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**The Universal Periodic Review Mechanism:  
Trend, Challenge and Prospect for Enforcement  
of Human Rights in Ethiopia**

**By Eyob Awgchew**

**February 2019**  
**Addis Ababa, Ethiopia**

# **The Universal Periodic Review Mechanism: Trend, Challenge and Prospect for Enforcement of Human Rights in Ethiopia**

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**A Thesis Submitted to Addis Ababa University, College of Law and Governance Studies, School of Law in Partial Fulfillment of LL.M degree in Human Rights Law**

## **Declaration**

I, Eyob Awgchew, declare that this thesis is my original work and it has never been presented in any other University. All source materials used in this work have been duly acknowledged. It is hereby presented in partial fulfillment of the requirements for the award of LL.M Degree in Human Rights Law.

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## Approval Page

Addis Ababa University

College of Law and Governance Studies

The thesis entitled “*The Universal Periodic Review Mechanism: Practice, Challenge and Prospect for Enforcement of Human Rights in Ethiopia*” By Mr. Eyob Awgchew is approved for the Degree of Master of Laws (LL.M) in Human Rights Law.

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## **Acronym**

|        |                                                  |
|--------|--------------------------------------------------|
| APAP   | Action Professional’s Association for the People |
| CERO   | Consortium of Ethiopian Rights Organizations     |
| CSO    | Civil Society Organization                       |
| ECOSOC | Economic and Social Council                      |
| EEG    | Eastern Europe Group                             |
| EHRC   | Ethiopian Human rights Commission                |
| EHR    | Ethiopian Human Rights Service                   |
| ELA    | Ethiopian Lawyers Association                    |
| ENA    | Ethiopian News Agency                            |
| EWLA   | Ethiopian Women Lawyers Association              |
| FAG    | Federal Attorney General                         |
| FDRE   | Federal Democratic Republic of Ethiopia          |
| GRULAC | Latin American and Caribbean Group               |
| GTP    | Growth Transformation Plan                       |
| HPR    | House of Peoples Representative                  |
| HRC    | Human Rights Council                             |
| HRCO   | Human Rights Council                             |
| IHL    | International Humanitarian Law                   |
| MoFA   | Ministry of Foreign Affairs                      |
| MoJ    | Ministry of Justice                              |

|            |                                                                                       |
|------------|---------------------------------------------------------------------------------------|
| MP         | Member of Parliament                                                                  |
| NGO        | Non-Governmental Organization                                                         |
| NHRI       | National Human Rights Institution                                                     |
| NHRAP      | National Human Rights Action Plan                                                     |
| NHRSC      | National Human Rights Steering Committee                                              |
| NMRF       | National Mechanism of Reporting and Follow-up                                         |
| OHCHR      | Organization of High Commissioner for Human Rights                                    |
| OHCHR-EARO | Organization of High Commissioner for Human Rights-Eastern African<br>Regional Office |
| OSJE       | Organization for Social Justice in Ethiopia                                           |
| RSs        | Recommending States                                                                   |
| SuR        | State under Review                                                                    |
| UDHR       | Universal Declaration of Human Rights                                                 |
| UN         | United Nation                                                                         |
| UN GA      | United Nation General Assembly                                                        |
| UPR        | Universal Periodic Review                                                             |
| WEOG       | Western Europe Organization Group                                                     |
| WG         | Working Group                                                                         |
| VECOD      | Vision Ethiopia Congress for Democracy                                                |

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## **Abstract**

*The Universal Periodic Review is a mechanism for the review of the human rights situations of all UN member countries. Though the Universal Periodic Review mechanism is a new development of HRC, in its two previous cycles achieved 100% engagement of all states. It has changed the landscape of human rights monitoring with its consensual approach. The principal objective of the Universal Periodic Review is the improvement of human rights situation on the ground. However, for the effectiveness of the Universal Periodic Review mechanism, the existence of relevant domestic institutional and legal framework, government commitment, effective participation of other stakeholders in all stages of UPR, and implementation of UPR recommendations is vital.*

*Ethiopia has engaged in both of the previous UPR cycles. Other stakeholders also participated by submitting their own alternative report and attending a consultation on the national report in both of the previous UPR cycles. Hence, UPR brought some new development in the human rights situation of Ethiopia. However, lack of well-established institutions and systems, lack of appropriate statistical data regarding the situation of human rights in Ethiopia, the absence of political commitment, and the principles adopted by Ethiopia for accepting recommendation are problems in the UPR process. Moreover, lack of the culture of self-evaluation in the government of Ethiopia, and lack of standing institutions, which prepare and submit national reports challenged the effectiveness of UPR in Ethiopia. Additionally, 10% fund limitation of CSOs proclamation no. 621/2009, governments' bad perception towards domestic human rights CSOs, limited access to government information and problems pertaining towards to CSOs like their tendency of excuse and weak capacity are challenges entangled for the effectiveness of UPR process in Ethiopia.*

*Nevertheless, there are new developments in a country, which serve for future effectiveness of UPR in enforcing human rights in Ethiopia. In general, the study has concluded that there are challenges from both the government and other stakeholder's side, which hamper the effectiveness of UPR in Ethiopia.*

## **Chapter One: Introduction**

### **1.1 Background of the Study**

Starting from its emergence UN firmly gives focus to human rights and brought it to international law through its own constituent act.<sup>1</sup> Article 1(3) of UN Charter makes promotion and encouragement of human rights and fundamental freedoms as purposes of UN, among others. Under article 55(c) of the charter, UN is obliged to assure Universal respect for, and observance of, human rights and fundamental freedoms for all. In addition, as per article 56 of the Charter member states are dedicated to take joint and separate action in co-operation with the UN for the attainment of universal respect and observance of human rights and fundamental freedoms. UN has been serving as an instrumental in standard setting for universal recognition of human rights and in creating treaties and other documents, which set out the universally recognized human rights.<sup>2</sup>

The UN has also created mechanisms for monitoring and supervising the implementation of human rights. These bodies or mechanisms are categorized into two. The first one is treaty bodies.<sup>3</sup> The second one is political or charter bodies, which are established by the UN charter or by bodies which are themselves created by the charter, such as UN General Assembly, Security Council and Economic and Social Council (ECOSOC), the Human Rights Council and its predecessor, the Commission on Human Rights. They are political UN human rights institutions and made up of representatives of governments.<sup>4</sup> ECOSOC as UN political human rights body is mandated to establish the Commission on human rights for the promotion and protection of human rights through article 68 of UN Charter.<sup>5</sup> To this effect, ECOSOC established the Commission on Human Rights in 1946.<sup>6</sup>

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<sup>1</sup> Sarah Joseph and Adam Mc Beth, Research Hand Book on International Human Right Law, (2010), P.1.

<sup>2</sup> Id.

<sup>3</sup> Geneva Academy of International Humanitarian Law and Human Rights, Optimizing The UN Treaty Body System: academic Platform Report on the 2020 Review, (2018) P.9.

<sup>4</sup> Sarah Joseph and Adam Mc Beth, cited above at note 1, P.1.

<sup>5</sup> UN Charter, signed in 26 June 1945, entered into force in 24 October 1945, art. 68.

<sup>6</sup> ECOSOC, Report of the Committee on the Organization of the Economic and Social council, E/20, 15 February 1946.

The Commission was the principal policy making body for the promotion and protection of human rights within the UN and it was the first human rights body responsible for protecting human rights worldwide.<sup>7</sup> The Commission plays a prominent role in a standard setting by drafting major international bills of human rights. The Commission also serves as an international forum for human rights discourse and as a bridge for closely engagement of different CSOs on the human rights agenda.<sup>8</sup> Even if, the Commission had done a lot in standard setting; it was criticized in other directions. In order to overcome its drawbacks and failings, UN General Assembly comes with new organ with a mandate to protect and promote human rights universally in 2006 through UN GA resolution A/RES/60/251.<sup>9</sup> This organ is known as Human Rights Council (hereinafter HRC), which replaced the Commission. The HRC is tasked with the four core functions of the Universal Periodic Review (UPR), the Special Procedures, the Advisory service, and the Complaint Procedure.<sup>10</sup> This study, however, focuses only on UPR.

The most important new development of HRC is UPR mechanism, which is established by UN GA Resolution 60/251 of 15 March 2006.<sup>11</sup> The UPR mechanism is created with the objective of keeping balance “between the competing objectives of creating a professional and an authoritative human rights organ on one hand and of creating an inter-governmental cooperative platform for human rights on the other hand.”<sup>12</sup> Its’ general outline is established by Resolution 60/251, which declares that the mechanisms’ primary objective is to improve human rights situations on the ground.<sup>13</sup> However, the detail modalities are left to the council with the guiding principles provided in the resolution.<sup>14</sup> The UPR procedure subjects all states to regular

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<sup>7</sup> Esther Theyskens, Eight Years of Human Right Council a success or a failure? (unpublished LLD Dissertation, 2014, Ghent University) P.3.

<sup>8</sup> Ibid, P.5.

<sup>9</sup> UN GA Resolution, Human Right Council, A/RES/60/251, 3 April 2006.

<sup>10</sup> Maximilian Spohr, “United Nations Human Right Council, Between Institution-Building Phase and Review of Status”, Max Planck Yearbook of United Nations Law, Vol.14, (2010), P.171.

<sup>11</sup> UNOHCHR, Working with the United Nations Human Rights Program; A Handbook for Civil Society, (2008)P.139

<sup>12</sup> Allehone Mulugeta Abebe, “of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council”, Human Rights Law Review, Vol. 9, (2009), P.2.

<sup>13</sup> Rosa Freedman, “New Mechanisms of the UN Human Rights Council”, Netherland Quarterly Human Rights, Vol.29, (2011), P.297 and HRC Resolution 5/1, Para.4.

<sup>14</sup> UN GA Resolution, cited above at note9, para.5 (e) and Id., P. 179.

international scrutiny, regardless of regional considerations or treaty obligation<sup>15</sup> and provides an opportunity for in-depth reviews on all states human rights records.<sup>16</sup>

The UPR assesses the human rights situation of states based on UN Charter, Universal Declaration of Human Rights (UDHR), Human Right Instruments to which a country is a party, Voluntary pledges and commitments made by countries and International Humanitarian Law (IHL), which applies to the country.<sup>17</sup> The review is undertaken based on a maximum of 20 pages reports from the State concerned, a compilation of the OHCHR, which includes documents prepared by the treaty bodies against the state and other UN information and a summary of reports from stakeholders like Inter-governmental Organizations, NGOs, NHRIs, etc., .<sup>18</sup>

UPR is commenced in April 2008.<sup>19</sup> All UN member states are subject to UPR within 4 years interval in the first UPR cycle and within 4 and a half years interval in the second and consequent cycles. The UPR Working Group (i.e. Consists of all 47 members of HRC) hosts the session of UPR.<sup>20</sup> The Working Group meets three times in a year approximately for ten days in each session.<sup>21</sup> During the first UPR cycle it reviews 16 countries in each session and 48 countries reviewed in a year, but in second and subsequent cycles 14 states in each session and 42 states within a year are reviewed or will be reviewed.<sup>22</sup> Troika (i.e. “the name given the three reporters”) facilitates the review process.<sup>23</sup> The review process takes 3 and half hours.<sup>24</sup> Then after within 48 hours after the dialogue, the UPR Working Group through Troika writes a report which will be informally adopted by the HRC<sup>25</sup> and officially adopted by HRC at its next regular

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<sup>15</sup> Michael Scholswohl, “UN Human Right Council: A New Kid on the Block”, International Law Students Association Quarterly , Vol.16,(2), (2007)P.22

<sup>16</sup>Rosa Freedman, cited above at note 13, Vol. 29, P.296.

<sup>17</sup> United Nations Human Rights Council: Institution-Building, Resolution 5/ 1 of 18 June 2007 [HRC Resolution 5/ 1], Paras. 1-2.

<sup>18</sup> Id., P.123.

<sup>19</sup> Human Rights Project at the Urban Justice Center, A Practical Guide to the United Nations’ Universal Periodic Review (UPR), (2010), P.5.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> UNGA Resolution, Review of the Human Rights Council, A/RES/65/281, adopted on 17 June 2011 and entered into force on 20 July 2011, Para 1(6).

<sup>23</sup> Id., P.8.

<sup>24</sup> HRC Decision, Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review, A/HRC/DEC/17/ 119, 19 July 2011, para. 3.

<sup>25</sup> Human Rights Project at the Urban Justice Center, cited above at note19, P.12.

session.<sup>26</sup> UPR as a state driven process has “great potential to promote and protect human rights in the darkest corners of the world.”<sup>27</sup> It brought the best guarantee of effect on the ground through the active involvement States in the process.<sup>28</sup> Ethiopia has actively engaged in HRC and its UPR Mechanism starting from the negotiations on the institution-building text of HRC. Ethiopia has submitted its’ first cycle report to HRC on 4 August 2009 and its human right record is reviewed by the council in its’ sixth session held from 30 November to 11 December 2009.<sup>29</sup> In the first UPR cycle, 142 recommendations are given for the government of Ethiopia, from which the country only accepted 99.<sup>30</sup> Ethiopia has also submitted its second cycle UPR report on 30 January 2014 for the review undertaken on the ninth session of HRC of 28 April-9 May 2014.<sup>31</sup> At this UPR cycle, Ethiopia gets 252 recommendations, from which it has accepted 188 recommendations and 64 were noted.<sup>32</sup> The third UPR national report is due on February 2019 and tentatively scheduled to be considered during the 33<sup>rd</sup> session of Human Rights Council (April-May 2019).<sup>33</sup> The crucial objective of the UPR Mechanism is to improve the human right situations of states and address human rights violations when they happen.<sup>34</sup> Ethiopia’s engagement in the UPR process has brought new developments in the protection and promotion of human rights; for instance, it has adopted National Human Right Action Plan (NHRAP), ratified treaties, and increased the branches of the Ethiopian Human Right Commission (EHRC) as per the recommendations.<sup>35</sup>

Therefore, the study explores to what extent Ethiopia utilize the UPR mechanism for promoting and protecting human rights. It also assesses the challenges of UPR in Ethiopia and about what needs to be done to make it more effective.

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<sup>26</sup> Id., P. 13.

<sup>27</sup> OHCHR, Fact Sheet, Human Right Council- Universal periodic review, November 2008

<sup>28</sup> A report of IBAHRI, The role of the Universal Periodic Review in advancing human rights in the administration of justice, (2016), P.6.

