Commission conducts either desk or field investigations depending on the cases brought before it.

After the conclusion of investigation, if the Commission is of the opinion that there exist human rights violations, it issued appropriate recommendations as per article 26(3) of its establishing proclamation to redress the violations.

2.3.2. Enforcement Power of EHRC

Conferring investigation mandate to the Commission contributes little in the provision of effective remedy unless the Commission is able to enforce its recommendations in a timely manner. Taking this in to account, the Commission is vested with enforcement power which is indicated under article 39 and 41 of its establishing proclamation. As per Article 41 (2), failure to comply with the Commission's recommendations or to justify noncompliance entails criminal liability. However, as mentioned in the introduction part, the Proclamation is silent about who should initiate criminal prosecution. This was an area of confusion for the Commission in its discussions on how to commence criminal prosecution until the Commission adopted its Investigation and Mediation Directive on 27 December 2014. The Directive contains detailed procedures as to the initiation of criminal prosecutions. As per the directive, the Commission has mandate to transfer the matter to the concerned public prosecutor.⁶⁸ On top of this, far before the adoption of the Directive, EIO has put in to practice article 41(2) of its establishment proclamation which has the same stipulation with article 41(2) of proclamation 210/2000. EIO exercise its mandate under the above article since 2010 through transferring the matter to the

⁶⁵ EHRCEP articles 6(4) &24(2)

⁶⁶ Cases that are prohibited by law to resolve through amicable settlement such as torture, massive human rights violations are not amenable to resolve amicably.

⁶⁷ Instigation is process intended to establish factual issues with a view to determining whether there has been a human rights violations or not.

⁶⁸ EHRC Investigations and Mediation Directives and the Directive, No. 2/2014, Article 87

concerned police office and presenting itself as accuser of those non complying respondents⁶⁹ and so far the institution has ensured the criminal accountability of many respondents.⁷⁰ And currently there are eight pending files seven of which are in Hawassa and the other one is in Bahr Dar against non-complying respondents.⁷¹ Therefore, the Commission can exercise its mandate under article 41(2) with the help of its Investigation Directive and sharing relevant information from EIO if other necessary preconditions are fulfilled.

However, so far the Commission does not transfer the matter of any case to concerned prosecutor or issue public reporting based on article 39 to pressurize non complying respondents to comply with its recommendations. This affects the ability of the Commission to provide remedies for all of its complainants. In other words, it provides remedies to victims to the extent that respondents are cooperative to comply with its recommendations. Therefore, when its recommendations are disregarded by respondents, no remedies are given to the victims by the Commission. And this is the central issue to be examined in this paper.

⁶⁹ Interview with Kenea Sona, Head of the Office of the institution of Ombudswoman(Addis Ababa, 16 April 2018)

⁷⁰ Ibid

⁷¹ Ibid

Chapter Three: Accomplishments and Challenges of EHRC in the Enforcement of its Recommendations

Introduction

The establishment of EHRC is envisaged under article 55(14) of FDRE Constitution. The framers of the Constitution agreed for the establishment of the Commission realizing that the existing courts cannot shoulder the protection of human rights in the country. As a result, EHRC was established through proclamation no. 210/2000 as a national institution that plays a major role in the protection and enforcement of human rights and thereby complement the existing institutions mandated in the protection of human rights. As such, the Commission is granted broad investigation mandate as can be seen from the cumulative reading of Articles 6(1), 6 (4), 7 and 24 of its establishing Proclamation. While exercising this mandate, the Commission has the responsibility to first put its utmost effort to resolve the complaints amicably. When such effort becomes unsuccessful or the complaints cannot be settled amicably owing to the nature of the alleged violations, the Commission conducts investigations and, based on its findings; it issues appropriate recommendations for the respondents to redress the violations. Thus, in light of this theoretical framework, the Commission's practice in redressing human rights violations have been carefully examined based on data collected through interviews, FGD and document analysis for the period after 2014. This chapter also examines the practice of the Commission in the enforcement of recommendations and the challenges in ensuring adequate enforcement of its recommendations.

3.1. The Commission's Practice in Redressing alleged Human Rights Violations

As stated in chapter 2 above, human rights breaches may be resolved in various ways ranging from amicable settlement to action in the courts. The Paris principles and the enabling laws of different NHRIs with investigation mandate urge the institutions first to exert their utmost effort to remedy alleged human rights violations through amicable settlement. The other way of redressing violations is conducting investigations and issuing decision or recommendation and ensuring its enforcement.

In the Case of EHRC, from the assessment of investigation files available in its Record and File Management Office (RFMO),⁷² the Commission attempted to provide remedies for alleged human rights violations in three ways: first, as stipulated under article 26(1) of its establishment proclamation, the Commission attempts to settle complaints amicably, but the number of complaints remedied in such way is very small as shown below in table 1. Second, the Commission provides remedies at preliminary stage of its investigation for simple cases such as denial of job certificate and unpaid salary and after the cases have been partially investigated, in which cases the investigation files are closed without recommendations, and with a statement that the violations have been redressed and the file is closed. For example, in *Ms. Y vs. Hilton Hotel case*, after examine the content of her complaint and evidence, the Commission sent a letter to the respondent (her employer) stating that Ms. Y brought a complaint before the Commission against it in relation to restriction of her documents that are necessary to enjoy her pension right and from the evidence she adduced to the Commission, she fulfill the criterion to use her pension right, hence, it should either submit the relevant documents to social security agency so as to enable his to enjoy her right or if it has legal ground and evidence for such restriction, to send them to the Commission within specified period of time to enable the Commission to conduct full fact finding activity over the case and to provide proper response to the Complainant. Then the respondent submitted her documents to the agency and notifies this fact to the Commission. Ms. Y also reported the same fact to the Commission. As a result, the file was closed without the need to conduct full investigation and issuing recommendation. Third, the Commission provides remedies by conducting full investigations and issuing appropriate recommendations. However, information on follow up activities, including whether the recommendations have been complied with or not, are missing from the files of such cases.

⁷² The researcher was allowed to access the RFMO of the Commission and manually assessed and examined each and every file available in the file shelves since 2014 to 2017, but due to poor file management system, all files were not available in the office, they have been scattered here and there out of the RFMO, there were also files which lacks necessary details such file No. However, utmost effort had done to access all and include in the study

Table 1**Performance of the Commission on investigating and redressing cases of human rights violations submitted against government and non-religious private institutions/entities from 2014 to 2017**

No.	Human rights violations cases over which files are opened for investigations and mediation	Year				
		2014	2015	2016	2017	Total
1	Total number of files/cases	86	52	68	97	303
2	Cases that have been amicably settled	2	2	1	-	5
3	*Cases interrupted in the middle of investigation process	31	29	34	66	160
4	Cases resolved at preliminary stage and in the middle of investigation	18	10	16	18	62
5	Cases on which investigations have been completed	20	11	18	26	74

* investigations have been interrupted on different legal grounds such as when the investigators ascertained that cases are out of the Commission's jurisdiction, the complainant has withdrawn his/her complaint, and when the complaint has been settled.

Source: RFMO and Annual Reports of the Commission

A separate category of cases handled by the Commission are related to complaints lodged by employees that provide spiritual service in the Ethiopian Orthodox Tewahdo Church (EOTC). Employees of religious institutions are excluded from accessing regular courts by the decision of the Federal Supreme Court Cassation bench,⁷³ which bars employees with spiritual functions from bringing a court case on the ground that state and religion are separate by the Constitution.⁷⁴ Hence, they cannot seek remedies from courts for the abuse of labor rights by their employer, i.e. EOTC. As a result, EHRC is the only institutional option for the complainants.

Data from the RFMO of the Commission indicates that its performances in providing remedies for complaints lodged by spiritual servants are very poor. While the Commission issued recommendations on complaints relating to lack of enforcement of decisions rendered by spiritual courts and administrative bodies of the Church, such recommendations were hardly compiled with by different church authorities that have been called as respondents before the Commission.⁷⁵

On the other hand, complaints related to suspension, demotion, transfer to places far away from family and places where there is low salary, denial of access to grievance mechanisms, the Commission is unable to give recommendations except pressuring the concerned Church authorities to hear the complainants and provide appropriate remedies to them.⁷⁶ This relates to the nature of the cases in which apart from human rights issues, also involved issue of religious autonomy. According to a senior investigation expert of EHRC, in such cases, it is the Church that has the power to decide over the merits of the cases.⁷⁷ In general, the performance of the Commission in this regard is summarized below in table 2.