<sup>29</sup> Ethiopia’s National Report under the Universal periodic Review Mechanism, UN GA, HRC Working Group on UPR, 4 August 2009 [Ethiopia’s First Cycle report].

<sup>30</sup> Draft Report of the Working Group on the UPR on Ethiopia, UN GA, HRC Working Group on the UPR, 11 December 2009.

<sup>31</sup> Ethiopia’s National Report submitted in accordance with para.5 of the annex to HRC Res.16/21, UN GA, HRC Working Group on the UPR, 30 January 2014 [Ethiopia’s Second Cycle Report].

<sup>32</sup> Report of the Working Group on the UPR on Ethiopia, UN GA, HRC Working Group on the UPR, 7 July 2014 and The UN Human Rights Council adopted the outcome of the UPR of Ethiopia.

<sup>33</sup> UPR 3<sup>rd</sup> cycle, available at [www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx](http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx) accessed on 28 June 2018

<sup>34</sup> The Permanent Mission of the International Organization of la Francophonie to the United Nations in Geneva and to Other International Organization in Switzerland, The Human Right Council; a Practical Guide, (2015), p.45

<sup>35</sup> Addis Ababa University and UPR INFO, Post- UPR Conference on Ethiopian Accepted Recommendations, (2015), P. 4.

## **1.2 Statement of the Problem**

The effectiveness of the UPR Mechanism in promoting and protecting human rights on the ground chiefly depends on the willingness and efforts of the state itself. UPR is an inclusive process, which has enough space for the participation or involvement of CSOs, NHRI, Universities and other stakeholders in its different stages. The engagement of these entities in the UPR process is very vital for the effectiveness of the UPR Mechanism. These stakeholders are allowed to participate in preparation of State report, prepare their own report, during the dialogue stage (as an observer entity), after the UPR and before the official adoption of the recommendations by HRC by lobbying the state to get more recommendations and through urging the state under review to change its position on rejected recommendations. They also participate at the Human Right Council Plenary session by delivering oral statements on the review of the state. They further partake in different activities to execute and follow up the implementation of recommendations accepted by the state.<sup>36</sup>

Ethiopia is a part to major human rights treaties. Hence, the UPR Mechanism enables the government of Ethiopia to remind its responsibility to fully respect and implement all human rights and fundamental freedoms derived from such documents.<sup>37</sup> Ethiopia has participated in the previous two UPR cycles and received a totality of 394 recommendations and at the third UPR cycle, it will be scrutinized on the 33<sup>rd</sup> session of Human Right Council. Therefore, the study discusses the trends of UPR in Ethiopia from the vantage point of the previous two UPR cycles. The study also figures out the major challenges that hinder the effectiveness of UPR to protect and promote human rights in Ethiopia. Finally, the study evaluates the potentials of UPR in promoting and protecting human rights in Ethiopia.

## **1.3 Research Questions**

This study generally focuses on the question of the extent to which the UPR Mechanism is utilized to enforce human rights in Ethiopia. In particular, it attempts to answer the following questions;

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<sup>36</sup> UPR Info. *The Universal Periodic Review Information for NGOs, Fact Sheet 1*, P.4.

<sup>37</sup> The Permanent Mission of the International Organization of la Francophonie to the United Nations in Geneva and to Other International Organization in Switzerland, cited above at note 34, p.45.



- ♣ What normative and institutional frameworks are there for the facilitations of the processes of the UPR Mechanism in Ethiopia?
- ♣ What are the major responsibilities of executive and legislative wings of the government in relation to the UPR Mechanism?
- ♣ Do CSOs and EHRC actively engage in the UPR process in Ethiopia?
- ♣ Is there any new improvement in the enforcement of human rights in Ethiopia because of the UPR Mechanism?
- ♣ Did the government of Ethiopia prepare UPR Recommendations Implementation Plan (RIP)?
- ♣ What factors hinder the effectiveness of the UPR Mechanism in Ethiopia?
- ♣ Are there any enabling situations for future effectiveness of UPR?

## **1.4 Objectives of the Study**

This research paper has both general and specific objectives.

### **1.4.1 General Objectives**

The cardinal objective of this study is to assess the relevance and effectiveness of the UPR Mechanism in protecting and promoting human rights in Ethiopia, through the evaluation of existing practices, challenges, and its potential.

### **1.4.2 Specific Objectives**

Within the framework of the above general objectives, the study has the following specific objectives:

- ♣ To analyze UN General Assembly Resolutions, HRC resolutions and other documents in order to understand the evolution of the UPR Mechanism and its process.
- ♣ To examine the role of the UPR Mechanism in promoting and protecting human rights.
- ♣ Flesh out the new development of HRC by using UPR Mechanism in promoting and protecting human rights compared to its predecessor, the Commission.
- ♣ To scrutinize the practice of Ethiopia in the UPR process and to investigate new developments in the enforcement of human rights as a result of its engagement in the UPR Mechanism.
- ♣ To explore the institutional framework for the UPR process and the participation of other stakeholders in the UPR process in Ethiopia.

- ♣ To recommend measures that should be taken by the government and other stakeholders to assure the effectiveness of UPR Mechanism in promoting and protecting human rights in Ethiopia.

### **1.5 Significance of the Study**

The study by critically examining the practices of UPR in Ethiopia will provide research findings on the challenges of UPR in Ethiopia. It is also hoped that the study will offer solutions should be taken to assure the effectiveness of UPR in Ethiopia. Moreover, it will give information for stakeholders like CSOs to actively engage in the UPR Mechanism and informs them ways of participation. It will identify the legislative, institutional, and practical gap that hinders the effectiveness of UPR Mechanism in promoting and protecting human rights in Ethiopia and calls for the legislative and executive actions. Moreover, it will be used as a stepping-stone for future research in the related field. The study will be also used as a reference by the government in implementing the accepted recommendations in particular and in utilizing UPR Mechanism in general and it will serve the government as a reference material in drawing budgets.

### **1.6 Methodology of the Study**

To answer the questions and attain the objectives of the study appropriate method of investigation has been applied. The qualitative research method has been employed to conduct this study. The research method adopts the analysis of secondary sources. Hence, the study analyzed Resolutions, Fact Sheets, books, research studies, journals, academic articles and reports on the subject matter. As of primary source relevant domestic legislations, National Human Rights Action Planes (NHRAPs), and Ethiopia's UPR recommendations are assessed and evaluated. However, the researcher has also used practical sources to have the insight of the reality on the ground. So for the practical source is concerned, this study uses an interview to examine the process of UPR in Ethiopia. The data is collected from Ministry of Foreign Affairs (MoFA), Federal Attorney General, and Ethiopian Human Right Commission (EHRC). To assess the participation and challenges of CSOs in the UPR Process in Ethiopia, data is collected from relevant domestic human rights CSOs of Human Right Council (HRCO), Vision Ethiopia Congress for Democracy (VECOD), Ethiopian Human Rights Service (EHRS), Ethiopian Women Lawyers Association (EWLA), and Consortium of Ethiopian Rights Organization (CERO). Their participation in the previous two UPR cycles and preparation for the third cycle is

considered in identifying informant CSOs. Interviewees are selected based on purposive sampling technique. Purposive sampling technique is the deliberative choice of an informant due to the qualities the informant poses and it involves identifying and selecting individuals or groups of individuals that are especially knowledgeable about or experienced with a phenomenon of interest. So it enables the researcher to collect information easily from respondents who are qualified, knowledgeable and experienced individuals on the area and capable to answer the predetermined interview questions. The approaches that have been followed in conducting the interview with the participants are semi-structured and non-directional. The study also tries to analyze some relevant accepted and noted UPR recommendations for Ethiopia.

### **1.7 Limitation of the Study**

This study is not without limitation. Due to lack of sufficient time and resource, detail assessment of the implementation of UPR recommendations in Ethiopia is beyond this research.

### **1.8 Literature Review**

Though one article is written by Mizanie A. Tadesse (PhD) in relation to Ethiopia's engagement in the UPR process, it leaves different questions unanswered. Except this, there is no specific and comprehensive study on the practice of UPR Mechanism in Ethiopia. However, there are pieces of literature related to the topic, which generally deal with the role of UPR Mechanism in promoting and protecting human rights and with specific reference to other countries.

Tamanna Hof Rti noted on the article that the ultimate value of the UPR lies at the full implementation of recommendations, which leads to an improvement in the domestic human rights situations of a state.<sup>38</sup> UPR Info<sup>39</sup> also stated in its publication that UPR is an efficient tool for the amelioration of human rights on the ground. In 2014, it has noted that one from two recommendations and 55% of accepted recommendations and 19% of noted recommendations were either fully or partially implemented halfway through the first UPR cycle. UPR Info also declared that UPR has brought human right improvement in states and it has brought institutional progress. However, it has also recommended states to establish national mechanisms for

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<sup>38</sup> Tomanna Hof Rti, "Implimenting UPR Commitments for Promoting Human Rights Standards in Bangladesh", *Journal of the Asiatic Society of Bangladesh (Hum)*, Vol.61(1), 2016, P.3.

<sup>39</sup> UPR Info, *The Butterfly Effects: Spreading Good Practices of UPR Recommendations*, 2016, P.IV-42.

reporting and follow-up, to strengthen inter-ministerial coordination and implementation as well as civil society input to assure the effectiveness of UPR.

Edward R.McMahal<sup>40</sup> stated that the first UPR cycle brought tangible benefits like intensifying attentions within governments, improved dialogue between some government and civil societies, both at national and international level. The author also recommended that to make UPR more effective the more involvement of NGOs should be enhanced, emphasis given for verifiable and action-oriented recommendations, there should be meaningful follow-up mechanism, and states should make mid-term reporting as a norm and encourage healthy and critical debate.

Christina Szurlej<sup>41</sup> noted in her PhD dissertation that by design UPR improves the UN Human Rights monitoring Mechanisms through holding all UN member States accountable for all of their human rights obligations in a public and transparent forum, creating impetus to collaborate with relevant stakeholders, accept recommendations, make voluntary commitment, implement them and follow-up with other states on their obligations. The research also found out that UPR process encounters challenges of limited resources to provide states with technical and capacity building assistance, maintaining universal participation among UN member states, state failure to provide clear response to recommendations, a lack of concrete, realistic and action-oriented recommendations, exclusion of relevant stakeholders from some stages of UPR, a lack of a methodological mechanism to measure level of implementation and a lack of systematic follow-up with reviewed states regarding implementations of accepted recommendations.

Through the analysis of the first two UPR cycles of the UPR, Edward R.McMahon and Elisa Johnson noted that the UPR Mechanism does appear to be generating some traction in promoting human rights<sup>42</sup>. Furthermore, Mao and Sheng<sup>43</sup> concluded in their article that nearly half of UPR recommendations triggered changes in domestic human right policies.

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<sup>40</sup> Edward R.McMahal, The Universal Periodic Review; A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Right Council, (2012), P.31.

<sup>41</sup> Christina Szurlej, Universal Periodic Review: A Step in the Right Direction? (PhD Thesis, Middlesex University, 2013), P.191 and 200.

<sup>42</sup> Edward R.McMahon and Elisa Johnson, Evolutionary not Revolutionary: The First two Cycles of the UN Human Rights Council Universal Periodic Review, (2016), P.1.

<sup>43</sup> Junxiang Mao and Xi Sheng, "Strength of reviews and Scales of Response: A Quantitative Analysis of Human Right Council Universal periodic Review on China", Buffalo Human Rights Law Review, Vol.23, (2016-2017), P.39.

Allehone M. Abebe also noted in his book chapter<sup>44</sup> that the UPR process has allowed the opportunity to monitor the implementation of the recommendations of treaty bodies. He has also argued that the level of seniority of delegation participating in the Geneva-based process is often a testament to how seriously many States have taken the process. But he has also contended that UPR process is encountered with problems like insufficient participation of NGOs in the review process, the implementation of recommendations, lack of capacity in developing countries even to send a diplomatic representative in Geneva and the duration of the review process were considered as possible areas for further improvements.

Mizanie A. Tadesse stated in his article<sup>45</sup> that, due to the limited legal space created by CSOs proclamation for their operation, weak capacity of local CSOs, and government reluctance to engage with CSOs, CSOs had a limited engagement in UPR process in Ethiopia. He has also pointed out that lack of UPR implementation matrix and follow-up mechanism have contributed for the non-implementation of several accepted recommendation of the first UPR cycle. Finally he has concluded that unless Ethiopia establishes a permanent organ responsible for UPR reporting and follow-up, allow the active participation of CSOs in its UPR process, reconsiders and accepts the widely shared recommendations and fully implement the recommendations it accepted, the UPR's avowed purpose of improving human rights situation on the ground will remain a distant dream for this country.

The researcher will make use of these and other similar literature as a steppingstone to address the research problem.

## **1.9 Organization of the Study**

This study has five chapters. Chapter one provides, the background of the study, statement of the problem, research questions, objectives of the study, significance of the study, and limitation of the study, methodology and literature review. Chapter two discusses about HRC and its genesis. Furthermore, the UPR Mechanism, major steps of UPR, actors in the UPR process, the role of UPR as a platform for promotion and protection of human rights and weakness and strength of

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<sup>44</sup> Allehone Mulugeta Abebe, *The Role and Future of the Human Rights Council*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW (Scott Sheeran and Nigel Rodley eds., 2013), p.754 and 755.

<sup>45</sup> Mizanie A. Tadesse, "Ethiopia and the Universal Periodic Review Mechanism: A Critical Reflection", *Journal of Ethiopian Law*, Vol.28, (2016-2017), p. 59.

the UPR mechanism are addressed. In chapter three, the study investigated Ethiopia's approach to HRC and UPR, the institutional and legal framework for UPR and the practice of other stakeholders in the UPR process. Chapter four is devoted to showing the main challenges which hinder the effectiveness of UPR Mechanism and tries to discuss the potential of UPR in protecting and promoting human rights in Ethiopia. The final chapter concludes the findings and provides the list of recommendations for the effectiveness of UPR Mechanism in protecting and promoting human rights in Ethiopia.

## Chapter Two

### The UPR Mechanism: An Introduction

This Chapter outlines the origin of UPR; explain the main features of UPR; explore its development and different stages of UPR. Also, discuss the basis of the review and process of the review based on HRC resolution 5/1. Furthermore, it summarizes the role played by stakeholders of UPR in its different stages. This chapter later outlines the space that other stakeholders have within the UPR process with the special emphasis on CSOs and NHRIs. The role of UPR in developing human rights domestically and the strength and weakness of the UPR Mechanism also discussed in this chapter.

### 2.1 The Historical Genesis of Human Rights Council

The Commission on Human Rights, which served as the international human rights mechanism for protection of human rights for 60 years encountered different problems and critiques apart from its significant contributions.<sup>46</sup> Its major problems were; the membership of extremely human rights abuser States<sup>47</sup>; over politicization and its double standards and selectivity while reviewing the human rights situation of States<sup>48</sup>; regional alliance and block voting<sup>49</sup>; “the use of a procedural device to prevent debate on proposed actions against Countries and on controversial issues”<sup>50</sup>; its subordinate nature (it was subordinate to ECOSOC)<sup>51</sup> and the size of its members created a difficulty to make a decision and discussion regarding to “the limited meeting time of one annual of six weeks.”<sup>52</sup> Because of these weaknesses the executive director of Human Rights Watch, Kenneth Roth described the Commission as;<sup>53</sup>

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<sup>46</sup> Michael Scholswohl, “UN Human Rights Council: A New Kid On the Block”, International Law Students Association Quarterly, Vol.16, (2007), P.16.

<sup>47</sup> For example in 2005 Freedom House revealed that China, Cuba, Eritrea, Saudi Arabia, Sudan, and Zimbabwe are members of the Commission on Human Rights, representing nearly 11 percent of the 53 member states. see Terlingen Terlingen, “The human right council: a new era in UN human right work?”, onlinelibrary.wiley.com Vol. 21 Issue 2, (2007), P.169 and Allehone M.Abebe, cited above at note 44, P.743.

<sup>48</sup> Maximilan Spohr, cited above at note 16, Max Planck Yearbook of United Nations Law, Vol.14, (2010), P.173.

<sup>49</sup> Meghna Abraham, A new chapter for human rights: A handbook on issues of transition from the Commission on Human Rights to the Human Rights Council, (2006), P.11.

<sup>50</sup> Ibid.

<sup>51</sup> Allehone M.Abebe, cited above at note 44, P.743.

<sup>52</sup> Maximilan Spohr, cited above at note 48, Vol.14, P.173.

<sup>53</sup> Katherine Short, from commission to council: Has the United Nations Succeeded in Creating a Credible Human Rights Body”, SUR-International Journal on Human rights, Vol.9, (2008), P.148.

*A jury that includes murderers and rapists, or a police force run in large part by suspected murderers and rapists who are determined to stymie investigation of their crimes.*

Such flaws of the Commission make clear to the international community that they should create a new mechanism.

### **2.1.1 Transition**

A High Level Panel on Threats, Challenges and Change discovered in its report that, the Commission's capacity to perform its task of protecting human rights had been undermined through erosion of credibility and professionalism within it<sup>54</sup> and with problems of membership.<sup>55</sup> Hence, the High Level Panel pointed out that reforming the Commission is necessary to enable it to perform its mandate in a better way and to make human rights systems performance effective.<sup>56</sup> It has "proposed that member States of the Commission should designate prominent and experienced human rights figures as the heads of their delegation."<sup>57</sup> It has also proposed for the existence of an advisory council or panel with professional members that support the Commission<sup>58</sup> and for universal membership of the Commission.<sup>59</sup> It has also recommended for the preparation of annual report, which assesses the human rights situation of all countries in the world by High Commissioner "based on information stemming from the work of treaty bodies, special Mechanisms and other sources deemed appropriate by the High Commissioner."<sup>60</sup>

Koffi Anan in his report<sup>61</sup> recommended for replacement of the Commission by a smaller standing body, a HRC, members to be elected by the General Assembly's 2/3 majority vote.<sup>62</sup> Moreover, he said that:

*if the United Nation is to meet the expectations of men and women everywhere and indeed, if Organization is to take the cause of human rights as seriously as those of security and*

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<sup>54</sup> UNGA Resolution, Follow-up to the outcome of the Millennium Summit, A/5/59/565, 2 December 2004, Para.283.

<sup>55</sup> Id., Para. 285.

<sup>56</sup> Id., Para. 284.

<sup>57</sup> Id., Para. 286.

<sup>58</sup> Id., Para.287.

<sup>59</sup> Id., Para.285.

<sup>60</sup> Id., Para. 288.

<sup>61</sup> UN GA, In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, A/59/2005, 21 March 2005, Para. 182 and UN GA, Human Rights Council; Explanatory note by the Secretary-General, The Secretary-General's proposal, A/59/2005/Add.1, 23 May 2005, Para. 2.

<sup>62</sup> Id., Para. 183.



*development-then member states should agree to replace the Commission on Human Rights with a smaller standing Human Rights Council.*<sup>63</sup>

Then after at the World Summit, held in September 2005, States agreed for the establishment of a Human Rights Council as “Pursuant to our commitment to further strengthen the United Nations human rights machinery, we resolve to create a Human Rights Council.”<sup>64</sup>

Finally, the General Assembly has established the HRC in 2006 through resolution 60/251, by 170 votes in favor, four against (Israel, Marshal Islands, Palau and the USA) and three abstentions (Belarus, Iran and Venezuela) in replacing the Commission.<sup>65</sup> But the final version of the Human Right Council resembles neither the High Level Panel’s proposition for membership of all members of UN nor the Secretary General’s recommendation for the smaller standing body.<sup>66</sup> Rather it comes up with 47 states membership, which is lower than the Commission with six members. The General Assembly failed to provide clear and strict membership criteria.<sup>67</sup> But as a vantage point, it has stated that states should “take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments.”<sup>68</sup> The establishing resolution limits the period of membership into three years and prohibits the immediate re-election of sates for membership after two consecutive terms and it has also a suspension clause which empowered the General Assembly to suspend the right of membership of a member of a Council which commits gross and systematic violations of human rights.<sup>69</sup> Like its predecessor, the HRC is responsible for “promoting the protection of human rights, fostering international cooperation on human rights, providing capacity building assistance to states to help them meet their human rights obligations, and responding to specific violations of human rights.”<sup>70</sup> The most significant innovation of the new Council was the creation of a new UPR mechanism.<sup>71</sup> The HRC brought UPR to rectify the main deficiencies of

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<sup>63</sup> Ibid.

<sup>64</sup> UNGA, Resolution adopted by the General Assembly on 16 September 2005, A/RES/60/1 2005 World Summit Outcome, 24 October 2005, Para.157.

<sup>65</sup> Meghna Abraham, cited above at note 49, p.12.

<sup>66</sup> Meghna Abraham, Building the New Human Rights Council: Outcome and analysis of the institution-building year, (2007), P. 7.

<sup>67</sup> Ibid.

<sup>68</sup> General Assembly resolution 60/251, cited above at note 9, para.8.

<sup>69</sup> Id., Para. 7.

<sup>70</sup> Sarah Joseph and Joanna Kyriakakis, The United Nations and Human Rights, in RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW, (Sarah Joseph and Adam McBeth eds., 2010), P.10.

<sup>71</sup> Meghna Abraham, cited above at note 66, P.8 and UN GA Res 60/251, Cited above at note9, para. 5.(e).

the Commission. The UPR is considered as “the key determinant of whether the Human Rights Council represents an improvement over the Commission.”<sup>72</sup>

## 2.2 The Development of UPR Mechanism

The General Assembly resolution 60/251 tasked the HRC to establish and implement a new system of universal periodic review, which will subject all States, in its first year among other tasks. Paragraph 5(e) of the resolution states that:

*Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session*

The UPR as a UN monitoring mechanism reviews the overall human rights situation of all UN member States, by all UN member States<sup>73</sup> and Observer State (like Palestine). It has “great potential to promote and protect human rights in the darkest corner of the world.”<sup>74</sup> It has commenced on 7 April 2008<sup>75</sup> two years later after its establishment. Starting from its inception all UN member States have participated in the process.

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<sup>72</sup> Esther Theyskens, cited above at note 7, P.1.

<sup>73</sup> Hilary Charlesworth and Emma Larking, Introduction: The Regulatory Power of the Universal Periodic Review, in, HUMAN RIGHTS AND UNIVERSAL PERIODIC REVIEW; RITUALS AND RITUALISM, (Hilary Charlesworth and Emma Larking, eds., 2014) P.1.

<sup>74</sup> OHCHR, UPR Fact sheet, OHCHR 2008, available at [www.ohchr.org/EN/HRBodies/UPR/Documents/UPRFactSheet...](http://www.ohchr.org/EN/HRBodies/UPR/Documents/UPRFactSheet...), accessed on 28 June 2018, P.1.

<sup>75</sup> Nathalie Jeannin and Lauren Michaud (eds), Universal Periodic Review: An Ambivalent Exercise, report & recommendations April 2008 – December 2009, 24 December 2009, P.5.

## **2.3. Nature of UPR**

### **1. Periodicity**

As inferred from its nomenclature UPR is a periodical review mechanism. It reviews states in every four years in the first cycle and since the second cycle in every four years and a half.<sup>76</sup> Resolution number 5/1 on part C deals about “periodicity and order of review” and established the order of review. The periodicity feature is one, which UPR shared from treaty bodies.

### **2. Universality and equal treatment**

Unlike treaty bodies which ‘examine only those states that ratify a specific treaty’, UPR scrutinizes the human rights situations of all States in the world. UPR Mechanism assesses “the fulfillment by each State of its human rights obligations and commitments in a manner that ensures universality of coverage and equal treatment with respect to all States.”<sup>77</sup> In the selection of countries for review, fair geographic distribution between regional groups is made. Part C of Resolution 5/1 at number 6 stated that “the order of review should reflect the principles of universality and equal treatment.” The OHCHR report stated that “the universal periodic review represents an essential step in ensuring a universal application of human rights whereby all Members of the United Nations are reviewed in the same manner.”<sup>78</sup> From the very beginning, the UPR is formed with and draws its legitimacy from its universality and non-selective features.<sup>79</sup> The universality feature of UPR deals with the politicization and selectivity criteria of the Commission.<sup>80</sup>

### **3. Cooperative**

Achieving international cooperation “...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction” is one purpose of UN.<sup>81</sup> To this effect, resolution 60/251 marked the cooperative nature of the UPR as, “the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the

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<sup>76</sup> UNGA Resolution 65/281, cited above at note 22, Para. I(B)(3.)

<sup>77</sup> UN GA Res. 60/251, Cited above at note 9, para.5(e).

<sup>78</sup> UN, Report of the United Nations High Commissioner for Human Rights, General Assembly Official Records Sixty-second Session Supplement No. 36 (A/62/36), 2007, New York, Para.2.

<sup>79</sup> Hilary Charlesworth and Emma Larking, Cited above at note 73, P.30.

<sup>80</sup> Rosa Freedman, Cited above at note 19, Vol.29, P. 292.

<sup>81</sup> UN Charter, Art.1(3).

country concerned.”<sup>82</sup> But this provision didn’t clearly define the phrase “cooperative mechanism”. However, Felice D. Gaer has conceptualized it as “that decisions, if any, would be reached only with the voluntary participation of the state under review.”<sup>83</sup> This nature of UPR is considered as a dramatic step towards changing the subtleties of UN’s human rights bodies from their confrontational nature to a cooperative exercise.<sup>84</sup>

During the discussion on how country scrutiny would undertake, Ban Ki-moon stressed on the importance of a new 'culture of cooperation' and that 'dialogue and cooperation' must be the 'dictate' of the new Council.<sup>85</sup> In fact, cooperation is not unique to UPR; participation of States in treaty bodies through high-level officials is a manifestation of cooperation. But state reporting and measures to implement recommendations and norms of the treaties is not cooperation rather, compulsory compliance.<sup>86</sup> UPR encourages cooperation of states and reduction of confrontation.<sup>87</sup> Furthermore, the HRC resolution 16/21 also manifests the cooperative nature of UPR as:

*While the outcome of the review, as a cooperative mechanism, should be implemented primarily by the State concerned, States are encouraged to conduct broad consultations with all relevant stakeholders in this regard.*<sup>88</sup>

#### **4. Comprehensiveness**

UPR is a comprehensive process because it incorporates both legally binding and non-legally binding human rights instruments<sup>89</sup> and it reviews all civil and political rights, socio-economic rights and the right to development. The comprehensive features of UPR would improve the indivisibility nature of human rights.

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<sup>82</sup> UN GA Resolution 60/251, cited above at note 9, Para.5(e).

<sup>83</sup> Felice D. Gaer, “A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System”, Human Rights Law Review, Vol. 7 Issue 1 (2007), P.128.

<sup>84</sup> Id., P.130.

<sup>85</sup> Id., P.131.

<sup>86</sup> Id., P.129.

<sup>87</sup> Junxiang Mao and Xi Sheng, cited above at note 43, Vol.23, p.7.

<sup>88</sup> HRC Resolution, Review of the work and functioning of the Human Rights Council, A/HRC/RES/ 16/21, 12 April 2011, para.7.

<sup>89</sup> Elvira Domínguez Redondo, “The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session”, Chinese Journal of International Law, Vol. 7, No. 3, (2008)P.726.

## 5. Inclusive

The UPR process has space for other stakeholders. Even if the institutional building package stated that “be an intergovernmental process, United Nations Member-driven and action-oriented”,<sup>90</sup> consultation is undertaken with CSOs and other stakeholders in different stages of UPR. States are expected to consult and provide a room for the participation of relevant stakeholders in the preparation of the national report and in the implementation of UPR recommendations.<sup>91</sup> NHRIs are also allowed even to participate “immediately after the SuR during the adoption of the outcome of the review by the Council plenary.”<sup>92</sup> Furthermore, OHCHR’s summary<sup>93</sup> and compilation<sup>94</sup> manifest its inclusiveness. Generally, UPR needs and provides space for the engagement of UN Agencies, NHRIs, and CSOs in all stages of the process in addition to the main actor (the state), which makes it inclusive.<sup>95</sup>

## 6. Voluntary commitments

As stated in HRC Resolution 5/11 para.1 (d) voluntary commitments or pledges made by States is one basis of the review. These are commitments undertaken by States to make reforms on certain issues for strengthening and improving human rights. States may make such a commitment at the beginning of the review, during the interactive dialogue, or after the interactive dialogue.<sup>96</sup>

## 2.4 Process of UPR

UPR as a state-driven process, they act as parties and judges of the process.<sup>97</sup> It enables them to disclose actions taken by themselves for protecting human rights and for the fulfillment of their human rights obligation.<sup>98</sup> It also provides an opportunity to grasp good practices and recommendations from the others, to make commitments and to seek support. The review is taken place at Geneva, Switzerland where the HRC has resided. Hence, all states are subject to

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<sup>90</sup> HRC Resolution 5/1, cited above at note 17, Para. 3(d).