⁷³ *Hamerework Kidis Mariam Betechristian SebaKa Gubae Office Vs. Deacon meheret Birhan et al.* [2005] no.18419 229-231 (Federal Cassation Bench)

⁷⁴ Ibid

⁷⁵ Interview with Zewdnesh Zegeye, Senior investigation expert in EHRC (Addis Ababa, 17 April 2018)

⁷⁶ Ibid

⁷⁷ Interview with Daniel Reta, Senior investigation expert in EHRC (Addis Ababa,15April 2018)

Table 2**Performance of the Commission in redressing complaints lodged by spiritual servants of EOTC in the years 2014 to 2017**

No.	Complaints over which files were opened for investigation and mediation	Year				
		2014	2015	2016	2017	Total
1	Total number of complaints	18	28	31	45	125
2	Complaints in which no violations were found	-	-	1	-1	2
3	Complaints over which recommendations issued	10	20	8	11	48
4	Complaints without final recommendations	8	11	26	34	79

Source: RFMO and annual reports of the Commission

3.2. Recommendation Enforcement practice of the Commission

The issue of enforcement of recommendations arises when the Commission conducted full investigation and forwarded recommendations upon finding the existence of violations. In such cases, the violations can be redressed only when the recommendations are enforced within the time provided in the law. To effectively discharge this responsibility, NHRIs in general and

EHRC in particular are given enforcement power which they use to pressurize respondents to comply with their recommendations or decisions. As mentioned in chapter 2 above, apart from public reporting, some NHRIs have power to enforce their decisions as in the case for example with the UHRC. Some others NHRIs such as GCHRAJ are empowered directly to take the matter before courts to seek enforcement of their non-complied recommendations. Moreover, few NHRIs such as the Malawi and Nepal Human Rights Commissions employed different non-confrontational enforcement tools to ensure compliance of their recommendations as mentioned in chapter 2.

In the case of EHRC, unlike the above mentioned NHRIs with recommendatory mandates, the Commission is not explicitly empowered to directly take the case before courts to seek enforcement of its non-complied recommendations. According to article 41(2) of its establishing proclamation, as elaborated by the Investigation Directive, the power of the Commission is to transfer the matter to the concerned public prosecutor. However, so far, the Commission has failed to exercise its power of ensuring criminal accountability and/or exposing non-complying respondents on media to pressure them to comply with its recommendations.

Notwithstanding the Commission's failure to exercise such power, in practice, it employed different non-confrontational enforcement tools to ensure compliance with its recommendations.⁷⁸ These include warning letter, field mission, Summoning of respondents in the office of the Commission, submitting recommendations to the HOPR and round table discussion with targeted respondents with a view to facilitating compliance with the recommendations.⁷⁹

3.2.1 Warning letter

Warning letters are a frequently used mean of pressuring respondents.⁸⁰ Through a warning letter, the Commission declares that if the respondent to whom it was sent failed to take appropriate measure to give effect to the Commission's recommendations within a specified period of time, it will resort to taking measure under article 41 of its proclamation to hold the

⁷⁸ Interview with Yosef Girma, Senior investigation expert in EHRC (Addis Ababa, 18 April 2018)

⁷⁹ Ibid

⁸⁰ Ibid

respondents criminally accountable.⁸¹ However, despite the fact that almost all of such letters have been disregarded by respondents, the Commission is yet to ensure the initiation of the criminal proceedings against non-complying respondents.⁸² This condition exacerbates the situation of noncompliance.⁸³ The head of office of the chief Commissioner underlined further that such failure of the Commission seriously affect the discussions with EOTC authorities to facilitate their compliance with its recommendations.⁸⁴ Hence, unless it is supported by actual exercise of power, the warning letters cannot have any pressuring effect.⁸⁵ Instead, they feed in to the perception of respondents as well as the general public that the Commission is incapable of enforcing its recommendations.⁸⁶ Therefore the Commission should not send the warning letters unless it is ready to ensure the initiation of criminal proceedings.

3.2.2 Summoning Respondents to the Commission

When Commission deems it appropriate, it requires the attendance of respondents to discuss the implementation of its recommendations.⁸⁷ However, most discussions with summoned respondents have not been successful in ensuring compliance with its recommendations.⁸⁸ Some government bodies raised their justification to show that they are not legally bound to comply with the recommendations.⁸⁹ For instance, *in the case between Mr. B vs. Kality Prison administration*⁹⁰ the delegate of the prison administration insisted that the prison administration medical service provision directive prohibit prisoners from indoor private medical treatment and hence, it cannot comply with the recommendations of the Commission to that effect.⁹¹ Discussions with other summoned respondents such as EOTC authorities were unsuccessful

⁸¹ Ibid

⁸² Ibid

⁸³ Interview with Wendmeh Zewudie, head of the office of Chief commissioner of EHRC (Addis Ababa , 26 April 2018)

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Interview with Genanaw Gobena, Registrar of investigation directorate of EHRC (Addis Ababa, 18 April 2018)

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ *Mr. A vs. Kality prison Administration* (2017) (EHRC) unpublished

⁹¹ Interview with Genanaw (n 83)

despite the inability of the respondents to provide legal ground for their noncompliance with the recommendations.⁹²

This shows that nearly all summoned respondents have not complied with the recommendations by either providing their own justifications or without providing any.

3.2.3 Field Missions

Conducting physical follow up is the other tool used by the Commission to facilitate implementation of its recommendations.⁹³ To conduct such follow up activities, the Commission has sent its staff to the offices or places of the respondents and concerned bodies to see the actions taken by them to give effect to the recommendations and to monitor the level of compliance or to discuss about the enforcement of recommendations.⁹⁴ For example, after the recommendations of the Commission on investigation in some parts of Oromia, Amhara and SNNP regional states, were approved by HOPR Resolutions⁹⁵ and submitted to the concerned bodies for implementation, the Commission had organized different groups of experts including Commissioners and sent them to monitor their implementation.⁹⁶ The monitoring reports indicate that some recommendations have been fully implemented and some others were on process of implementations.⁹⁷ For example, the recommendation of the Commission to the concerned government body to pay compensation to the family of a woman who died at her work place by the action of individuals who involved in the riot during a disturbance in the city of Ambo was fully complied with.⁹⁸ The findings also indicate that there were concerned bodies that have not taken any action to give effect to the recommendations.⁹⁹ The discussions with respondents and concerned bodies during a field monitoring mission have a positive effect in facilitating compliance.¹⁰⁰ This indicates that this tool is relatively good to facilitate and ensure compliance with the Commission's recommendations.

⁹² Ibid

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ HOPR Resolutions Numbers 11/2016 and 12/2017

⁹⁶ Interview with Yosef (n 78)

⁹⁷ Interview with Adham Duri, Director of Monitoring directorate of EHRC (Addis Ababa, 12 April 2018)

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid

3.2.4 Roundtable discussion

After the appointment of new Commissioners in June 2015, roundtable discussions have been used by the Commission in its endeavor to ensure compliance with its recommendations. The discussions have been conducted between the respondents, heads of the respondents who are concerned with the issues, the top management of the Commission and the experts who conducted the investigations.¹⁰¹ The investigator presents the case and then the Commission's findings and recommendations are discussed by the participants.¹⁰² Some of these discussions were successful. For example in *Mr. (group compliant) vs. Sankura woreda and Silte Zone Administrations case*,¹⁰³ findings and recommendations of the Commission relating to a land dispute were presented by the Commission in the office of the SNNP president with the presence of the concerned woreda and Zone administrations officials and after discussing the matter, the president gave a direction to the respondents to implement the recommendations within 15 days and thereafter to report to his office and the Commission.¹⁰⁴ Finally the respondents notified the Commission that they implemented the recommendations and the representative of the complainants also confirmed that they were satisfied with the remedial action taken.¹⁰⁵

However, there are recommendations which have not been enforced despite the Commission's conduct of round table discussion.¹⁰⁶ For example, in *Mr. C vs. Oromia regional state case*¹⁰⁷ the chief Commissioner and the President of the regional state held a discussion over the findings and recommendations of the Commission and agreement was reached to implement the recommendations of the Commission.¹⁰⁸ Nonetheless, through subsequent follow up, it has been

¹⁰¹ Interview with Genanaw (n 87)

¹⁰² Ibid

¹⁰³ *Mr.B(group complaint) vs. Sankura woreda and Silte Zone Administrations* (2017) EHRC, (unpublished); the commission stated that the respondents measure of taking the plot of land which was the legal holding of the church and used by the members for Meskel and Epiphany festivities and other religious services/ceremonies/ since 1959 without any other similar replacement land was violation of their land holding right and their constitutional right to freedom of expression of their religion and hence the respondents should either return the land to the complainants or give another similar plot of land which can be used for the same purpose.

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Interview with Yosef (n 78)

¹⁰⁷ *Mr. C vs. Oromia regional state* (2017) EHRC, (unpublished); the finding of the Commission indicated that the victim (Mr.C) had been beaten by police and as a result his bone in one of his leg had been broken and his right to get medical service had been denied and those responsible for the violations left free. And the Commission submitted its recommendations to the regional state requesting to take appropriate action to rectify the violations mentioned above

¹⁰⁸ Interview with Genanaw (n 87)

proved that the recommendations had not been implemented as per the agreement and as a result the violations were not rectified.¹⁰⁹ In addition, the Commission has conducted a number round table discussion with EOTC authorities concerning complaints of spiritual servants to facilitate the enforcement of its recommendations.¹¹⁰ However, almost all discussions were ineffective in ensuring the timely and actual compliance with the recommendations.¹¹¹ The cases reviewed show that when the respondents were government bodies, the discussions were relatively better in terms of ensuring compliance with recommendations.

3.2.5 Reporting to the House of People Representatives (HOPR)

In recent times, the Commission began to seek the enforcement of its recommendations through the HOPR. It submits recommendations to HOPR for enforcement in two different ways.¹¹² The first is that it directly submits its recommendations at the end of its investigation process.¹¹³ This is when the cases investigated concern complicated human rights violations that affects the interest of a wider population, cases that involve ethnic conflicts¹¹⁴ and when many bodies involved in the violations.¹¹⁵ The causes of the violations of these cases are related with existing policy, working system and law and as such may require taking policy and legal measures to rectify the violations.¹¹⁶ Recommendations on such cases can be better enforced through the HOPR than the independent action of the Commission since the House is the highest authority of the government and it has supervisory power over the executive.¹¹⁷

In this regard recommendations of the Commission on investigations conducted in 2016 and 2017 over protest in some parts of Oromia and Amhara and SNNP regional states, as mentioned above, were directly submitted to the HOPR and the House passed two separate resolutions requesting the concerned bodies to implement the recommendations issued by the Commission.¹¹⁸ After passing the resolutions, the HOPR through its Speaker submitted its

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² Interview with Zewdnesh (n 75)

¹¹³ Ibid

¹¹⁴ Interview with Wendmeneh(n 83)

¹¹⁵ Interview with Zewdnesh (n 75)

¹¹⁶ Interview with Yosef (n 78)

¹¹⁷ Interview with Wendmenh (n 83)

¹¹⁸ (n 95)

decision and the recommendations to the speakers of the regional councils and request them together with the Presidents of the regions to take appropriate measures to give effect to the recommendations of the Commission as per the decision of FDRE Parliament and the House follow up its implementation.¹¹⁹ The office of the Amhara regional state President submitted to the HOPR and the Commission a report identifying the recommendations that have been fully implemented and those that were in the process of being implemented¹²⁰ For instance, the recommendation of the Commission to conduct referendum to resolve the Qemant people question of self-administration was fully complied with since the referendum was conducted in October 2017.¹²¹ But, the report also stated that the remaining organizational activities to establish Qemant people self-administration (i.e special zone or wereda) have been on process.¹²²

On the other hand, the Oromia and SNNP regional states did not submit similar report either to the HOPR or to the Commission.¹²³ However despite their failure to submit reports, as indicated in the report of the field mission conducted by the Commission mentioned above, in both regions some concerned bodies have taken actions to give effect to the recommendations and some others failed to take actions to implement the recommendations.¹²⁴ The Commission submitted its field monitoring report to the HOPR.¹²⁵ The HOPR had discussed over the monitoring report of the Commission and passed a decision that requires non complying bodies to take appropriate actions to implement the recommendations.¹²⁶ The HOPR follows up such decision and if the respondents and concerned bodies do not comply, it will pass final decision and take legal measures against such respondents.¹²⁷ The final legal measure that is planned to be taken by the HOPR is issuing public reporting.¹²⁸ However, public reporting should be followed by other measure such as removal of public officials from their position if the respondents still failed to comply with the recommendations.

¹¹⁹ Interview with Fetiha Yesuf, Coordinator of Democratic, Human Rights and Administrations affairs Standing Committee of HOPR (Addis Ababa, 27 April 2018)

¹²⁰ Ibid

¹²¹ Ibid

¹²² Ibid

¹²³ Ibid

¹²⁴ Interview with Adham(n 97)

¹²⁵ Interview with Fetiha(n 119)

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Ibid

In addition, when its independent attempts to ensure compliance through the different enforcement tools failed, the Commission submits such recommendations to the HOPR requesting it to take appropriate measure. This is the second approach pursued by the Commission to submit its recommendations to the HOPR for enforcement. For instance, after its independent attempt to ensure compliance of its recommendations proved ineffective, the Commission has submitted its recommendations on *Mr. vs. Addis Ababa Administration case*,¹²⁹ to the HOPR. The HOPR organized a discussion forum for both the Commission and the respondent in the presence of concerned Standing Committees of the HOPR, and other officials¹³⁰. The Commission's recommendations and the justifications raised by the respondents were discussed and finally decision that requires the respondent to implement the Commission's recommendations was made by House, but the respondent disregarded the decision.¹³¹ Hence, there are few respondents who were not cooperative despite decision passed by the HOPR requiring them to implement the recommendations without any lawful justification.¹³² As mentioned above, the HOPR has finalized its preparatory work to resort to naming and shaming of such non-complying respondents through media.¹³³

In general, in the Commission's endeavor to ensure compliance with its recommendations using the above enforcement tools, there are implemented and unimplemented recommendations which are summarized in the tables bellow.

¹²⁹ *Mr.D vs Addis Ababa Administration* (2016) file no. 392 (EHRC) unpublished; the Commission stated the respondent action of granting a plot of land which is found adjacent to Mr. D's school to the other individual who has no prior right over such land is in violation of Mr. D's right to equal treatment before the law and his prior rights to use a plot of land found adjacent to his school, and hence the respondent should respect and ensure the rights of Mr.D over such land.

¹³⁰ Interview with Yosef(n 78)

¹³¹ Interview with Birhanu Abadi, Director of Investigation directorate of EHRC (Addis Ababa, 10 April 2018)

¹³² Interview with Fetiha(n 119)

¹³³ Ibid

Table 3

The level of enforcement of recommendations issued by the Commission on violations committed by government and non-religious private bodies

No.	complaints and recommendations	Year				
		2014	2015	2016	2017	Total
1	Cases over which complete investigation have been conducted	20	11	18	26	75
2	Cases on which no violations were found	16	9	12	11	48
3	Cases in which the existence of violations have been proved and recommendations issued	5	4	5	14	28
4	Enforced recommendations	1	2	4	8	15
5	Non complied recommendations	4	2	1	7	14

Source: RFMO and annual reports of the Commission

Table 4**The level of enforcement of the recommendations issued by the Commission on human rights abused committed by EOTC authorities**

No	Investigated complaints	Fiscal year				
		2014	2015	2016	2017	Total
1.	Complaints over which recommendations have been given	10	20	8	11	49
2.	Complied recommendations	6	4	1	2	13
3.	Non-complied recommendations	4	16	7	9	36

Source: RFMO and annual reports of the Commission

Non complied recommendations by Church respondents are much more than non-complied recommendations by other respondents, as indicated in the above tables. This is because respondents resist compliance of the recommendations under the guise of religious autonomy.¹³⁴ Moreover, absence of transparency and accountability procedure is also other reason for increased number of non-complied recommendations.¹³⁵ In effect, as indicated in the table almost all recommendations are not enforced by the Commission.

Currently as per the direction given by the top management of the Commission, all preexisting and new complaints are being handled and processed through the office of the chief Commissioner.¹³⁶ The head of the office has continued discussion over the issues with the

¹³⁴ Interview with Zewednesh (n 75)

¹³⁵ Ibid

¹³⁶ Interview with Genanaw (n 87)

respondents.¹³⁷ However, at the writing of this paper there was no single recommendation that was enforced through such discussion.¹³⁸

3.3 Effectiveness of Enforcement tools of the Commission

As mentioned in chapter 2, the most important test of effectiveness of a certain enforcement power or tool is its ability to ensure effective remedies to victims of human rights violations.

So far all of the enforcement tools used by the Commission are non-confrontational as indicated above. So long as these tools ensure compliance with the recommendations, utilizing them is a sound approach since they enable to ensure effective remedies to victims, and also help to keep the channels of communication open.¹³⁹ In other words, if the respondents are cooperative, such types of tools enable to provide remedies expeditiously and to continue smooth relationships between the Commission and the respondents.

However, the effectiveness of the tools used by the Commission so far is dependent on how cooperative the respondents are.¹⁴⁰ In the practice of the Commission there are recommendations that have been complied with through the use of these tools. This shows that if the cooperation of respondent is obtained, the tools can be effective to ensure the implementation of the recommendations. For example, in *Mr.E vs. Arada sub city wereda 9 police office case*¹⁴¹ the recommendations were fully complied timely through the discussion between the Commission and the respondent.

On the other hand, the tools have become ineffective when respondents' cooperation was lacking like in *Mr. C's case*, mentioned above.

Among the tools used by the Commission so far, enforcement through HOPR seems to be more powerful (since it is the highest authority of the government) that needs no securing of respondents willingness. But the empirical assessment shows this also requires the cooperation

¹³⁷ Interview with Wendmenh(n 83)

¹³⁸ Ibid

¹³⁹ Ibid

¹⁴⁰ Ibid

¹⁴¹ *Mr.E vs. Arada sub city wereda 9 police office(2017) EHRC, (unpublished)*;the Commission recommended that the respondent should take disciplinary and other measure against 3 of its member who committed torture on detainees found the detention center and the respondent promptly dismissed them from their job through disciplinary measure and criminal charge has been initiated against them

of the respondents to ensure actual compliance with the recommendations. This can be seen from *Mr. D vs. Addis Ababa Administration case*, as briefly elucidated above.¹⁴² In this case, the decision of the HOPR requiring the respondent to implement the Commission's recommendations was submitted to the office of the Mayor of Addis Ababa administration with the signature of the Speaker of the HOPR.¹⁴³ However the respondent did not implement the decision of the HOPR and the violation identified was not redressed.¹⁴⁴ Hence, reporting to the HOPR does not always ensure actual and timely compliance with the recommendations of the Commission unless the respondents are cooperative to comply with.

Therefore, all tools used by the Commission so far become ineffective upon disregarded by respondents, as they are not complemented by binding enforcement mechanism. Hence, many of the recommendations remained unenforced and the victims were left without remedies.