<sup>91</sup> Id., Para. 15(a) and HRC Resolution 16/21, cited above at note 88, Paras. 8 and 17.

<sup>92</sup> HRC Resolution 16/21, Para. 13.

<sup>93</sup> Id., Para. 9.

<sup>94</sup> HRC Resolution 5/1, cited above at note 17, Para. 15(c).

<sup>95</sup> Kate Gilmore, Luis Mora, Alfonso Barraganes, and Ida Krogh Mikkelsen, “The Universal Periodic Review: A Platform for Dialogue, Accountability, and Change on Sexual and Reproductive Health and Rights”, Health and Human Rights journal, Vol. 17 (2), (2015), p.168.

<sup>96</sup> Edward R. McMahon, cited above at note 40, P.10.

<sup>97</sup> Jarvia Maitya, “Reposting the International Human Right Protection System: The UN Human Rights Council”, Commonwealth Law Bulletin, Vol. 36, (2010), P.321.

<sup>98</sup> Ibid.

review, Resolution 5/1 established the order of review. HRC member states will be reviewed first. Even from members, the initial members will be reviewed first. Then observer states will be reviewed. Both in HRC member States and in observer States the country to be reviewed first is chosen through drawing lots from each regional group. Then for the others, English alphabetical order will be applied unless another country is volunteer to be reviewed first.<sup>99</sup>

The review is conducted by the WG, which comprises all the 47 members of the HRC and chaired by the president of the council. The review takes the form of an interactive dialogue between the SuR and the member and observer States of the HRC.<sup>100</sup> Each review is facilitated by “Troika” (a group of three rapporteurs selected by the drawing of lots among the members of the Council and from different Regional Groups).<sup>101</sup> In addition, the Troika receives all advance questions and transmits them to the SuR.<sup>102</sup> The Working Group and observer States of the HRC scrutinize the human rights situations of the SuR through juxtaposing information provided in State report, OHCHR’s summary of stakeholders information and OHCHR’s compilation of UN treaty bodies and other UN information with the State’s duty in UN Charter, UDHR, human rights instruments to which it is a party, voluntary pledge by the State and the applicable IHL.<sup>103</sup>

## **2.5 Stages of the UPR**

UPR is not a straightforward process; rather it passes through various steps. The role played by different actors also varies from step to step.

### **1) Documentation**

The first step of the UPR process involves the preparation of documents of the national report, compilation, and summary of OHCHR.<sup>104</sup> Both national report and OHCHR’s compilation and summary should be submitted six weeks before the interactive dialogue phase.<sup>105</sup>

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<sup>99</sup> HRC Resolution 5/1, Cited above at note 17, Para.12.

<sup>100</sup> The Universal Periodic Review, available at <http://www.ohchr.org/civilsocietyhandbook/>, Visited on 12 June 2018, p.137.

<sup>101</sup> HRC Resolution 5/1, Cited above at note 17, Para. 18(d).

<sup>102</sup> UPR Info, The Civil Society Compendium: A comprehensive guide for Civil Society Organisations engaging in the Universal Periodic Review, (2017), P.9.

<sup>103</sup> HRC Resolution 5/1, Cited above at note 17, Paras, 15,1 and 2.

<sup>104</sup> Id., Para.15.

<sup>105</sup> Id., Para.17.

### **A) State Report**

As stated under paragraph 15 (a) of resolution 5/1 states are required to submit a national report to HRC which could be written or orally. The written report should not exceed a maximum of 20 pages.<sup>106</sup> The report should provide information about the method used in the preparation of the report, background information about normative and institutional framework for promotion and protection of human rights, achievements and challenges of a State on the protection of human rights, national priorities and expectation of a State on capacity building and technical assistance.<sup>107</sup> While in the second and the subsequent cycle of UPR, the national report should focus on the implementation of the previous UPR recommendations and on the new challenges faced by the state.<sup>108</sup> During preparing national report, states are required to intensively consult stakeholders like CSOs, NHRIs and experts to assure the inclusiveness of the UPR process.<sup>109</sup> The resolution failed to show the time of consulting with stakeholders at this stage. However, Christina Szurle suggested that States should undertake public consultations one year before their review is scheduled.<sup>110</sup> Nevertheless, Theodor Rathgeber argued for the undertaking of consultation any time before completing the report.<sup>111</sup> Consultation with stakeholders aimed at assuring the national report to depict the actual and comprehensive picture of the human rights situation in the country, the State's effort to progressively improve it and that the proposed recommendations to improve the situations are significant and relevant.<sup>112</sup>

### **B) OHCHR's Compilation**

OHCHR's compilation of UN information will contain the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official UN documents. It should be a maximum of 10 pages.

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<sup>106</sup> Id., Para 15 (a).

<sup>107</sup> HRC, General Guidelines for the Preparation of Information under the Universal Periodic Review, (27 September 2007) Un Doc A/HRC/6/102, paras. A, B, D, E and F).

<sup>108</sup> HRC Resolution 16/21, Cited above at note 88, Paras. 6 and 7 and HRC Resolution, Report of the Human Rights Council on its seventh organizational meeting, A/HRC/OM/7/1, 4 April 2013, Para.2.

<sup>109</sup> HRC Resolution 5/1, Cited above at note 17, Para. 3(m).

<sup>110</sup> Christina Szurle, cited above at note 41, P.76.

<sup>111</sup> Theodor Rathgeber, The HRC Universal Periodic Review: A preliminary assessment, FES Briefing Paper 6 (2008), [www.upr-info.org/sites/default/files/general...](http://www.upr-info.org/sites/default/files/general...) Visited on 12 June 2018, P.2

<sup>112</sup> The Danish Institute for Human Rights, Universal Periodic Review First Cycle Reporting Methodologies From The Position Of The State, Civil Society And National Human Rights Institutions, (2010), p.15.

### **C) OHCHR's Summary**

OHCHR also prepare a summary of reliable and credible information of relevant stakeholders like “NGOs, National Human Rights Institutions, human rights defenders, academic institutions, research institutes, regional organization, as well as civil society representatives.”<sup>113</sup>

### **2. The Interactive Dialogue Stage**

Based on the above stated three documents the human right situations of the SuR will be scrutinized by the HRC Working Group.<sup>114</sup> The interactive dialogue is always commenced with the presentation of the SuR on the national report and sovereign response to advanced written questions of States that are clustered by the troika and submitted to it through the Secretariat before 10 days of the review.<sup>115</sup> The dialogue between the SuR and members and observers of the HRC was 3 hours long in the first UPR cycle while it is 3 and a half hours long in the second and subsequent cycles.

Out of the three and a half hours period, the SuR is given 70 minutes for presentation, response and to say final remark at the end of the presentation.<sup>116</sup> Beside to the SuR members of the HRC and observer states<sup>117</sup> are allowed to speak in the interactive dialogue. The remaining 140 minutes is allocated to them for asking questions and pass recommendations.<sup>118</sup> If the registered numbers of speakers can be accommodated to 140 minutes, three minutes for HRC member States and two minutes to observer States is allocated.<sup>119</sup> But if it is impossible to accommodate, all speakers are required to speak within two minutes and if it is impossible again, the time will be divided in a way which provides time for all registered speakers.<sup>120</sup>

### **3) Adoptions of the Out-Come Document**

The HRC's UPR sessions in Geneva, take place in two fora: the regular HRC plenary session and the WG session.<sup>121</sup> The WG session ends-up with informal or preliminary adoption of the report. Whereas, the plenary session ends-up with the adoption of the formal and the final

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<sup>113</sup> Michal Davala, Universal Periodic Review: Effective Monitoring Of Human Rights Standards?, (2009), P.8.

<sup>114</sup> HRC Resolution 5/1 cited above at note 24, Par.18(a).

<sup>115</sup> HRC, Modalities and practices for the universal periodic review process, 8/PRST/1., president on the Council's statement on 9 April 2008, paras, 7(a), 5 and 2.

<sup>116</sup> HRC Resolution 17/119, cited above at note 24, para.3.

<sup>117</sup> Theodor Rathgeber, cited above at note 111, p.3.

<sup>118</sup> Esther Theyskens, cited above at note 7, P.31.

<sup>119</sup> HRC Resolution 17/119, cited above at note 24, para.5.

<sup>120</sup> Id., para.6 and 7.

<sup>121</sup> Anette Faye Jacobson, Spot on Universal Periodic Review: an Introduction, (2010), P.9.



outcome document. At the end of the interactive dialogue, the troika is required to prepare the outcome report of the WG with the assistance of the Secretariat and with the full involvement of the SuR<sup>122</sup> within 48 hours.<sup>123</sup> The report of the WG consists of a summary of the interactive dialogue and should include questions of RSs, recommendations and/conclusions of speakers, the accepted and noted recommendations<sup>124</sup> and pledges and reasons raised by the reviewed State in accepting and noting recommendations.<sup>125</sup> The WG will adopt this report within two weeks of the review, but not sooner than forty-eight hours after the review, providing an opportunity for the reviewed State to modify the report within two weeks.<sup>126</sup>

As presidential statement 8/1 of the HRC stated, “the review process starts at WG level and ends with the adoption of the outcome of the review by the Council at its plenary session.”<sup>127</sup> Therefore, the outcome document of the WG is officially adopted by the plenary of the Council in its next session, around four months later from the report of the WG.<sup>128</sup> One hour is allocated for HRC’s plenary session. From this 20 minutes is allocated for the SuR to make formal statements and to reply for questions and recommendations; 20 minutes for other Countries to speak their opinion on the outcome document (4 minutes for HRC members and 3 minutes for observer States) and the remaining 20 minutes is allocated for relevant stakeholders to make general comments (2 minutes is given for each CSOs).<sup>129</sup> Separate time is provided for the sake of providing enough time for interactive dialogue and for other tasks and functions of the HRC in its plenary session and to provide additional time for the SuR to consider and decide on the recommendations proposed in the WG before the final comments are made.<sup>130</sup>

The plenary session’s outcome document include the WG out-come document, the SuR’s views and answers to recommendations and/conclusions and its voluntary commitment made before the

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<sup>122</sup> HRC Resolution 8/1 cited above at note 115, Para.8 and 9.

<sup>123</sup> Human Rights Project at Urban Justice Center, Cited above at note 19, p.12.

<sup>124</sup> Id., Para. 8 and 10.

<sup>125</sup> Id., Para 11.

<sup>126</sup> Christina Szurle, cited above at note 41, P.80.

<sup>127</sup> HRC Resolution 8/1 cited above at note 115, Para.12.

<sup>128</sup> Human Rights Project, cited above at note 19, P.10.

<sup>129</sup> Id., P.13.

<sup>130</sup> A.F. Jacobson, cited above at note 121, P.9-10.

adoption of the document in plenary session, a summary of views of the SuR and members and observer States of the HRC and the general comments of the relevant stakeholders.<sup>131</sup>

#### **4) Implementations and Follow-up**

This is the final stage of the UPR process. For the effectiveness of the UPR mechanism, its recommendations must be implemented and the HRC requires the subsequent reviews to focus on the implementation of the preceding outcome.<sup>132</sup> Implementation of the accepted UPR recommendations primarily lies on the States.<sup>133</sup> Even though States are required to be reviewed within 4 and a half years interval in the second and subsequent UPR cycles the time left for implementation is approximately three years.<sup>134</sup> To implement the recommendations the States undertake activities like disseminating the adopted recommendations and its reaction towards the recommendations, prepare policy papers or reform programs and NHRAP which make up the adopted recommendations, with broad consultation and with an independent body to monitor it.<sup>135</sup> They also “establish mechanisms to monitor the implementation of recommendations and submit regular updates to the Human Rights Council.”<sup>136</sup>

Other stakeholders have also role to the implementation by raising awareness.<sup>137</sup> Publishing the accepted and noted recommendations along with their reasoning and the voluntary commitments, using the media to put pressure on the government to fulfill its UPR obligation, organizing meeting to discuss on recommendations, developing a strategy for monitoring the implementation (Implementation Strategy and Matrix (IM) which show the key actors and responsibilities for implementation of recommendations) and taking part in implementation and organizing webcasting to inform CSOs and others are also means for other stakeholders to involve on implementation stage.<sup>138</sup> But if CSOs, NHRI and other independent stakeholders are not invited to take part, “they can submit written comments or alternative suggestions and

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<sup>131</sup> HRC Resolution 8/1 cited above at note 115, Paras. 13 and 14 and HRC, Follow-up to President's statement 8/1, PRST/9/2, president of the council statement on 24 September, Para.(a).

<sup>132</sup> HRC Resolution 5/1, cited above at note 17, Para.34.

<sup>133</sup> Id., Para. 33 and HRC Resolution 16/21, cited above at note 88, Para.17.

<sup>134</sup> The Danish Institute for Human Rights, cited above at note 112, P.24.

<sup>135</sup> Id., P.24-26.

<sup>136</sup> Christina Szurle, cited above at note 41, P.82.

<sup>137</sup> HRC Resolution 5/1, cited above at note 24, Para.33 and The Human Rights Commission of Malaysia, All about the Universal Periodic Review (UPR), (2011), P.7.

<sup>138</sup> Human Rights Project at the Urban Justice Center, Cited above at note 19 p. 25.

encourage the state to conduct open hearing meetings.”<sup>139</sup> The international Community also contributes for implementation of UPR by assisting weak countries in capacity-building and technical assistance.<sup>140</sup>

OHCHR also facilitate the implementation of recommendations in various ways.<sup>141</sup> The HRC also determine if and when a specific follow-up mechanism is required at the time considering the outcome of the review.<sup>142</sup> Furthermore, States are encouraged to submit a mid-term follow-up report on the implementation status of recommendation to the HRC voluntarily.<sup>143</sup>

## **2.6 The Role of Other Stakeholders in UPR**

Other-stakeholders take part in the UPR process both nationally and internationally. “UPR is senseless without the meaningful engagement of all relevant social actors at the country level, who are fundamental in ensuring the effective enjoyment of human rights.”<sup>144</sup> As per the OHCHR, other stakeholders are CSOs, NHRIs, human rights defenders, academic institutions, ombudspersons and regional organizations.<sup>145</sup> This section, however, focuses only on CSOs and NHRIs.