Such total reliance of the Commission on non-confrontational tools and their ineffectiveness when respondents' cooperation is lacking, indicates that the Commission is unable to discharge its statutory duty to challenge refusing respondents. Human rights protection requires challenging the wrongs of respondents. As such the Commission is legally empowered to challenge the wrongdoings of respondents through naming and shaming and/or ensuring the criminal accountability of non-complying respondents. Hence, where non-confrontational tools become ineffective, the Commission should exercise its formal enforcement power¹⁴⁵ exhaustively to provide effective remedies to victims. However, its failure to confront non-complying respondents using its formal enforcement power resulted in many unaddressed human rights breaches and the Commission has failed to provide effective remedies to victims in whose favor the it issued recommendations. This situation is even more serious in relation to victims who have no right of recourse to court of law when the Commission is unable to provide effective remedies, particularly spiritual employees of EOTC and other economically incapable people who cannot afford to litigate before courts.

¹⁴² (n 129)

¹⁴³ The Commission's reports on non-complied recommendations and refusing respondents submitted to the House of People Representative, unpublished

¹⁴⁴ Ibid

¹⁴⁵ Formal enforcement power refers to the power of the Commission to issue public reporting and to ensure the criminal accountability of noncomplying respondents stated under articles 39 and 41 of the Commission's establishing proclamation respectively

In addition, the Commission lost public trust and legitimacy because of its failure to provide remedies by challenging the wrongs of respondents. This is confirmed by data from the participants in the FGD. They stated that: ~~the~~ Commission is an incapable institution that cannot use more than discussions to ensure implementation of its recommendations. Its discussions are ineffective to provide remedies to victims and as a result the public perceive the Commission as toothless institution that cannot redress human rights violations. This condition discouraged the people from looking the Commission for remedy”¹⁴⁶.

In particular one of the participants stated that *–in the first time when I thought to bring my complaint to the Commission, many of my neighbors told me the inability of the Commission to redress violation. But because of my economic problem to bring court action, the Commission was the only option I have to apply my case and when I got effective remedies by the Commission, I was amazed and very happy”*¹⁴⁷.

This shows that the Commission’s failure to challenge refusing respondents by using its formal enforcement power makes it to be perceived as an institution that lacks total ability of redressing violations although it actually redress some violations diplomatically.

Therefore to ensure better compliance of its recommendations, the Commission should exhaustively exercise its enforcement power granted by its enabling proclamation. It should also report its investigation works publically so as to inform its performance in redressing human rights violations to the public.

The experience of EIO shows that the fact that the institution exercises its power of ensuring the criminal accountability of non-complying respondents brought some positive advantages in enforcing its recommendations. When a respondent is held criminally accountable, this serves as a lesson for other/future respondents and creates pressure to comply with recommendations for fear of criminal penalty and having criminal record.¹⁴⁸ After the EIO commenced exercising such power, the majority of the respondents are willing to comply with its recommendations upon

¹⁴⁶ Anonymous Focus group Discussion Participants, on 9 May 2018

¹⁴⁷ Anonymous Focus group Discussion Participant 2, on 9 May 2018

¹⁴⁸ Interview with Temesgen Kegne, Senior investigation expert in institution of Ombudswoman (Addis Ababa, 16 April 2018)

receiving warning letter.¹⁴⁹This shows that if the Commission commences exercising its power of ensuring the criminal accountability of non-complying respondents, it may ensure better compliance of its recommendations.

Therefore, the Commission should complement the non-confrontational tools with its formal enforcement power. In other words upon ensuring the ineffectiveness of the former, the Commission should go further and use its formal enforcement power to be able to ensure better implementation with its recommendations.

3.4 Challenges that Impede adequate Enforcement of the Commission's Recommendations

3.4.1 Unwillingness and Resistance of Respondents

Compliance with the Commission's recommendations has been challenged by different respondents in different ways. The data from interviews, the assessment of investigation files and reports shows that some private entities rather than complying with the Commission's recommendations, preferred to initiate court proceedings.¹⁵⁰ For example, *in Mr.F vs Reliance property administration PLC and Tsehay Real-estate case*¹⁵¹ after received the Commission's recommendations relating to the right to work of the complainant, the respondents submitted a letter with annex of evidencing that they have instituting a case against the complainant before regular court and claimed that they were not bound to implement the Commission's recommendations.¹⁵² The fact that the case is pending or investigated and decided by the Commission cannot deny individuals from initiating court action on the same case as mentioned in chapter 2 above. Hence such defense is within the right of respondents and the Commission is duty bound to terminate such cases¹⁵³.

The same source of data also indicates that few government bodies resist compliance without legal ground and some other government bodies also resist by raising their own justifications to

¹⁴⁹ Ibid

¹⁵⁰ Interview with Genanaw (n 87)

¹⁵¹ *Mr. F vs Reliance property administration and Tsehay Real-estate* (2017) EHRC, file no.286 (unpolished)

¹⁵² Interview with Genanaw (n 87)

¹⁵³ One of the limitation on the jurisdiction of the commission is cases pending before regular courts, and when the commission, after admitting a case for investigation or has already rendered recommendations, ascertains that the case is subsequently lodged before court of any level, it has the duty to terminate the case at any time (EHRCEP Art.7and EHRC IMD Art.63(2))

be relieved from the duty to implement the recommendations.¹⁵⁴ For instance in *Mr. A vs. Kality prison administration case* (cited above) the Commission proved that Mr. A has pneumonia and heart related problem, but the respondent denied Mr. A access to indoor specialized private medical treatment and further diagnosis showed that Mr. A's problem has aggravated.¹⁵⁵ It also proved that the respondent denied such treatment based on the Federal prison administration medical service provision directive article 9(3)(b), which states that in door medical service in private medical institutions is prohibited. The Commission has seen the above provision in light of Article 21 of the FDRE constitution, article 22(1)(2) of UN standard minimum rules for the treatment of prisoners which is ratified by Ethiopia, and article 11(4) of the Councils of Minister regulation No. 138/1999 on the treatment of federal prisoners and proved that the provision of the prison administration directive is inconsistency with these legal documents which allow prisoners with special health problem to get proper medical treatment from private or government medical institutions.¹⁵⁶ In effect, the Commission recommended that the provision of the directive should not be applied and the rights of Mr. A should be respected.¹⁵⁷ Indeed, such recommendations are within the mandate of the Commission because article 26(3) of its proclamation authorizes it to state in its recommendation that the directive that cause the violations to be inapplicable. However, the respondent insisted on the provision of its directive and disregarded the Commission's recommendations.¹⁵⁸ Hence, justification based on provisions of directive, and other laws to refuse compliance with its recommendations is another challenge faced by the Commission. In such instances the Commission usually reported the cases to the HOPR¹⁵⁹ and the HOPR organizes discussion forums for both the Commission and the respondents together with the concerned Standing Committee of the House as mentioned above, and if the justification of the respondents is more convincing than the Commission's recommendations, it will be accepted, but if the justification by the respondent is less convincing

¹⁵⁴ Ibid

¹⁵⁵ (n 143)6

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Interview with Genanaw (n 87)

¹⁵⁹ Ibid

or unlawful, decisions are made by the House requiring respondents to implement the Commission's recommendations.¹⁶⁰

In these cases, the best means for the Commission to avert such resistance is to exert utmost effort to give persuasive and strong recommendations that are capable to deny any justification by respondents. Because a persuasive and strong recommendation is one of the enforcement tools used by EIO and other countries NHRIs.¹⁶¹ The Commission should equip itself with well qualified experts and the necessary facilities required for such purposes. After the discussion or debate in the Parliament, the HOPR should render a decision that should not erode human rights guaranteed in the Constitution and human rights treaties ratified by Ethiopia and should ensure its enforcement through taking appropriate legal action.

In addition to resistance through citing legal bases for their actions, few government bodies also refused compliance with the Commission's recommendations on the ground that the Commission has failed to collect all the relevant evidence to issue its recommendations. In particular Genanaw on this point stated that:

*“In Mr.X vs. Addis Ababa land development and management Beauru case, after the Commission looked into the evidence adduced by Mr. X, it issued recommendations, but the respondent replied to the Commission that it cannot comply with the recommendations due to the fact that it had not given opportunity to adduce its evidence and had it been given such opportunity, it had credible evidence that can disprove the evidence of Mr. X provided to the Commission which consequently led to a change in the applicable legal provision cited by the Commission”.*¹⁶²

¹⁶⁰Interview with Fetiha (n 119), the mandate of the HOPR to make such decision emanates from its supervisory power over the executive: The House has the highest power to protect human rights of the people. It exercises this power by delegating parts of it to different bodies of the executive and by controlling such bodies in the exercise of the delegated power. The House controls the executive directly by itself and indirectly by establishing institutions that are accountable to it such as EHRC. If the Commission's independent effort to rectify human rights violations proved ineffective, it has legal duty to report it to the House for appropriate actions. Hence, the Commission submits report on the non-complied recommendations and the refusing respondents to the Democratic, Human Rights and Administrative Affairs Standing Committee and after receiving, this Committee transfers the Commission's report to the concerned Standing Committee that supervise the refusing respondents and such Committee requires the respondents to implement the Commission's recommendations. If the respondents failed to comply or raise its own justification, then discussion forum is organized for both the Commission and the respondent in the presence of concerned Standing Committees of the HOPR, and after debate, decision is rendered by the House in favor of more convincing justification

¹⁶¹ Interview with Kenea (n 69)

¹⁶² Interview with Genanaw (n 87)

This shows the existence of deficiencies in the investigation work of the Commission. Thus, the Commission should conduct exhaustive factual investigations, in particular it should give equal opportunity for both parties to provide their evidence and disprove the other party's evidence, always act neutrally while weighing evidence of the parties and it should refer to the relevant legal provisions that are violated by the fact that has been established.