### **A) Civil Society Organizations (CSOs)**

The effective and meaningful participation of CSOs is essential to enable the UPR Mechanism to fulfill its “great potential to promote and protect human rights in the darkest corner of the world.”<sup>146</sup> CSOs take part in all stage of UPR.<sup>147</sup>

I) In Documentation Stage: CSOs take part in the preparation of national and their own report. Besides, after the documentation stage but one or two months before the interactive dialogue,

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<sup>139</sup> The Danish Institute for Human Rights, cited above at note 112, P. 45.

<sup>140</sup> HRC Resolution 5/1, cited above at note 17, Para. 36.

<sup>141</sup> Christina Szurle, cited above at note 41, P. 85.

<sup>142</sup> HRC Resolution 5/1, cited above at note 17, Para. 37.

<sup>143</sup> HRC Resolution 16/21, cited above at note 88, Para. 18.

<sup>144</sup> Jose Parra, Beyond the Procedure: The Universal Periodic Review as a Catalyst for Public Debate on Human Rights, (2006), P.5.

<sup>145</sup> UPR Info, cited above at note 102, P. 11.

<sup>146</sup> Ben Schokmn and Phil Lynch, Effective NGO Engagement with the Universal Periodic Review , in, HUMAN RIGHTS AND UNIVERSAL PERIODIC REVIEW; RITUALS AND RITUALISM (Hilary Charlesworth and Emma Larking, (eds), 2014).

<sup>147</sup> HRC Resolution 5/1, cited above at note 17, 3(m).

they involve in “lobbying RSs through their embassies in the country of the SuR and through their permanent missions in Geneva.”<sup>148</sup>

II) In the Interactive Dialogue stage: Only CSOs with ECOSOC status can attend the interactive dialogue. Attending the review helps CSOs to display the review through social media, make contact with the RSs and SuR and to influence them and to deal with other CSOs and other stakeholders.<sup>149</sup> CSOs can influence the acceptance of pending and rejected recommendations by dealing with the SuR, NHRIs, development agencies and embassies in the period between the preliminary adoption of the outcome document by Working Group and final adoption in HRC plenary session.<sup>150</sup>

III) During the HRC Adoption: CSOs with ECOSOC consultative status can attend and make oral statement on the plenary session either physically or by sending video statement.<sup>151</sup> But if CSOs have not attained such status, they can deal with CSOs which have attained the status to convey a message.<sup>152</sup> Here CSOs may “challenge the responses given by the SuR to questions and recommendations.”<sup>153</sup> Finally, they can also engage in implementation and follow-up stage as described above.

#### **B) National Human Rights Institutions (NHRIs)**

NHRIs as independent bodies have a pivotal role in all stages of UPR.<sup>154</sup> They serve as inter-mediator to facilitate the dialogue between the government and CSOs, assist all actors of UPR in preparation of reports and in implementation and follow-up of UPR recommendations, and suggest recommendations for RSs.<sup>155</sup> They have to be consulted and take part in the preparation of a national report. NHRIs are also permitted to submit their own report, which will be included

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<sup>148</sup> James Jolley, An Academic Study of the Universal Periodic Review (UPR) from the perspective of Children's Right, (2012), P.20.

<sup>149</sup> Id., P.29.

<sup>150</sup> UPR Info, Cited above at note 36, P. 4.

<sup>151</sup> Id., P. 32.

<sup>152</sup> A.F. Jacobson, cited above at note 121, P.25.

<sup>153</sup> UPR Info, cited above at note 102, P.33.

<sup>154</sup> HRC Resolution 5/1, Cited above at note 24, Para.3(m).

<sup>155</sup> UPR Info, cited above at note 102, P.12.

in OHCHR summary of stakeholders report.<sup>156</sup> They can also engage in a plenary session of HRC<sup>157</sup> and in follow-up and implementation of recommendations.<sup>158</sup>

## **2.7 The Role of UPR in the Domestic Enforcement of Human Rights**

The utilization of international human rights mechanisms aims at bringing change and development in the national context.<sup>159</sup> The ultimate objective of the UPR Mechanism is to bring improvement in the human rights situation of a country on the ground.<sup>160</sup> The second and subsequent UPR cycles should focus on the implementation of recommendations and the development of the human rights situation on the ground.<sup>161</sup> Through the implementation of its recommendations, UPR has a great potential to bring development in human rights situations of states on the ground.<sup>162</sup> State's action like "national and international legal measures, national action plans, awareness-raising efforts, and the creation of new institutions to work on the different human rights issues were all part of the effort to implement the recommendations received."<sup>163</sup>

According to UPR Info's "impact of UPR on the Ground" study of the mid-term implementation status of first UPR cycle recommendations, of the "11,527 commented recommendations, 2,068 (18 percent) recommendations were fully implemented at mid-term, 3,428 (30 percent) were partially implemented and 5,602 (48 percent) were not implemented at mid-term."<sup>164</sup> But the 429 (4%) of the recommendations were not assessed in the study due to lack of information.<sup>165</sup> Hence, the study concluded that the fact that 48% of the recommendations either fully or partly implemented indicated that UPR brought an impact on the ground.<sup>166</sup> However, others argue that the implementation of recommendation solely is not the correct test of the effectiveness of UPR. Rather "the success of the mechanisms must be measured against its

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<sup>156</sup> OHCHR, National Mechanisms For Reporting And Follow-Up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms, (2016), P.4 and HRC Resolution 5/1, para.15(c).

<sup>157</sup> HRC Resolution 16/21, Cited above at note 88, Para.13.

<sup>158</sup> Christoffer Badse, The Role Of National Human Rights Institutions, in, UNIVERSAL PERIODIC REVIEW - FIRST CYCLE REPORTING METHODOLOGIES FROM THE POSITION OF THE STATE, CIVIL SOCIETY AND NATIONAL HUMAN RIGHTS INSTITUTIONS, (The Danish Institute for Human Rights, 2011), P.48.

<sup>159</sup> José Parra, cited above at note 144, P.9.

<sup>160</sup> HRC Resolution 5/1, cited above at note 17, Para.4 (a).

<sup>161</sup> HRC Resolution 16/21, Cited above at note 88, Para.,6.

<sup>162</sup> A report of IBAHRI, cited above at note 28, P.4.

<sup>163</sup> UPR Info, Beyond promises: The Impact of UPR on the Ground, (2014), P.5

<sup>164</sup> Id., P.17.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

raison d'être: the actual impact that implemented recommendations have on improving the human rights situation on the ground.”<sup>167</sup> This one needs the impact of UPR on the development of human rights in each States.

## **2.8 Achievements and Shortcomings of UPR Mechanism**

### **2.8.1 Achievements**

In the previous two cycles, UPR maintains 100% participation of all UN member States, “with 60% of those States being represented at the Ministerial level during the adoption of second cycle reports.”<sup>168</sup> States representation with high profile delegates and proactively participated in the dialogue shows the seriousness of their attitude towards the Mechanism.<sup>169</sup> The engagement of all States in the process assures the review of States, which are not a party to treaty bodies or not submit report.<sup>170</sup> Furthermore, it has practically assured the ‘universality, interdependence, indivisibility and interrelatedness of all human rights.’<sup>171</sup> It avoids selectivity by subjecting all States to scrutiny with the same standard and by giving the same amount of time in interactive dialogue.<sup>172</sup> The fact that States have around 3 years to implement recommendations and the second and subsequent review is focused on implementation of the previous review has the “potential of addressing many human rights issues more quickly than has happened in the past.”<sup>173</sup> Ratification of various treaties by member States<sup>174</sup> and sharing of best practices among the States and other stakeholders is also the achievement of UPR Mechanism.<sup>175</sup> The holistic nature of UPR provides a better opportunity for coordination of action, recommendations, and improvement of human rights on the ground.<sup>176</sup>

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<sup>167</sup> UPR Info, cited above at not 39, P.1.

<sup>168</sup> URG, Event Out-Come Report, The Universal Periodic review: Sharing National Experiences, available at <https://www.universal-rights.org/wp-content/uploads/2015/07/UPR-17-July-side-event-draft-report-1.pdf> Accessed on 21May, 2017, P.4.

<sup>169</sup> UPR Info, Analytical Assessment of Universal Periodic Review 2008-2010, (2010), p. 11

<sup>170</sup> Ibid

<sup>171</sup> Ibid, and HRC Resolution 5/1, Para 3(a)

<sup>172</sup> James Jolley, cited above at note 148, P. 45.

<sup>173</sup> Id., P. 46.

<sup>174</sup> Katherine Short, “From Commission to Council: has the United Nations succeeded in creating a credible human rights body?”, SciELO - Scientific Electronic Library Online, vol.5(9), (2008), available on <http://dx.doi.org/10.1590/S1806-64452008000200008> visited on 26 June 2018, P.10-11.

<sup>175</sup> HRC Resolution 5/1, Para. 4(d).

<sup>176</sup> UPR Info, Cited above at note 169, P.13.

### 2.8.2 Shortcomings

The State driven nature of UPR may lead to “undesirable politicization and thereby weakens the credibility of the Council.”<sup>177</sup> This is manifested through the practice of regional voting, mutual praise rather than scrutinizing human rights abuses of the SuR, and lack of honest questioning<sup>178</sup> and the speaking time is frequently taken by such states. The time limit for speakers in interactive dialogue hinders RSs to express their views or concerns about the SuR.<sup>179</sup> The high number of recommendations for the SuR creates confusion, regarding the implementation of recommendations and measures to be taken for implementation. It also causes distortion in assessing the number of accepted and implemented recommendations. This may ultimately brought discouragement in economically poor countries to participate and cooperate with UPR.<sup>180</sup>

The low level of specific and action-oriented recommendations (only 31% in the first cycle and 39% in the second cycle)<sup>181</sup> and rejection of recommendations without appropriate reasons deter the effectiveness of the UPR.<sup>182</sup> Additionally, weak troika,<sup>183</sup> only some RSs are following-up the implementation of their recommendations and most of the states are reluctant to submit the mid-term report.<sup>184</sup> The absence of financial and technical support for CSOs within the UPR Mechanism is also another shortcoming of UPR.<sup>185</sup> The effectiveness of UPR is also challenged by lack of genuine political will in the government; absence of knowledge about UPR process among CSOs, NHRIs and the government itself; lack of media coverage and absence or weakness of domestic institutions responsible for protecting human rights.<sup>186</sup> Limited space for other stakeholders is also another weakness of the UPR Mechanism.

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<sup>177</sup> Katherine Short, cited above at note 174, P.10-11.

<sup>178</sup> Is The Mechanism of Universal Periodic review overrated? a critical analysis of the functioning of universal periodic review in the context of addressing human rights issues, available at [lawmantra.co.in/is-the-mechanism-of-universal-periodic...](http://lawmantra.co.in/is-the-mechanism-of-universal-periodic...) accessed on 5 July 2018.

<sup>179</sup> UPR Info, cited above at note 169, P.13.

<sup>181</sup> UPR Info, cited above at note 39, P.1.

<sup>182</sup> UPR Info, cited above at note 169, P. 14-16.

<sup>183</sup> Id., P.17-18.

<sup>184</sup> UPR Info, Universal periodic Review: On the Road to Implementation, (2012), P.61.

<sup>185</sup> UPR Info, cited above at note 39, P.IV.

<sup>186</sup> José Parra, cited above at note 144, P.63.

## CHAPTER THREE

### THE PRACTICE OF UPR IN ETHIOPIA

This chapter discusses the positions of Ethiopia on HRC and its UPR Mechanism and investigates the existing institutional and legal arrangement for reporting and monitoring implementation of UPR recommendation. It also analyzes Ethiopia's UPR national reports and recommendations, engagement of other stakeholders, in particular, domestic human rights CSOs and EHRC, and HPR in the UPR process.

#### 3.1 Ethiopia's Approach to HRC and UPR

Ethiopia argued during the negotiations of the institution-building text that the UPR should provide the necessary space for an interaction between the global and regional human rights systems.<sup>187</sup> But such an argument was not considered and accepted. Ethiopia didn't have a different and separate position from African group both on HRC and UPR.<sup>188</sup> Therefore, the following arguments and positions raised by African group could be traced to Ethiopia. From the outset, all African countries voted for the adoption of the resolution creating the HRC on 15 March 2006.<sup>189</sup>

African States were active participants both in the negotiation process of UN GA resolution 60/251, which finally adopted the HRC in New York, and in institution building text, resolution 5/11 in Geneva.<sup>190</sup> African group brought a resolution, which was supported by all members of the Council belonging to the African Group, almost all Asian States, and by Brazil and Ecuador, for the review of the Commission's special procedure Manual and to draft code of conduct by the Working Group.<sup>191</sup> African Group also argued that "NGO participation in the interactive dialogues should be seen as an exception and that there was no guarantee that this would be continued in future sessions."<sup>192</sup> Furthermore, Takele stated that through "active involvement in

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<sup>187</sup> Allehone M. Abebe, cited above at note 44, P.755.

<sup>188</sup> Interview with Allehone Mulugeta, the then First Secretary at the Permanent Mission of Ethiopia in Geneva, September 10, 2018.

<sup>189</sup> Meghna Abraham, cited above at note 49, P.12.

<sup>190</sup> Obonye Jonas, "Reflections on the Practices and Experiences of African States in the African Peer Review Mechanism (APRM) and the Universal Periodic Review Mechanism (UPR): A Human Rights Perspective", *Comparative and International Law Journal of Southern Africa*, Vol.45, Issue3,(2012), P.436.

<sup>191</sup> Meghna Abraham, cited above at note 66, P.9.

<sup>192</sup> Id, P.14



the formative stage of UPR and drafting of its modus operandi” they have influenced the rule and procedures of UPR to serve purposes of ritualism.<sup>193</sup> They have also strongly opposed the idea of establishing a stringent procedure for guarantying the active involvement of CSOs in the preparation of the national report and interactive dialogue stage of UPR to shield from open criticism with CSOs.<sup>194</sup> African group also lobbied for state-driven nature of UPR.<sup>195</sup> Moreover, Egypt on behalf of African group argued for attribution of recommendations for RSs.<sup>196</sup>

### 3.2 Reporting Mechanism in Ethiopia

States duties before international human rights mechanism evolve as a result of the development of new human rights systems regionally and globally. Hence, to meet their obligation of reporting and implementing recommendations or decisions emanating from the regional and global human rights systems, many states develop a new type of government structure called National Mechanism for Reporting and Follow-up (NMRF). NMRF is a standing permanent government structure with a mandate to coordinate and prepare reports to and engage with the global and regional human rights mechanisms; coordinate and track national follow-up and implementation of recommendations or decisions or concluding observations of these mechanisms.<sup>197</sup> It performs these functions in coordination with various government institutions from three wings of the government and in consultation with NHRIs and CSOs. NMRF is established with parliamentary legislation or executive regulation or with policy documents and can be formed within one ministry (for example within MoJ or MoFA) or it can be an inter-ministerial or separate institution.<sup>198</sup> NMRF is required to have engagement, coordination, consultation, and information management capacities.<sup>199</sup> As Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights, stated, states are making public commitment to

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<sup>193</sup> Takele Soboka Bulto, *Africa’s engagement with the Universal Periodic Review: commitment or capitulation?*, in HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW RITUAL AND RITUALISM ( Hilary Charlesworth and Emma Larking (eds), Cambridge University Press, 2015 ) P.248.