Other resistance to compliance with the Commission's recommendation is on the ground of religious autonomy by EOTC authorities against whom cases have been brought to the Commission.¹⁶³ In *Mr. G vs Office of Tekelay Betekhnet case*¹⁶⁴, after it investigated the case, the Commission sent recommendations requiring the respondent to pay the unpaid salary of Mr. G as per the decision of Kidus Synod. Then the respondent sent a letter to the Commission stating that EHRC should not interfere with their religious affairs.¹⁶⁵ This resistance continued despite the fact that the Commission had conducted awareness raising training as to the Commission's mandate and the scope of the religious autonomy for different Church authorities at different times.

Indeed labor rights disputes of spiritual servants involve spiritual issues. In this regard, w/r Zewdenesh, a Senior investigation expert of the Commission stated that:

*“Regarding labor rights issues of spiritual servants, there is no law by the government or by the church itself that clearly demarcate spiritual issues from human rights issues. Both issues are often mixed. As a result, when we go to discuss with the respondents, they state that the Commission violated the principle of religious autonomy which is guaranteed in FDRE Constitution”*¹⁶⁶

Employment rights issues of spiritual servants of religious institutions involves two competing interests:¹⁶⁷ Religious institutions need to take measures against spiritual servants independent of government oversight and at the same time government has an obligation to protect the labor right

¹⁶³ Interview with Zewdenesh (n 75)

¹⁶⁴ *Mr. G vs Office of Tekelay Betekhnet* (2016) EHRC, unpublished

¹⁶⁵ Ibid

¹⁶⁶ Interview with Zewdenesh (n 75)

¹⁶⁷ Tadesse melaku, The need for Balancing Rights of Employees and religious autonomy: The Case of Ethiopia in Benedek et al(eds), *Ethiopian and wider Africa perspective on human rights and Good Governance*(2014) 178

of such employees. Hence, it requires a balancing act of the two interests.¹⁶⁸ These conflicting interests can be balanced by correctly interpreting the scope of the principles of secularism on the one hand and the applicability and protection of human rights on the other hand. The principle secularism prohibits the government from interfering in the spiritual affairs of religious institutions, specifically as per this principle the government cannot determine the dogma/laws of religious institutions, types and contents of spiritual teaching rendered by the institutions to their followers, it cannot encourage certain religion and discourage the other and it cannot recruit and employ the staff (emphases on spiritual employees) of religious institutions.¹⁶⁹ Thus the government is prohibited from interfering merely in spiritual affairs and hence, by virtue of this principle, religious institutions are autonomous to administer their spiritual affairs independent of any government interference, but as human rights are applicable to all persons, government has legal obligation to protect the human rights of employees with spiritual functions in religious institutions when religious institutions interfered unfairly in the enjoyment of their employment rights. Therefore, in practical application, this is better determined on case by case bases. For instance, Mr. H brought a complaint against the Addis Ababa Diocese claiming that the respondent dismissed him on the ground that Mr. H preached something that deviated from Orthodox teaching. This is spiritual issue which must be decided by the church itself and as a result the Commission rejected the case for lack of jurisdiction. As such, the Commission is serious in considering the principles of religious autonomy while admitting complaints of spiritual servants. But the problem is that many of the respondents believe that all labor rights issues are out of the reach of the Commission.

As a result of such resistance by many respondents and the Commission's reservation on mediation and discussion to ensure compliance of its recommendations, the Commission is unable to provide effective remedies to complainants. Two of the participations in the FGD stated that ~~they~~ they applied to the Commission seeking enforcement of decisions of spiritual courts of the church given in their favor, and they have followed up more than a year but left without

¹⁶⁸ Ibid

¹⁶⁹ The Principle of Secularism in FDRE Constitution and the Role of Government Bodies, Training paper for Officials and Civil Servants (2015) 3, unpublished

remedy and that they contended the Commission is incapable to enforce its recommendations and to provide remedies to complainants”.¹⁷⁰

This shows that in providing effective remedies for EOTC employees with spiritual function, the Commission accomplishes almost nothing as it failed to ensure compliance with nearly all of its recommendations. This is a serious problem and as per the data from the interview of the head of the office the chief Commission, the Commission has reported such problem to the HOPR but as per the data from the interview of the Coordinator of Democratic, Human rights, and Administrations affair Standing Committee of the HOPR, such a report has not yet been received by the House. Hence, the Commission should further report the problem to the House and request it to take appropriate measure to address this problem.

The main cause of such problem is the cassation bench decision (cited above) that bars the right employees with spiritual functions to seek judicial remedies for their labor rights abuses by different church authorities. In its reasoning, the bench stated that adjudicating disputes arising from the employment relationships between the religious institutions and their employees with spiritual functions amounts to violations of article 11 of FDRE Constitution—principle of secularism and hence, any labor right issues of such employees should be adjudicated by religious courts or institutions with in the religious institutions established for that purpose.¹⁷¹ With such reasoning, the cassation bench goes too far from the spirit of principle of secularism. As mentioned above, while this principle prohibits the government from interfering in the spiritual affairs of religious institutions, it does not prohibit it from protecting employees with spiritual function from arbitrary interference in the enjoyment of their employment rights by their employers (religious institutions). Therefore, in excluding these employees from accessing courts, the cassation bench decision contradicts with FDRE constitution and human rights treaties ratified by Ethiopian since these human rights documents recognized and protect the right to access courts for all persons.¹⁷² The state has positive obligation to ensure that every one gets access to competent and independent courts that are legally established.¹⁷³ In particular, from the cumulative reading of articles 34(5) and 78(4), religious courts which do not follow

¹⁷⁰ Anonymous Focus group Discussion Participants, 2 and 3 ,on 9 May 2018

¹⁷¹ Cassation Division Decision (n 73)

¹⁷² UDHR, Article 8, ICCPR Article 2, FDRE Constitution Article 37

¹⁷³ Ibid

legally prescribed procedures has not mandate to adjudicate labor rights issues. Moreover, the cassation decision is in contradiction with the jurisprudence of other secular countries.¹⁷⁴ For example, the case law from American courts and European Human Rights courts, religious institutions employees with spiritual functions have been given opportunity to access courts and the courts render decision over such cases on cases by cases approach.¹⁷⁵ Thus, cassation bench decision is inconsistency with FDRE Constitution, international human rights treaties ratified by Ethiopia and the established jurisprudence of US courts and European Human Rights courts. Therefore, the cassation division should reconsider its decision (cited above) to make it inline with the essence of the principle of secularism stated under article 11 of FEDR Constitution and the rights of employees with spiritual functions guaranteed in FDRE Constitutions and human rights treaties ratified by Ethiopia based on its power under article 2(4) of proclamation No.454/2005.¹⁷⁶

In general, the fact that the complainants are denied access to courts coupled with the Commission's inability to provide remedies creates a gap in the protection of the human rights of the complainants that are guaranteed in the Constitution and human rights treaties ratified by Ethiopia. So far, saving its attempt to remedies abuses on individual complaints bases, the Commission is yet to accomplish necessary tasks that contribute to filling such gap. On this point w/r Zewdneshe asserted that "unless these complainants get access to independent and impartial bodies to adjudicate their labor rights abuses, the abuses on their rights has been being continuing, as such this is the area that that Commission should conduct monitoring activity and report its finding to the HOPR. However the Commission is failed to do such monitoring."¹⁷⁷ Ato Genanaw also stated that the Commission is failed to discharge its duty to report to the HOPR about the capacity challenges of the church to enforce its decisions given in favor of spiritual servants.¹⁷⁸

In addition to monitoring and reporting the enforcement challenge of the church, the Commission has statutory mandate to review laws and decisions that left precedent and submit

¹⁷⁴ Tadesse (n 167) 192

¹⁷⁵ Ibid

¹⁷⁶ Federal courts Reestablishment proclamation No. 454/2005, article 2(4), as per this provision, the Cassation division has the power to render different legal interpretation over its previous interpretation of certain legal provision and as such it can change(either amend or reverse) its previous decision.

¹⁷⁷ Interview with zewdneshe (n 75)

¹⁷⁸ Interview with Genanaw(n 87)

its recommendations to appropriate bodies.¹⁷⁹ Hence the Commission should also assess the effect of the cassation bench decision on the complainants' right to access court and submit its findings to the concerned bodies to enable them to take appropriate measures to fill the gap in protection of human rights of the complainants.

3.4.2 Failure of the Commission in the actual use of its formal enforcement power

So far, except declaring to exercise its formal enforcement power through its warning letters,¹⁸⁰ the Commission is passive in the actual use of such power. Such inaction of the Commission has led to the perception that it is incapable of enforcing its recommendations and this exacerbates the situation of non-compliance.¹⁸¹

In fact, to issue public reports and to ensure the criminal accountability of a respondent, the Commission is required to fulfill all the necessary preconditions. However, the Commission is yet to fulfill such mandatory prerequisites which make the Commission to be passive in the use of its formal enforcement power.¹⁸² These include the following:

3.4.2.1 Follow up of recommendations and well documented evidences

After findings and recommendations are sent to the respondents, the Commission is required to follow up their enforcement within the time of three months.¹⁸³ Each and every follow up task has to be attached and indicated in the investigation files.¹⁸⁴ This is because after the end of three months, when transferring the matter to police or prosecutor to initiate criminal charges against non-complying respondents, all the necessary information and evidence should be found within the documents transferred to such office.¹⁸⁵ In the practice of EIO, a police that received the institution's request for criminal investigations initiates such investigations after examining the documents submitted to it in light of article 41(2) of its Proclamation and believes that the respondent is in violation of such provision.¹⁸⁶ Every warning letter that is sent to the respondents within three months from the receipt of the recommendations and other relevant

¹⁷⁹ EHRCEP Article 6 (5)

¹⁸⁰ Interview with Wendmeneh (n 83)

¹⁸¹ Ibid

¹⁸² Interview with Yosef (n 78)

¹⁸³ Ibid

¹⁸⁴ Ibid

¹⁸⁵ Interview with Kenea (n 69)

¹⁸⁶ Ibid

documents must be attached to the files and submitted to the police office together with the findings and recommendations.¹⁸⁷ Otherwise if there is gap in evidence submitted by the institution, it complicates police investigations and most of the time the cases are abated for lack of adequate evidence.¹⁸⁸ In the Case of EHRC, well documented evidence on follow up of the enforcement of recommendations is almost lacking.¹⁸⁹ The assessment of the investigation files that are identified in the above tables as files with non-complied recommendations shows that information evidencing the follow up activities is missing.¹⁹⁰ Participants of the FGD also stated that “the Commission is active in conducting investigation and rendering appropriate recommendations, but once it sent its recommendations to the respondents, it does not follow up their implementation”.¹⁹¹ Hence, effective follow up activities that are supported by well-organized and documented evidence are the main prerequisites that the Commission fails to fulfill. As can be seen from the experience of EO, this is a mandatory precondition in requesting the police and public prosecutor to initiate criminal charges against non-complying respondents. Such evidence is also equally necessary to issue public reporting.

3.4.2.2 Specifying the respondents that should bear criminal accountability

To ensure the criminal accountability of certain non-complying respondent, personalizing the criminal offense to responsible individual is a precondition.¹⁹² This requires identifying the respondent responsible for the alleged violations brought to the Commission prior to investigation process is commenced. However, identifying individual respondents is a main challenging task for NHRIs in other countries in general and in Ethiopia in particular.¹⁹³ In the experience of EIO, first thorough examination of the complaint is conducted and then identifying respondent is done by investigating who is the exact cause of the maladministration in question and whose specific mandate is it to give final decision over the case.¹⁹⁴ Such respondents are then requested to participate in the investigation process by adducing evidence and other legal

¹⁸⁷ Interview with Temesgen (n 148)

¹⁸⁸ Ibid

¹⁸⁹ Interview with Yosef (n 75)

¹⁹⁰ In identifying whether the recommendations were complied or not, the researcher used information obtained from face to face interviews and interview of complainants over phone numbers which are available on the back of their files.

¹⁹¹ Anonymous Focus group Discussion Participants, on 9 May 2018

¹⁹² Interview with Temesgen (n 148)

¹⁹³ Interview with Kenea (n 69)

¹⁹⁴ Ibid

responses.¹⁹⁵ Finally, the institution sends its recommendations to the respondent to comply with them or to send justification why with it would not in 15 or 30 days.¹⁹⁶ If this is disregarded, warning letter is sent,¹⁹⁷ and if the respondent does not act, a last warning letter specifically identifies the name of the individual and his/her position and mentioning that in case of noncompliance the institution will pass the matter over to the concerned police for criminal investigation regarding on his /her violations of article 41(2) of the institution's establishing proclamations.¹⁹⁸ This specific warning letter helps to personalize the crime and make it easy for police to identify the suspect while conducting criminal investigations.¹⁹⁹ However, in the practice of EHRC, in the course of the investigation, the question of who has the specific mandate to decide over the case and who is the immediate cause of the violations are left unidentified. As such, more than one body (individual) participates in the investigation process and the recommendations are also submitted to all of them.²⁰⁰ When ignored, warning letter is submitted but not specifically mentioning the name of individuals. Instead, it is sent in the name of the institutions and occasionally by mentioning the position of the respondents such as to the chief executive of the certain wereda or sub city. Hence much has remains to be done in specifying the exact respondents as another precondition for ensuring the criminal accountability of non-complying respondents.

3.4.2.3 Fulfilling the Necessary staff and Department

Follow up on recommendations requires adequate and well qualified staff. In the experience of the EIO, investigators have duty to follow up their enforcement within 90 days after the receipt of the recommendations and to support the follow up process with well documented evidence as mentioned above. At the end of the 90 days, if the respondent failed to comply or justify noncompliance, the investigator transfers the case to the legal department.²⁰¹ This department has senior legal experts and one of its functions is transferring the matter to the concerned police office and following up the criminal proceeding against non-complying respondents.²⁰² However

¹⁹⁵ Ibid

¹⁹⁶ Ibid

¹⁹⁷ Interview with Temsegen (n 148)

¹⁹⁸ Ibid

¹⁹⁹ Ibid

²⁰⁰ Interview with Genanaw(n 87)

²⁰¹ Interview with Kenea (n 69)

²⁰² Ibid

in the experience of EHRC, at the outset, legal department and senior legal experts who are tasked with transferring cases of non-compliance to police and prosecutor offices and following up criminal proceedings are lacking. The investigation directive of the Commission has assigned such tasks to the investigator who has conducted the investigation over the case.²⁰³ However, investigations experts are failed support recommendation follow up processes with necessary evidence,²⁰⁴ which is a precondition to transfer the matter to justice office as mentioned above. In addition the turnover of directors and experts of the Investigation Directorate has been high and vacated positions are not filled in a short time.²⁰⁵ This negatively impacted on the follow up of the enforcement of recommendations and criminal charge initiation of the Commission. Therefore, the Commission should organize itself with the necessary legal department and personnel to effectively exercise its formal enforcement power.

3.4.3. Overt and Latent problems of Article 41

So far, the overt problems of article 41 have been criticized by academics and practitioners. The first critics is related to its failure to clearly stipulate as to who should initiate the criminal proceedings against refusing respondents. Indeed such critic is proper in that if it was clearly state the responsible organ to initiate criminal proceedings, it could avoid the confusion of the Commission in that regard and the Commission could not justify its failure to ensure the criminal accountability of non-complying respondents by clarity problem of the same article. Notwithstanding its clarity problem, the EIO exercises its power under the same article by transferring the matter to the concerned police office, as mentioned above, with the understanding that in the country's criminal justice administrations system, investigation of criminal offenses and instituting criminal charges are the mandates of the police and public prosecutor. However, in its experience when the respondent to be held criminally accountable were from the police force, the concerned police that received the evidence from the EIO were unwilling to investigate allegations of crime against fellow police officers.²⁰⁶ This negatively impacted on the ability of the EIO to ensure compliance of its non-recommendations which can be the same problem for EHRC.

²⁰³ EHCIMD Articles 85&87

²⁰⁴ Interview with Yosef (n 78)

²⁰⁵ Ibid

²⁰⁶ Interview with Temesgen (n 148)

Moreover, the phrase under article 41(2) which states “... or **does not state reasons for such failure...**” has understood by police and public prosecutor to include any unjustified and general responses.²⁰⁷ They argued that this provision does not require non complying respondents to send adequate/persuasive and justified reasons.²⁰⁸ Thus, if they find in the evidence transferred by EIO that the refusing respondent sent to the Institution any unjustified and general response within three months; they responded that there is no offense committed by non-complying respondents in violation of article 41(2).²⁰⁹ As a result, in such cases, the EIO, instead of transferring the matter to police, it submitted special reports to the HOPR.²¹⁰ However the House does not take special measure except organizing the normal discussion forums for the non-complying respondents and the Institution and most of the discussions were ineffective in ensuring actual implementation of the Institution’s recommendations.²¹¹ Hence this loophole of the above provisions also another problem that affects adequate implementations of recommendations issued by the EIO which also applies to recommendations issued by EHRC. These are the overt problems of article 41 that require amendment of the provision.

However the same article has covert problem that can seriously hinder the enforcement of recommendations and also the provision of effective remedies to victims. This relates with the declaration of the provision. It declares only the criminality of failure to comply or to justify non-compliance with in three months. And it is silent about how to enforce the non-complied recommendations for which refusing respondents are already held criminally accountable. Once a refusing respondent is held criminally accountable, the provision does not impose further duty on such respondent to comply with the recommendations. As a result, in the experience of EIO, those respondents that have been held criminally accountable continuous to challenge implementation of non-complied recommendations.²¹² Hence, the silence of the provision in this regard seriously hindered further enforcement of non-complied recommendations issued by EIO.²¹³ After ensuring the criminal accountability of non-complying respondents, the institution attempted to utilize other enforcement tools to enforce those non complied recommendations,

²⁰⁷ Interview with Kenea(n 69)

²⁰⁸ Ibid

²⁰⁹ Ibid

²¹⁰ Ibid

²¹¹ Ibid

²¹² Ibid

²¹³ Ibid

which include mediation and reporting to the HOPR. However, in the past eight years, the HOPR has not taken binding measures to ensure compliance and it only organized discussion forums which were almost ineffective to ensure compliance with recommendations.²¹⁴

In the case of NHRIs of other countries with mandate to grant recommendations, such as those of Ghana and Tanzania, they are empowered to take the case before courts to seek the enforcement of their recommendations when respondents failed to comply with in the time fixed in the law.²¹⁵ Hence their enforcement power is aimed directly at enforcing recommendations that are not complied with and providing effective remedies to victims of violations. This enables them to achieve the very purpose of granting investigation mandates to the institutions.