<sup>194</sup> Id., p. 249.

<sup>195</sup> Id. P. 252.

<sup>196</sup> Allhone Mulugeta, cited above at note 12, Vol.9, P.16

<sup>197</sup> UN OHCHR, *National Mechanisms for Reporting and Follow-up: A Practical Guide To Effective State Engagement With International Human Rights Mechanisms*, (2016), p.1, 2, 4, and 5.

<sup>198</sup> UN OHCHR, *National Mechanisms for Reporting and Follow-up: Briefing for UPR delegations*, available at <https://www.universal-rights.org/wp-content/uploads/2017/03/OHCHR-briefing-NMRFs-1.pdf> accessed on 23 September 2018.

<sup>199</sup> Ibid.

establish such mechanism especially in the context of UPR.<sup>200</sup> In order to submit reports without delay through fulfilling its standard quality, the existence of a strong institutional mechanism for reporting is crucial.<sup>201</sup>

NMRF structure is not established in Ethiopia until the writing of this paper. But previously the preparations of national reports and “submission of them to the appropriate international and regional bodies”, which includes a national report to UPR, was the mandate of MoFA.<sup>202</sup> However, the first UPR national report was prepared within a system established for the preparation of the overdue treaty reports entitled “Implementation of Reporting Obligation under International Human Rights Instruments Ratified by Ethiopia”<sup>203</sup> with the assistance of OHCHR-EARO.<sup>204</sup> To carry out this obligation Legal Expert Committee, Drafting Committee, Ad-hoc National Inter-Ministerial Committee (composed representative of various government organs under the project) and focal persons in various institutions were established.<sup>205</sup> Legal experts were five individuals and who are experts in the area of human rights.<sup>206</sup> The Drafting Committee was composed of consultants from the legal professionals and constituted by MoFA.<sup>207</sup> Focal persons at various relevant federal government institutions and regional bureaus; were responsible for coordination and supply of data required for the reports.<sup>208</sup> Therefore, the first national report benefited from both the information and data collected for these overdue treaty reports and ad-hoc institutional setup for the same purpose.

Generally, three main bodies were involved in the preparation of the second national UPR report. National Human Rights Steering Committee (NHRSC), which was composed of Federal Government Communication Affairs Office, Ministry of Finance and Economic Cooperation, Ministry of Women, Children and Youth Affairs, Ministry of Federal Affairs, Ministry of Justice, EHRC, Ministry of Labor and Social-Affairs and the coordinator, Ministry of Foreign

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<sup>200</sup> UN OHCHR, cited above at note 197, p. iV.

<sup>201</sup> Mizanie A. Tadesse, cited above at note 45, Vol.28, P.31.

<sup>202</sup> Foreign Service Proclamation, Proclamation No. 790, *Fed. Neg. Gaz.*, Year 22, No. 52, Art. 3(7), (2013).

<sup>203</sup> Wondemagegn Tadesse, “Ethiopia’s Human Rights Reporting: Opportunities and Challenges”, Human Rights Series, Vol. 1, Year I P.222.

<sup>204</sup> Ethiopia’s First cycle Report, cited above at note 29, Para.1.

<sup>205</sup> Ibid.

<sup>206</sup> Wondemagegn Tadesse, cited above at note 203, Vol.1, P222.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

Affairs, served as the lead in the preparation process<sup>209</sup> and follow-ups the whole preparation process.<sup>210</sup> The NHRSC works with the NHRAP Office in the Ministry of Justice to get relevant evidence and updated information. The other body was the Drafting Team that was accountable to the NHRSC and responsible for collecting information/data from different stakeholders, arranging information in a way comfortable for the report and preparation the draft of the report.<sup>211</sup> The team consisted of at least six legal expertise and other professionals (like, economist or statistics) who were either contractually hired for this purpose or appointed from government institutions.<sup>212</sup> The third body was, focal persons appointed from 40 government institutions and were responsible for the collection of information and evidence as per the instruction and regulation of the NHRSC and the Drafting Team.<sup>213</sup> The concept note also stated that Urban Administration's and Regional State's Finance and Economic Cooperation Bureau or Justice Bureau will serve as coordinator of the focal persons.<sup>214</sup> The role of MoFA in the preparation of the two national reports is not clear in the report.

However, starting from May 2016, the above-stated mandate of MoFA is taken and given for Federal Attorney General. As per article 6(8)(e) of Proclamation No. 943/2016,<sup>215</sup> the Attorney General is mandated to prepare national reports and follow-up the implementation of treaties and recommendations. Ethiopia has timely submitted both of its national report to the HRC.

### **3.3 Do the reports conform to the Guidelines?**

State's national report should provide information about by whom the national report was prepared, whether consultations were undertaken, how and who was participated in those national consultations and the summary of the outcome of the consultations on the methodology section.<sup>216</sup> Both of Ethiopia's previous UPR national reports have a specific section for a methodology, which explains who was in charge of preparing the report and also state the

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<sup>209</sup> MoFA, Concept note on preparation of national report for II UPR and 5<sup>th</sup> and 6<sup>th</sup> report for African Charter on Human and Peoples Right and Interview with Ephrem Bizuayehu, formerly Ministry Councilor in Genève Mission and the incumbent Cabinet Advisory of MoFA, September 15, 2018.

<sup>210</sup> MoFA, cited above at note 209.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Federal Attorney General Establishment Proclamation, Proclamation No. 943, *Fed. Neg. Gaz.* Year 22, No. 62, (2016).

<sup>216</sup> UPR Info, Identifying best practices: An Analysis of National Reports, 2015, P.7-8.

consultation with CSOs is undertaken. However, both reports did not clearly show when the consultation took place, how the government notified other stakeholders to the consultation conference and the name and the number of participants. Moreover, it did not explain the drafting process of the report and the outcome of consultations with CSOs.

Both reports have specific sections for the legal and institutional framework. In the second and subsequent national report, law and institution adopted/established before the first review should not be mentioned, rather the report should emphasize on the development of legal and institutional framework since from the previous review.<sup>217</sup> Ethiopia's second national report encompasses information about new developments both on legal and institutional framework. But it also comprehends information about the 1992 constitution, the Revised Family code, and the Criminal code and Federal Ethics and Anti-Corruption Commission which are enacted and established before the previous review and stated in the previous national report.<sup>218</sup> The national report should not be a simple summary of the normative and institutional framework of the country. Rather, it should clearly depict the way laws are applied in practice.<sup>219</sup> In this regard, Ethiopia's UPR national reports encompass information both on the framework and the practice. But there are paragraphs in the first UPR report deal only about the normative framework without touching the practice.<sup>220</sup>

Another predicament of the second national report was a discrepancy between the recommendations given during the first UPR cycle and Ethiopia's reply in the second national report regarding the implementation of the first UPR cycle.<sup>221</sup> Both of the previous national reports also have separate sections for achievements and good practices and challenges and constraints. The second national UPR report did not repeat the achievements and good practices stated in the first report, which is good and conforms to the standard. However, "the diverse and complex nature of the nation" was considered as a challenge in the second national report, which couldn't be a constraint or challenge.<sup>222</sup> Ethiopia has incorporated national priorities and

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<sup>217</sup> Id., P.9.

<sup>218</sup> Ethiopia's Second Cycle Report, cited above at note 31, Paras. 5, 74, 75 and 16 respectively.

<sup>219</sup> Nathalie Jeannin and Lauren Michaud (eds), cited above at note 75, p.8.

<sup>220</sup> Ethiopia's First cycle Report, cited above at note 29, Para. 48-51.

<sup>221</sup> Ethiopia's Second Cycle Report, cited above at note 31, Para. 29 and 30.

<sup>222</sup> Id. Para. 108.

commitments in its first UPR national report but not in the second.<sup>223</sup> Both the first and the second national report also encompassed information on Ethiopia's request on technical assistance.<sup>224</sup> Ethiopia does not provide annex in both of its UPR national reports. Including annex provides an opportunity to incorporate additional and essential information, which are not included in the main report due to word limitation. The other States used an annex to add information about a list of the participants in national consultations, date and process of consultations, CSOs recommendations, a table indicating the level of implementation of each recommendation, and so on.<sup>225</sup>

### **3.4 UPR and Engagement of CSOs in Ethiopia**

For genuine assessment of the country's human rights situation generally and the degree of implementation of the previous UPR recommendations specifically, the national report should be comprehensive enough.<sup>226</sup> The institution-building text required the report preparation phase to be broad and inclusive of all stakeholders in a non-binding manner.<sup>227</sup> For comprehensiveness of the national report, CSOs participation is vital. States before starting the preparation of UPR national report should "elaborate and establish a timetable for the process and identify contact points for all relevant stakeholders".<sup>228</sup> Secondly, it should spread information about UPR, the way for national consultations and the possibility of participation in the process to all relevant stakeholders and to the public at large.<sup>229</sup> Dissemination of information could be conducted through the website, booklets, media etc. As UPR Info dictated SuR should perform such activities 12 Months before the review.<sup>230</sup>

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<sup>223</sup> Ethiopia's First cycle Report, cited above at note 29, Paras., 108-112.

<sup>224</sup> Id., Paras. 113-115 and Ethiopia's Second Cycle Report, cited above at note 31, Para.109.

<sup>225</sup> UPR Info, Cited above at note 216, P.16.

<sup>226</sup> UPR Info, Ensuring sustainable UPR implementation: A call to action for States to strengthen the third cycle of the Universal Periodic Review, (2016), P.5.

<sup>227</sup> Allhone Mulugeta, cited above at note 12, Vol.9, P.24.

<sup>228</sup> Lis Dhundale and Lisbeth Arne Nordager Thonbo (eds), Universal Periodic Review - First Cycle Reporting Methodologies From The Position Of The State, Civil Society And National Human Rights Institutions, (2<sup>nd</sup> ed., THE DANISH INSTITUTE FOR HUMAN RIGHTS, 2011), P.13 and 14.

<sup>229</sup> Ibid.

<sup>230</sup> UPR Info, Cited above at note 102, P.18.

Then the SuR should undertake national consultation 12-6 Months before the review.<sup>231</sup> Effective consultation is very important for the overall success of UPR. SuR can structure national consultations in one of the following options:

- 1) The state can present a draft of the National Report and let this be the basis of the consultation,*
- 2) The state can invite for at more open consultation without presenting a draft National Report*
- 3) The two approaches can be combined in a two-phase process.<sup>232</sup>*

Broad and inclusive consultation of CSOs in the preparation of national report enables the State to profit from UPR's value of acting as a catalyst in a national process of self-examination and improvement.<sup>233</sup>

### **3.4.1 Participation of CSOs in the first UPR National Report**

Before the commencement of the preparation of the national report, training workshops on UPR were organized with the assistance of OHCHR-EARO in collaboration with EHRC and MoFA.<sup>234</sup> But the report failed to show the exact numbers of the conferences as well as the date of undertaking, except the one which is held on February 2009. The training workshops were given for relevant stakeholders from government institutions and CSOs. The training was aimed to create awareness to all stakeholders on their role to a national report and UPR Mechanism generally and to enhance report preparation skill of stakeholders.<sup>235</sup> Overall, the project on “Implementing Reporting Obligation of International Human Rights Instruments Ratified by Ethiopia” has taken one year for completion.<sup>236</sup> However, the preparation of national UPR report specifically takes 2 months only. Because the data is already collected for other reports in a project, hence these two months are used to arrange the data in conformity to UPR national

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<sup>231</sup> Ibid.

<sup>232</sup> Lis Dhundale and Lisbeth Arne Nordager Thonbo (eds) , cited above at note 228, P.19.

<sup>233</sup> Marianne Lilliebjerg, “The Universal Periodic Review of the UN Human Rights Council - An NGO Perspective on Opportunities and Shortcomings”, *Netherlands Quarterly of Human Rights*, Vol.26, (2008), P.314.

<sup>234</sup> Ethiopia's First cycle Report, cited above at note 29, Para.5.

<sup>235</sup> Interview with (confidential), Human Rights Officer of UNOHCHR-Eastern Africa Regional Office, October 13, 2018.

<sup>236</sup> Interview with Wondimagegn Tadesse, Coordinator of the Legal Expert committee, October 10, 2018.

report guidelines.<sup>237</sup> Nevertheless, UPR Info's timetable for the SuR required conducting national consultation before 12-6 months of the review.<sup>238</sup>

There was good attention from both CSOs and government side. CSOs were well strong during the first UPR Cycle.<sup>239</sup> Then after the training workshops, the Legal Expert Committee had prepared the draft report. Then the draft report was sent to members of the Drafting Committee, who were consultants with law expertise, especially from Addis Ababa University Law School, to give feedback and comments to the Legal expert Committee.<sup>240</sup> The government calls CSOs for a consultation on the draft report. In the consultation, APAP, EWLA, OSJE, HRCO, and VECOD have participated.<sup>241</sup> But the problem was the government was very defensive in accepting CSOs recommendations.<sup>242</sup> Later the Drafting Committee and the National Inter-Ministerial Committee developed the report by incorporating comments of participants of the Conference and EHRC.<sup>243</sup>

Despite the fact that the report stated the participation of CSOs both in pre-report training workshops and a national conference, it didn't depict the name, numbers, comments of CSOs and the date of the conference. My effort to grasp information from MoFA on these issues is not realized because of the absence of documents and personnel who had participated in the preparation of the first national UPR report. The government (MoFA in collaboration with EHRC) calls government institutions and CSOs like ELA, HRCO and VECOD to a discussion on UPR Recommendations and manner of implementations.<sup>244</sup> However, even if the intended goal of the workshop was on how to implement the recommendations, the government had diverted all the concern of the discussion on the importance of GTP I and the implementation of UPR recommendations should be performed within the framework of this GTP.<sup>245</sup> Even in this workshop, the government was not open enough to accept the comments of CSOs and RIM was

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<sup>237</sup> Ibid.

<sup>238</sup> UPR Info, The Role of a State under Review at the UPR, available at [https://www.upr-info.org/.../timeline\\_for\\_sur\\_participation\\_e.pdf](https://www.upr-info.org/.../timeline_for_sur_participation_e.pdf) \_Accessed on 23 September 2018.

<sup>239</sup> Interview with Kumlachew Dagne, EHRS founder and board chair and HRCO Chair until April 2018 , September 14, 2018.

<sup>240</sup> Interview with Wondimagegn Tadesse, cited above at note 236.

<sup>241</sup> Interview with Yeshiwas Eshete, HRCO Program Coordinator, September 13, 2018.

<sup>242</sup> Ibid.

<sup>243</sup> Ethiopia's First cycle Report, cited above at note 29, Para.5.

<sup>244</sup> Interview with Kumlachew Dagne, cited above at note 239.

<sup>245</sup> Ibid.

not developed, generally means and method of implementing the recommendation was not developed. Rather, the workshop end-up by discussing GTP I.<sup>246</sup>

### **3.4.2 Participation of CSOs in the Second UPR National Report**

At the end of the first UPR cycle, the MoFA clustered accepted recommendations and sent to the relevant government institutions. The MoFA and drafting team requests those institutions to send back a report on the implementation status of the recommendations.<sup>247</sup> The MoFA and the Drafting Team had communicated those institutions through a letter, telephone and emails about the report, but such communications were not as effective as intended.<sup>248</sup> So the NHRSC/Drafting Team prepared a one day conference to inform such government institutions and data collectors about the nature of the report, information to be included in the report, the method and means of collecting information and the goal and purpose of the report.<sup>249</sup> By using the reports of those institutions and other information, the drafting committee prepared the draft report and submitted to the NHRSC.<sup>250</sup> Afterward, the Drafting Team brought the draft report for consultation and finalized the report by incorporating views of government institutions and CSOs in the validation workshop.<sup>251</sup>

The report stated that the mid-level official team (the Drafting Team) had organized consultative workshop and validation workshop without showing, the date, the name and number of CSOs participated, and way of notifying stakeholders for the conference. But the document in MoFA showed that different religious institutions, CSOs and Medias were selected and called for the consultation workshop undertaken on 5 December 2013 (27 November 2006 E.C) on the draft UPR national report.<sup>252</sup> However, the researcher is not sure about the actual engagement of these

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<sup>246</sup> Ibid.

<sup>247</sup> Interview with Zewdu Mengesha, the then Member of drafting Team and the incumbent Lecturer of Bahir Dar University, September 12, 2018 and Letters from MoFA, For different Government institutions to request their implementation report (unpublished. archive of MoFA).

<sup>248</sup> Interview with Zewdu Mengesha, cited above at note 247.

<sup>249</sup> Ibid and Letters from MoFA, cited above at note 247.

<sup>250</sup> Interview with Ephrem Bizuayehu, cited above at note 209.

<sup>251</sup> Ibid.

<sup>252</sup> Letter from MoFA, for different stakeholders to attend the consultation workshop on the draft of Ethiopia's second national report. From religious institutions (Ethiopian Orthodox Church, Ethiopian Muslim affairs supreme senate, Ethiopian Catholic Church, Ethiopian Gospel Church Unity, Ethiopian Gospel Church Mekane Eyesus, and Ethiopian Inter-religious Council), From CSOs and professional association (Ethiopian Women Federation, Ethiopian youth federation, Ethiopian Journalist Union, ELA, Ethiopian Economist Union, Ethiopian dis-abled person national federation, National Old persons union, EWLA, HRCO, Ye Ethiopia Ye Fith Siratoch Maekel, EHRS and VEDCO) and from medias (Ethiopian Radio and TV Organization, Ethiopian Press Organization, ENA,



institutions. Though the concept note highlighted the possibility to call stakeholders through media, they were called for the consultation selectively with letters. Regarding the number of CSOs involved in this validation workshop, my informants both from CSOs and government side agreed that 3 or 4 human rights CSOs have participated.<sup>253</sup> Mr. Ephrem Bizuayehu from MoFA has argued that since UPR is a cooperative, voluntary and state-centered mechanism the government is not required to assure the participation of CSOs in the preparation of national UPR report and CSOs didn't request for participation.<sup>254</sup> Because of the 2009 CSOs proclamation, II UPR was not suitable for CSOs' engagement. CSOs were highly de-franchised both financially and human resources. Many CSOs previously engaged in human rights activities had to revise their mandate to survive the funding restriction and avoid being closed down.<sup>255</sup> Many human rights activists and defenders had to flee the country or stop their work for fear of persecution.<sup>256</sup> EWLA totally shay-away their advocacies work and APAP and OSJE become resident CSOs.<sup>257</sup> Within this, challenge some CSOs involved in the UPR process. For instance, HRCO and VECOD were involved in the consultation of national UPR process.<sup>258</sup>

The preparation of the second national UPR report has taken around 5 months only. The government had commenced a communication with government institutions for sending reports on the implementation of accepted I UPR recommendations on September and October 2013<sup>259</sup> and conducted a consultation on the draft report, two months later, on 5 December 2013. Finally, the report was submitted to HRC later on 30 January 2014 and the review was undertaken on a ninth session of HRC of 28 April-9 May 2014. Therefore, consultation was undertaken approximately 4 months before the review, which is below the standard of UPR Info. The MoFA has prepared two days conference on implementation of recommendations from the Second cycle UPR. However, a very few numbers of human rights CSOs were involved in the

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Fana BC, Sheger Radio, Reporter Magazine, Addis Admas Magazine, Addis fortune Magazine, and Capital Magazine) were called for the consultation (unpublished. Archive of MoFA) .

<sup>253</sup> Interview with Ephrem Bizuayehu, cited above at note 209, Interview with Kumlachew Dagne, cited above at note 239 .

<sup>254</sup> Interview with Ephrem Bizuayehu, cited above at note 209.

<sup>255</sup> Interview with Rakeb Messele Abera, consultant who drafted the joint submission for the CSO Taskforce, October 10, 2018.

<sup>256</sup> Ibid.

<sup>257</sup> Interview with Meron Aragaw, Executive Director of EWLA, August 13, 2018

<sup>258</sup> Interview with Kumlachew Dagne, cited above at note 239.

<sup>259</sup> Letters from MoFA, Cited above at note 247.

consultative meeting. As the attendance sheet of the conference shows, ELA was the only participant of human rights CSOs.<sup>260</sup>

#### **3.4.3.1 CSOs Involvement in Stakeholders Submission**

In the first UPR cycle, a totality of 20 CSOs had submitted stakeholders report on Ethiopia.<sup>261</sup> Among these, only one submission was from local CSOs: APAP, EHRCO, EWLA, and OSJ had prepared a joint submission.<sup>262</sup> The coalition finalized the report after it calls validation workshops twice, which include both government institution and CSOs.<sup>263</sup> But before the presentation of the draft report, the government institutions (representative of MFoA, Anti-corruption Commission, Ministry of Justice) said in the validation workshop that:<sup>264</sup>

*We believed that the report is based on the unfounded allegation of the group, which calls itself HRCO. We believe that HRCO is not human rights CSO, rather opponent political group so we categorically rejected the report. Our presence should not be considered as any semblance of approving or validating of the report. Then all government institutions except EHRC walked out of the workshop.*<sup>265</sup>

For the second UPR cycle, 22 stakeholder's reports were submitted.<sup>266</sup> However, only one separate stakeholder report by HRCO and one joint submission by CSO Taskforce, consisting of HRCO, VECOD, EHRS, and Ye Ethiopia Ye Fiteh Seratoch Ma'ekel (Centre for Legal Pluralism in Ethiopia) were submitted by domestic CSOs.<sup>267</sup>

#### **3.4.3.2 Role of CSOs During the Dialogue Phase**

The CSOs couldn't speak and give recommendations during the interactive dialogue stage. So CSOs should lobby other Countries before the interactive dialogue stage about recommendations

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<sup>260</sup> MoFA, Attendance sheet for participants of the consultative meeting on the implementation of the recommendations from the second cycle Universal Periodic Review.

<sup>261</sup> UPR Info, Civil Society and Other submission, available at <https://www.upr-info.org/en/review/Ethiopia/Session-06---November-2009/Civil-society-and-other-submissions#top> accessed on December 3, 2018.

<sup>262</sup> Ibid.

<sup>263</sup> Interview with Dan Yirga, Human Rights and Human Rights Violation Report preparation officer of HRCO, October 11, 2018.

<sup>264</sup> Interview with Kumlachew Dagne, cited above at note 239.

<sup>265</sup> Interview with Danu Yirga, cited above at note 263

<sup>266</sup> UPR Info, Civil Society and Other Submissions, <https://www.upr-info.org/en/review/Ethiopia/Session-19---April-2014/Civil-society-and-other-submissions#top> accessed on December 12, 2018.

<sup>267</sup> Ibid.

that should be given for the SuR and to assure such recommendations will be raised during the review.<sup>268</sup> In this regard, domestic CSOs have a trend to work with foreign States through their embassies in Ethiopia and some also deal with their ambassadors in Geneva. Through their relation with foreign Countries, apart from financial and technical aid, they tried to pursue such states regarding UPR recommendations to be given for Ethiopia. A good lobbying activity was undertaken domestically with different diplomats by CSOs and personal connections before the interactive dialogue stage.<sup>269</sup> For instance, the European Union has prepared diplomat meeting in Addis Ababa about CSOs' UPR report on which CSOs raised their recommendations. From which, Sweden, Ireland, and Britain had endorsed the CSOs recommendations.<sup>270</sup> HRCO also work together with Britain, Sweden, Germany, Netherland, and USA through their embassies in Ethiopia.<sup>271</sup>

The other way CSOs views are heard is by preparing a side event at least a day before the review.<sup>272</sup> This provides an opportunity for RSs to be informed about the human rights situation of SuR. Domestic CSOs have not a trend to prepare such kind of events. However, even if it is not enough, HRCO and VECOD have involved on pre-session dialogue in Geneva, which is prepared by UPR Info<sup>273</sup> and attended by around 37 diplomats.<sup>274</sup> However, persons from the Ethiopian embassy were not happy by the moment they came to the pre-session and take the entire concept note from the table prepared for diplomats for limiting the accessibility of the concept note to the diplomats.<sup>275</sup> VECOD and HRCO also have tried to pursue RSs to give recommendations for the government of Ethiopia for the existence of vibrant society, a strong opposition party, and independent media through their ambassadors in Geneva.<sup>276</sup> Furthermore, during the II UPR cycle, some CSOs (members of the collation and VECOD) were following the live webcast of the interactive dialogue with the coordination of OHCHR-EARO.<sup>277</sup> In the II UPR, the heads of VECOD and HRCO also participated in the session at which the report of the

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<sup>268</sup> Human Rights Project at the Urban Justice Center, cited above at note 19, P.22.

<sup>269</sup> Interview with Kumlachew Dagne, cited above at note 239.

<sup>270</sup> Ibid.

<sup>271</sup> Interview with Dan Yirga, cited above at note 263.

<sup>272</sup> Human Rights Project at the Urban Justice Center, cited above at note 19, P.27.

<sup>273</sup> Interview with Kumlachew Dagne, cited above at note 239.

<sup>274</sup> Ibid.

<sup>275</sup> Ibid.

<sup>276</sup> Interview with Taddelle Derso, Executive Director of VECOD, August 22, 2018.

<sup>277</sup> Interview with (confidential), cited above at note 235.

WG on the review of Ethiopia was adopted with the support of OHCHR-EARO.<sup>278</sup> Ethiopian CSOs were not involved in the plenary session of HRC in both of the previous UPR cycles.

#### **3.4.3.3 CSOs Involvement in the Monitoring and Follow up of UPR Recommendations**

None of the major human rights domestic CSOs participated in monitoring and follow-up of the implementation of the first cycle UPR recommendations. All the CSOs (VECOD, EWLA, and HRCO), which I have contacted, did not have developed monitoring tools. Furthermore, they did not have a strategy to engage with government institution and EHRC regarding monitoring and follow-up of UPR recommendations. They hadn't provided an arrangement within their organization for this purpose. All the CSOs the researcher communicated raised the CSO proclamation as the main reason for their undoing in this regard.

CSOs' participation on monitoring and follow-up of the implementation UPR recommendation is good in the second cycle compared to the first one.<sup>279</sup> VECOD, for instance, is in the process of making studies on the implementation of the accepted II UPR cycle recommendations, at the time of making an interview.<sup>280</sup> The idea for actively engaging in monitoring and follow-up the implementation of the second UPR recommendations was raised by individuals who are members of CSOs.<sup>281</sup> These individuals came up with an idea to establish CERO. Through this consortium, they planned for a project aimed at building up the capacity of CSOs on UPR activities and effectively monitor and follow-up the implementation of the second UPR cycle recommendations. However, as the result of two reasons they have brought their project to OHCHR-EARO to be owned by it. The two reasons are: the registration of the CERO takes a prolonged period and none of CSOs does have a financial capacity to cover the cost and lack of sufficient foreign aid due to the 10% limitation.<sup>282</sup> Even if CSOs are encouraged to submit a mid-term report,<sup>283</sup> none of the domestic CSOs has done it.

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<sup>278</sup>Interview with Taddelle Derso, cited above at note 276.

<sup>279</sup>Interview with Mesud Gebeyehu, Secretary of CERO, September 28, 2018.

<sup>280</sup> Interview with Taddelle Derso, cited above at note 276.

<sup>281</sup> Interview with Mesud Gebeyehu, cited above at note 279.

<sup>282</sup> Ibid.

<sup>283</sup>UPR Info, UPR Mid-term reporting Optimising Sustainable Implementation: Good practices for UPR stakeholders, (2018), P.11

### 3.5 The UPR Process and Engagement of EHRC

NHRIs have a crucial role in the UPR process. At the preliminary stage, NHRIs could perform activities like prepare engagement strategy with stakeholders, timetable, engage with the state's national consultation workshops, and collect up-date information.<sup>284</sup> NHRIs could also submit a parallel report individually with 2815 words maximum limitation and 5630 words maximum limitation for joint submission.<sup>285</sup> They will share their parallel reports for stakeholders, encourage CSOs to produce their own parallel report, communicate with OHCHR and SuR to highlight their parallel report.<sup>286</sup> Thirdly, before the interactive dialogue stage, they could perform preparatory activities like identify relevant states, attend UPR Info's pre-session, and organize meetings.<sup>287</sup> During the review stage, they will attend the dialogue in Geneva or view the webcast.