However in the case of EHRC, as mentioned above, article 41 set aside the issue as to how the Commission enforces its recommendations when the respondents do not comply with them within 90 days. As mentioned in chapter 2 above, the effectiveness of enforcement power is measured by its ability to ensure effective remedies to victims. In light of this, article 41 has a serious legal gap and hence, by drawing inspiration from NHRIs of other countries, it should be amended to empower the Commission to take appropriate legal actions that are directly aimed at enforcing its recommendations when they are not complied with in the time provided by the law.

²¹⁴Ibid

²¹⁵GCHRAJ Act455, section 18, TGHGG Act 2001, Article28(3)

Chapter four: Conclusion and Recommendations

4.1 Conclusion

NHRIs are vested with investigation mandate to contribute to the provision of effective remedies for victims of human rights violations. To enable the institutions to discharge this responsibility meaningfully, NHRIs in general and EHRC in particular have granted enforcement power which used to force refusing respondents to comply with their decisions or recommendations and thereby to ensure effective remedies for all complainants/victims.

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. The Commission is vested with enforcement powers which include issuing public reporting and ensuring the criminal accountability of non-complying respondents. However, so far, the Commission has failed to exercise its enforcement power despite the existence of many non-complied recommendations and many complainants left without remedies. Notwithstanding its failure to use such power, the Commission has utilized different non-confrontational enforcement tools to ensure compliance of its recommendations. These include round table discussion, reporting to the HOPR, field mission, summoning respondents to office of the Commission, and warning letter. Using such tools, the Commission has had some level of success in ensuring enforcement of some of its recommendations. However, their effectiveness to ensure compliance with recommendations has been dependent on the cooperation of the respondents. When the respondents' cooperation was secured, they were effective to ensure compliance and to provide effective remedies to complainants. And when the respondents became uncooperative, they were ineffective and recommendations remained unenforced. Unenforced recommendations by respondents from EOTC are much more than non-complied recommendations by other respondents.

The Commission lost public trust and legitimacy because of its failure to provide effective remedies through challenging the wrongdoings of refusing respondents.

There are three different major challenges that hinder adequate enforcement of the Commission's recommendations. The first challenge is resistance by respondents to comply with the recommendations. Some government bodies refused to implement recommendations through

citing legal provisions and justifying their measure on that ground. Respondents from EOTC resisted compliance on ground of religious autonomy and few government bodies refused to implement recommendations without any justification despite decisions were passed by the HOPR requiring them to implement the recommendations. The House planned to issue public reporting against such respondents as last measure.

The second major challenge is the failures of the Commission in actual use of its formal enforcement power. The main factors that prevent the Commission from using its enforcement power are related with its failure to fulfill the necessary preconditions. These include failures of the Commission to conduct effective follow up tasks that were substantiated with well documented evidence, failures of the Commission in specifying the respondents that should bear naming and shaming and/or criminal accountability and lack of the necessary staff and department that is responsible to initiate and follow up criminal proceeding against refusing respondents. EIO has actually exercised its mandate of ensuring the criminal accountability of refusing respondents by fulfilling all the above preconditions since 2010.

The third challenge is related with legal gap under article 41 of the Commission's establishing proclamation. Unlike other countries NHRIs such as GCHAJ whose enforcement power is directly aimed at enforcing non complied recommendations, the type of enforcement power of EHRC stated under article 41(2) of its establishing proclamation does not targeted to enforcing non complied recommendations. It rather aimed at ensuring the criminal accountability of refusing respondents. And it is silent about how the com proceeds to enforce those non complied recommendations for which refusing respondents were already held criminally accountable. As a result of this, in the experience of EIO, exercising the power of ensuring criminal accountability of refusing respondents is proved ineffective to enforce non complied recommendations and in such cases the institution is unable to provide effective and timely remedy to victims of maladministration. Hence, this type of enforcement power is ineffective as the most important measure of effectiveness of enforcement power is its ability to provide effective remedies for victims. Thus, such gap under article 41 hinders adequate enforcement of recommendations issued by of EIO which can be the same problem to recommendations issued by EHRC.

4.2 Recommendations

Based on the above findings and conclusions, the following recommendations are provided;

1. Learning from relevant experience of the EIO, the Commission should fulfill all the necessary preconditions for exercising its formal enforcement power and then when the non-confrontational tools are proved ineffective, it should proceed to use its formal enforcement power exhaustively to ensure better compliance of its recommendations. In particular it should fulfill the following:
 - It should conduct thorough examination of the complaints so as to specifically select the right respondents before commencing its investigation
 - It should effectively accomplish follow up tasks that are supported with the necessary evidence and should be well documents with the investigation files
 - It should fulfill the necessary staff and department that should shoulder the responsibility to initiate and follow up criminal proceeding against refusing respondents. Particularly it should have legal department with the necessary qualified legal experts.
2. Pending exercising its formal enforcement power, the Commission should make proposal for the amendment of article 41 of its establishing proclamation. In particular by drawing inspiration from other countries effective NHRIs, it should suggest a type of enforcement power which directly aimed at enforcing non complied recommendations and providing effective remedies to victims of human rights violations such as the power to seek enforcement of non-complied recommendations through regular courts.
3. To avert resistance to comply with its recommendations based on legal provisions and failures of the Commission to consider all relevant evidence to the cases that had been investigated, it should conduct exhaustive factual and legal investigations and should issue convincing and strong recommendations that can deny any justification for non-complying respondents.

4. The House of People Representatives should complement its measure of exposing the refusing respondents on media with removal of non-complying officials from their position. i.e. if the former is proved ineffective, the House should proceed to remove that respondents from his/her position and require other officials to implement the non-complied recommendations to rectify the violations.
5. In relation to complainants from EOTC, the Commission should reports the challenges it faced and its inability to provide remedies to the Complainants to the House of People Representative. It should also review the cassation bench decision in light of the rights of complainants to access court and get effective remedies and submit its recommendations to the concerned bodies.
6. The cassation division should reexamine and amend its decision to make it inline with the spirit of the principle of secularism stated under article 11 of FEDR Constitution and the rights of employees with spiritual functions guaranteed in FDRE Constitutions and human rights treaties ratified by Ethiopia. In particular, it should be amended in a manner that allows regular courts to handle and adjudicate labor right issues of religious employees with spiritual functions on cases by cases approach.
7. Considering that the poor file management system of the Commission resulted in loss of important documents and the difficulty of accessing data for different studies, the Commission should organize it with the necessary facilities and personnel and change it into computerized file management system.

Bibliography

Books and Thesis

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

Performance & Legitimacy: National Human rights Institutions (International Council on Human Rights Policy 2004)

Polo Evodia Chabane, Enforcement powers of National Human rights Institutions: A case study of Ghana, South Africa and Uganda (2007)

Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union (European Union Agency for Fundamental Rights 2012)

Derege Sisay, The Effectiveness of Ethiopian Human rights Commission in Addis Ababa (2014)

Yemsrach Endale, The Roles and Challenges of Ethiopian National Human Rights Institutions in the protection of human rights in light of Paris principles (2010)

Meseret Mamo, The effectiveness of Ethiopian Human rights Commission in implementing its investigative Mandate (2011)

Helina Azeze, The Effectiveness of Ethiopian Human Rights Commission in light of the Paris principles (2014)

Zewdnesch Zegeye, An appraisal of the effectiveness of the Ethiopian Human Rights Commission to Promote and Protect Human Rights: with Particular Emphasis to Hawassa, Branch (2016)

Shiva Datta Bhandari , The Role of National Human Rights Institutions in Ending Impunity for Human Rights Abuses During Conflict: the Case of Nepal (2015)

Roles and Functions of National Human Rights institutions (Raoul Wallenberg Institute 2015)

National Human Rights Institutions: History, principles Roles and responsibilities (United Nation 2010)

John W. Creswell, Research design, Qualitative, Quantitative and Mixed Approaches, (4th ed. 2014)

Michael Quinn et al, A Guide to using qualitative Research Methodology (2002)

Gomez and Robin Ramcharan, The protection capacity of National human rights institutions in Southeast Asia (Working Paper Series # 172)

Tadesse melaku, The need for Balancing Rights of Employees and Religious Autonomy: the Case of Ethiopia in Benedek et al (eds), Ethiopian and wider Africa perspectives on human rights and Good Governance (2014)

Domestic laws

FDRE Constitution, Proclamation No.1/1995

Ethiopian Human rights Commission Establishment Proclamation, No.210/2000

Ethiopian Institution of Ombudsman Establishment Proclamation, No.211/2000

Federal courts Reestablishment proclamation No. 454/2005

Ethiopian Human Rights Commission Mediation and Investigation Directive, No. 2/2014

House of People Representatives Resolution No. 10/2016

House of People Representatives Resolution No 11/2017

Councils of Minister Regulation on treatment of Federal Prisoners, No. 138/1999

Cases

Hamerework Kidist Mariam Betechristian SebaKa Gubae Office Vs. Deacon Meheret Birhan et al. (2005) no.18419 (Federal Cassation Bench)

Mr. A vs. Kality prison Administration (2017) (EHRC) unpublished

Mr.Bs (group complaint) vs. Sankura woreda and Silte Zone Administrations (2017) EHRC, unpublished

Mr. C vs Oromia Regional State (2017) EHRC, unpublished

Mr.D vs Addis Ababa Administration (2016) file no. 392 (EHRC) unpublished

Mr.E vs. Arada sub city wereda 9 police office (2017) EHRC, unpublished

Mr. F vs Reliance Property Administration and Tsehay Real-Estate (2017) file no.286, EHRC, unpolished

Mr.G vs Office of Tekelay Betekhnet (2016) EHRC, unpublished

Note that:- All the Investigations files from 2014 to 2017 were assessed and used as sources of data

Reports

Ethiopian Human Rights Commission (EHRC), Annual Report for 2014

Ethiopian Human Rights Commission (EHRC), Annual Report for 2015

Ethiopian Human Rights Commission (EHRC), Annual Report for 2016

Ethiopian Human Rights Commission (EHRC), Annual Report for 2017

Official reports of the Commission submitted to the House to notify non complied recommendations and refusing respondents,2017 and 2018

International laws, principles and General comment

Universal Declaration of Human Rights, 1948

International convention on civil and political rights, 1966

Paris principles (Principles Relating to the Status of NHRIs), General Assembly resolution 48/134, 1993

The Constitution of the Republic of Uganda, 1995

The Ghana Commission on Human rights and administrative Justice establishing Act 456/1993

The Tanzanian Commission on Human rights and Good Governance Establishing Act

2001

UN Human Rights Committee General Comment 31, 2004

UN Standard Minimum Rules for the Treatment of Prisoners, 1955

Interviews

Interview with Wendmeneh Zewudie, head of the office of Chief Commissioner of EHRC (Addis Ababa 26 April 2018)

Interview with Birhanu Abadi, Director of Investigation directorate of EHRC (Addis Ababa, 10 April 2018)

Interview with Adham Duri, Director of Monitoring directorate of EHRC (Addis Ababa, 12 April 2018)

Interview with Genanaw Gobena, Registrar of investigation directorate of EHRC (Addis Ababa 18 April 2018)

Interview with Zewdnesh Zegeye, Senior investigation expert in EHRC (Addis Ababa, 17 April 2018)

Interview with Kenea Sona, Head of the Office of the institution of Ombudswoman (Addis Ababa, 16 April 2018)

Interview with Temesgen Kegne, Senior investigation expert in institution of Ombudswoman (Addis Ababa, 16 April 2018)

Interview with Daniel Reta, Senior investigation expert in EHRC (Addis Ababa, 15 April 2018)

Interview with Yosef Girma, Senior investigation expert in EHRC (Addis Ababa, 18 April 2018)

Interview with Fetiha Yesuf, Coordinator of Democratic, Human Rights and Administrations affairs Standing Committee of HOPR (Addis Ababa, 27 April 2018)

Appendixes

Appendix 1: Interview Questions for members of Ethiopian Human Rights Commission

Date: _____ Name: _____ Sex: _____

Address: _____ Position: _____

1. 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.
 - From your practical experience, so far, what enforcement tools has the commission employed to ensure compliance of its recommendations?
2. Since recently, the Commission has directly submitted recommendations to the HOPR for enforcement, but not all recommendations have been submitted to the House, hence which type's recommendations are amenable to be submitted to the HOPR?
 - how do you see the effectiveness of submitting to HOPR in ensuring compliance of the recommendations?
 - Once those selected recommendations have been submitted to the house, what is the role of the Commission regarding such submitted recommendations?
3. How do you see the effectiveness of all enforcement tools so far used by the Commission to ensure compliance of its recommendations and provide effective remedies for victims?
 - Are there non- complied recommendations despite the Commission has used one or more of the above tools?
4. Are there instance whereby the Commission on its own motion submitted non complied recommendations and refusing respondents to the HOPR and requested it to take appropriate legal actions to correct the violations?
5. What are the challenges that impede adequate enforcement of the Commission's recommendations?

6. What kinds 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?
7. What obstacles make the Commission to be unable to exercising its power of public reporting and ensuring criminal accountability of non-complying respondents?
8. EHRC and EIO have the same enforcement power. In practice, the EIO has exercised its mandate of ensuring the criminal accountability of non-complying respondents, but this is lacking in the history of the Commission. How this different is created between the two institutions? Why this practice is missing in EHRC?
9. The Commission has investigated redundant complaints brought by spiritual servants of Ethiopian Orthodox Tewahdo Church. But it cannot provide effective remedies to the Complainants. What are the challenges and problems that make the commission to be unable to provide effective remedy for the complainants?
10. Currently, how the Commissions handle and process such complaints?
11. Do you think that the Commission discharges its utmost responsibility in providing effective remedies for such complainants in particular and in assisting the government to discharge its obligation to protect the rights of the complainants in general? Did it report such problem to the parliament?
12. Do you have other opinion you want to share?

Appendix 2: Interview Questions for members the House of People Representatives

Date: _____ Name: _____ Sex: _____

Address: _____ Position: _____

1. The EHRC is one among those national institutions that have major role in enforcing constitutionally guaranteed rights and it is accountable to the HOPR. It submits performance reports to the House. Hence, from the examinations of its performance reports, how the recommendations are enforced? And what enforcement tools the Commission has used?

2. Are there instance whereby the Commission on its own motion submitted non complied recommendations to the HOPR and requested it to take appropriate legal actions?
3. Again did the House on its own motion demands the commission as to the existence of non-complied recommendations? If yes how it responds after receiving such reports?
4. What are the challenges that hinder adequate enforcement of the Commission's recommendations?
5. What kinds grounds non-complying respondents raise to resist the compliance of the Commission's recommendations? Or how they justify the fact of disregarding Commission's recommendations?
6. What obstacles make the commission to be unable to exercising its power of public reporting and ensuring criminal accountability of non-complying respondents?
7. Regarding enforcement power, EHRC and EIO have the same power. In practice, the EIO has exercised its mandate of ensuring the criminal accountability of non complying respondents but this is lacking in the history of the Commission. How this different is created between the two institutions?
8. The Recommendations given by the Commission out of its investigation in some parts of Amhara , Oromia and SNNRS regional states conducted in 2008 and 2009 E.C were directly submitted to the House and the House passed two separate recommendations requesting the concerned regional states to take appropriate action to give effect to all recommendations given by the commission. What was the purpose of submitting such recommendations directly to the House? Who is responsible to follow up their enforcement? Did the House follow up its enforcement? So far, to what extent the recommendations have been complied?
9. From the Commission's record and file management office, recommendations of the Commission given over complaints of spiritual servants of Ethiopian Orthodox Tewahdo Church have been not been complied by respondents and the Commission is unable to provide remedies to the complainants who have no other institutional option seek remedies. Do you think that Commission discharges its expected responsibility to provide remedy to

the complainants in particular and in assisting the government to discharge its obligation to protect the rights of such citizen in general? Did it report this problem to the HOPR?

10. Do you have other opinion you want to share?

Appendix 3: Interview questions for members the institution of Ombudsman

Date: _____ Name: _____ Sex: _____

Address: _____ position: _____

1. When and how did the institution start ensuring the criminal accountability of respondents who unlawfully refused to comply with its recommendations?
2. What were the preparatory works done by the institution to exercise such a power? were there challenges during the first time when it exercised this power?
3. The constituting proclamation of the institution declares the criminality of failure to comply or justify noncompliance with the recommendations of the institution within three months and there is no clear stipulations as to who initiate criminal proceeding against non-complying respondents. Hence how the institution did address this gap?
4. The enabling Proclamation is also not clear enough as to who will be criminally responsible for non-compliance with recommendations within three months. So, how the intuition does select those individuals to hold criminally accountable?
5. Are there later challenges and problems in the course of exercising this power?
6. So far, how many respondents have been held criminally accountable by the institution? Currently, are there pending criminal proceeding cases against refusing respondents?
7. Once the matter transferred to the concerned justice office and the respondents founded to be guilty and sent to jail, or incurred financial penalty, how the intuition proceeds to enforce its non-recommendations to redress the violations that have already proved by its investigations?
8. How do you see the effectiveness of exercising such power in providing effective remedies for victims of human rights violations?

9. In the institution who are entrusted the responsibility of following upon enforcement of recommendations and transferring matter to the concerned justice office and following up the criminal proceedings?

10. Do you have any other comments you want to share?

Appendix 4: Focus Group Discussion Questions for Complainants

Date: _____ Name: _____ Sex: _____

Address: _____ position: _____

1. How do you see the Commission's recommendations enforcement practice and its practice of providing effective remedies for victims of human rights violations brought before it?
2. Has the Commission enforced the recommendations rendered over your complaints? And do you got effective remedies by the Commission? If not, what was the final fate of your cases?
3. What problems and challenges do you think that hinder the Commission from enforcing its recommendations adequately and provide effective remedies for all victims of human rights violations brought before it and its attention?
4. How the general public see the Commission's practice of rectifying human rights violations?
5. Do you have any other comments you want to share?

Thank you!!