After the review stage, but before the HRC plenary session, NHRIs are required to perform activities like advising SuR to accept recommendations, prepare for an oral statement presentation, and disseminate recommendations and host sideline events.<sup>288</sup> During the HRC plenary session, A-Status NHRIs could provide 2 minutes oral statement<sup>289</sup> and disseminate the session to stakeholders.<sup>290</sup> At the implementation stage, NHRIs could approach RSs on the implementation of their recommendations, work together with SuR and other stakeholders, and use recommendations in other treaty bodies.<sup>291</sup> Finally, NHRIs could be involved in UPR by submitting a mid-term report.

During the first UPR cycle, EHRC engaged in UPR through providing training for stakeholders regarding the nature of UPR, the content and method of preparation of UPR report, and its time table.<sup>292</sup> Furthermore, it was involved in giving monetary, expert and material aid for the

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<sup>284</sup> Northern Ireland Human Rights Commission, The Universal Periodic Reporting Process; A Guide of National Human Right Institutions, (2016), P.1.

<sup>285</sup> UPR Info, cited above at note 1o2, P.23.

<sup>286</sup> Northern Ireland Human Rights Commission, cited above at note 284, P.6.

<sup>287</sup> Id, P.7.

<sup>288</sup> Id, P.15.

<sup>289</sup> HRC Resolution 16/21, Cited above at note 88, Para.,13

<sup>290</sup> Northern Ireland Human Rights Commission, cited above at note 284, P.17.

<sup>291</sup> Id., P.19.

<sup>292</sup> Interview with Confidential, the former special advisor of EHRC Commissioner and the incumbent, October 1, 2018.

government for the preparation of UPR national report.<sup>293</sup> EHRC has engaged in the national report consultation workshop and given comments on the draft of the first national report through the invitation of the legal expert committee.<sup>294</sup> However, the Commission didn't prepare an engagement strategy with stakeholders and submit a parallel report during the first UPR cycle. So it didn't perform activities which could be done at this stage. The commission has not a practice of communicating RSs regarding recommendations to be given for Ethiopia. Therefore, it didn't do pre-interactive dialogue activities of identifying relevant states and organize a meeting with relevant actors in Geneva (even with CSOs). But the commission has done with the Media regarding the concept of UPR or for awareness creation on UPR.<sup>295</sup> It has also engaged in the implementation of UPR recommendations. For instance, EHRC in collaboration with OHCHR-EARO organized a consultative workshop in March 2010 on the development of NHRAP.<sup>296</sup> It was also a technical advisor of National Coordinating Committee (a committee which supervised the development of NHRAP) and served as a secretariat for it.<sup>297</sup> It also undertakes human rights education to different government institutions.<sup>298</sup> The Commission has been also very helpful in implementing UPR recommendations in relation to vulnerable groups. The Commission's Office of Women and Children Affairs undertake awareness-raising campaign on the right of women and non-discrimination and on the protection of women and children from harmful traditional practice.<sup>299</sup>

During the second UPR cycle, even if the commission didn't prepare a strategy to engage with stakeholders, it engaged in national consultation workshop, involved with relevant CSOs, and also collects data on the implementation status of accepted recommendations of the first cycle.<sup>300</sup> The commission has also submitted its own parallel report.<sup>301</sup> In addition, it has validated its

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<sup>293</sup> Ibid.

<sup>294</sup> Interview with Wondimagegn Tadesse, cited above at note 236.

<sup>295</sup> Interview with Confidential, cited above at note 292.

<sup>296</sup> UPR Recommendation and Stage of Compliance In A Word Format, available on <https://www.upr-info.org/followup/assessments/session19/ethiopia/Ethiopia-EHRC.pdf> accessed on 12 September, 2018.

<sup>297</sup> Ibid.

<sup>298</sup> Ibid.

<sup>299</sup> Ibid.

<sup>300</sup> Interview with Adham Duri, Human Rights Protection & Monitoring Directorate at EHRC, August 25, 2018.

<sup>301</sup> Ethiopian Human Rights Commission's Submission for the UPR, available at [https://www.upr-info.org/sites/default/files/document/ethiopia/session\\_19\\_-\\_april\\_2014/ehrc\\_upr19\\_eth\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/ethiopia/session_19_-_april_2014/ehrc_upr19_eth_e_main.pdf) accessed on 12 September 2018.

report by undertaking consultation with stakeholders.<sup>302</sup> The commission with a collaboration of OHCHR-EARO has prepared capacity-building workshops for CSOs.<sup>303</sup> Regarding the pre-dialogue activities, the commission didn't attend the UPR-Info pre-session;<sup>304</sup> make contact with RSs and organized a meeting in Geneva.<sup>305</sup>

Members of EHRC have attended the interactive dialogue.<sup>306</sup> Since it has not got A-Status, it didn't attend HRC's plenary session. Then the commission has engaged at the implementation stage of UPR. In this regard, the commission has translated in to Amharic language and published both of the previous UPR cycle's accepted recommendations in collaboration with MoFA.<sup>307</sup> In addition, Mr. Adham stated that the Commission interprets and categorizes accepted UPR recommendations and identifies the government institutions responsible for their implementation.<sup>308</sup> The Commission clarifies the general recommendations and identifies the right within the recommendations. It also points out indicators for the implementation of recommendations and follow-ups the implementation of UPR recommendations through its Human Rights Protection & Monitoring Directorate and follow-up manual. The Commission has categorized 188 accepted II UPR recommendations into 22 rights.<sup>309</sup> The Commission has studied the implementation of the second UPR cycle recommendations.<sup>310</sup> However, the commission has not submitted a mid-term report.

### **3.6 The role of House of People Representative (HPR) in UPR**

“Parliaments and the United Nations Human Rights Council are natural partners.”<sup>311</sup> Parliaments are primarily responsible for enacting legislation and control of the government. The executive branch of government is responsible to prepare a UPR report and also to respond for the

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<sup>302</sup> Interview with Confidential, cited above at note 292.

<sup>303</sup> Mizanie A. Tadesse, cited above at note 45, Vol.28, P.35.

<sup>304</sup> Interview with Kumlachew Dagne, cited above at note 239.

<sup>305</sup> Interview with Adham Dure, cited above at note 300.

<sup>306</sup> Mitiku Mekonnen, Reflection of the Two-Cycle UPR Process: Ethiopian Human Rights Commission; in Post-UPR Conference on Ethiopia Accepted Recommendations, (UPR Info and Addis Ababa University ), 2015, P.5.

<sup>307</sup> Ibid.

<sup>308</sup> Interview with Adham Duri, cited above at note 300.

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Inter---Parliamentary Union And Senate Of the Philippines, *Report Of the Seminar* (Manila, 26---27 February 2015) available at [www.ipu.org/splz---e/manila15.htm](http://www.ipu.org/splz---e/manila15.htm), visited on October 18, 2018.

recommendations.<sup>312</sup> However, the UPR process is not exclusive to the parliament. Rather, according to HRC/Res/5/1, “UPR should ensure the participation of all stakeholders.”<sup>313</sup> Therefore, parliament is included among the broader group “stakeholders”.<sup>314</sup> Nevertheless, this resolution failed to define the role of parliament in the different phases of the UPR process.

States are encouraged (not obliged) to broadly consult all relevant stakeholders in preparing national report.<sup>315</sup> More explicitly, HRC/Res/35/29 Para.1 encourage States to “promote the involvement of parliaments in the reporting process and the inclusion of parliaments in the consultation process” and welcomes the inclusion of Members of the Parliament (MP) within the delegation of the State.<sup>316</sup> However, before the reporting process, parliaments could perform UPR related activities like, aware the government their wishes to engage in UPR process, conducting training for MPs on UPR, acting as a bridge between CSOs and the government and supporting CSOs engagement in UPR process.<sup>317</sup> Moreover, parliaments or committees within the parliaments or individual MP could provide information to the OHCHR to be included in its summary.<sup>318</sup> Parliaments with their representative/s could also involve in the interactive dialogue of UPR either as members of the delegations of SuR or as an observer.<sup>319</sup> If the parliaments go to Geneva, they could connect with UN agencies, CSOs, and other MPs.<sup>320</sup> Otherwise; they could watch UPR webcast live.<sup>321</sup>

They are also one of the key stakeholders for the implementation of UPR recommendations. For that matter, 60 to 70% of UPR recommendations, require or involve parliamentary action.<sup>322</sup> Therefore, parliaments through passing laws, overseeing the government and allocating budget

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<sup>312</sup>Felix Kirchmeier, *The Role of Parliaments in the Universal Periodic Review; A review of resolution A/HRC/Res/5/1 of the Human Rights Council and further suggestions*, Fact sheet No.2, April 2009, P.1.

<sup>313</sup>HRC, Resolution 5/1, cited above at note 17, para. 3m.

<sup>314</sup> Felix Kirchmeier, cited above at note 312, p.1.

<sup>315</sup> HRC Resolution 5/1, cited above at note 17, Para.15 (a).

<sup>316</sup>HRC, Contribution of parliaments to the work of Human Rights Council and its Universal Periodic Review, RES/35/29, on 23 June 2017, paras.1and 2.

<sup>317</sup> The Universal Periodic Review and Parliament; Opportunities for engagement, 10 December 2014, available at <http://www.vn.undp.org/content/dam/vietnam/docs/Article/NA%20PDF%20Connie.pdf> accessed on 10 September 2018.

<sup>318</sup> Felix Kirchmeier, cited above at note 312, p.2.

<sup>319</sup> Ibid.

<sup>320</sup> The Universal Periodic Review and Parliament, cited above at note 317.

<sup>321</sup> Ibid.

<sup>322</sup> Universal Periodic Review: Opportunities for Parliamentary Involvement, available at <https://www.cypcs.org.uk/ufiles/Universal-Periodic-Review.pdf> accessed on 10 September, 2018. P.1.



implement the majority of UPR recommendations.<sup>323</sup> The HRC also encourages the involvement of parliaments in the implementation of accepted recommendations.<sup>324</sup> Their mandate to oversight all human rights activities of the government is another means for their engagement in implementation.<sup>325</sup> After the plenary session of UPR, parliaments engage in the UPR process through discussion on recommendations and filter out recommendations linking to the parliament; prepare implementation mechanism; discuss on the validity of noted recommendations; urge the government to develop Recommendations Implementation Plan (RIP); advocate for mid-term UPR report; consider UPR recommendations before passing the national budget<sup>326</sup>; establish aperiodic means for parliamentary oversight of the implementation of recommendations; and prepare discussion forum and work together with others like CSOs and NHRIs on implementation of recommendations.<sup>327</sup>

The Rabat declaration also calls parliaments to articulate dispositions on parliamentary strategies for their involvement in different phases of UPR and in national mid-term reporting. Furthermore, it pleads the OHCHR, the HRC, and other relevant mechanisms to:

*set involvement and participation modalities for parliaments in the proceedings of all UN mechanisms for the protection and promotion of human rights, particularly the HRC and its UPR.*<sup>328</sup>

Ethiopia's House of People Representative (HPR) was involved in the reporting process of the first UPR cycle in three ways. One it was one member of the Ad-hoc National Inter-Ministerial Committee.<sup>329</sup> Second, it had engaged in the reporting process by giving relevant data to those organs responsible for the preparation of the report. HPR has a trend of accepting a report from government institutions on activities performed regarding human rights protection and

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<sup>323</sup> Inter---Parliamentary Union And Senate Of the Philippines, *Report Of the Seminar* (Manila, 26---27 February 2015), available at [www.ipu.org/splz---e/manila15.htm](http://www.ipu.org/splz---e/manila15.htm), accessed on 10 October, 2018.

<sup>324</sup> HRC, Resolution 35/29, Cited above at note 316, Para.1.

<sup>325</sup> The Universal Periodic Review and Parliament, cited above at note 317.

<sup>326</sup> Ibid.

<sup>327</sup> Inter---Parliamentary Union And Chamber Of Deputies Of the Romanian Parliament, *Summary And Recommendations Presented By the Rapporteur Of the Seminar* (Bucharest, 17---18 February 2014).

<sup>328</sup> Inter---Parliamentary Union And Parliament Of the Kingdom Of Morocco, *Rabat Declaration* (Rabat, 29---30 September 2014).

<sup>329</sup> Interview with Wondimagegn Tadesse, cited above at note 236.

promotion.<sup>330</sup> Hence, standing committees especially Legal, Justice and Administrative affairs committee and Women and Children affairs committees feed the report preparation with such data and with their own activities performed in the area.<sup>331</sup> Thirdly, it was involved in the consultation workshop on the draft of the report. HPR has invited for the consultation through paper with the attachment of the draft of the report.<sup>332</sup> However, Ms. Askale Tilahun, Deputy Chairman of Legal sub-committee of Legal, Justice and Administrative Standing Committee of HPR has criticized the consultation process as: the time arranged for the consultation is very limited, stakeholders including MPs Parliament called to the consultation have not awareness about UPR (hence they simply attained the ceremony without giving comments on the draft which makes the consultation process ritualistic) and even if some gives comments on the draft the government was not volunteer to accept and include it within the report.<sup>333</sup> However, HPR has not engaged in activities of UPR that could be performed before the reporting process.

HPR was also involved in the interactive dialogue phase of UPR. The Foreign Affairs standing Committee has gone to Geneva to attend the interactive dialogue phase (Ethiopia's term) in both of the previous UPR cycles.<sup>334</sup> However, they have not made any connection with UN agencies, CSOs or other MPs.<sup>335</sup> But Ms. Askale Tilahun, stated that Legal, Justice and Administrative Standing committee, which has a crucial and striate connection to UPR, has not yet participated in the interactive dialogue and they have complained in this regard to the Speaker of the House. HPR has no platform designed for the purpose of post plenary session of UPR. The parliament performs none of the above-stated post plenary session of UPR activities.<sup>336</sup> However, it doesn't mean that the parliament has never been engaged in the follow-up process of UPR recommendations. It engages in the follow-up process at least indirectly in following-up of the implementation of NHRAP. It has followed-up the implementation of NHRAP in the following ways:<sup>337</sup>

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<sup>330</sup> Interview with Askale Tilahun, Deputy Chairman of Legal sub-committee of Legal, Justice and Administrative Standing Committee of HPR, October 28, 2018.

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid.

<sup>334</sup> Ibid.

<sup>335</sup> Ibid.

<sup>336</sup> Ibid.

<sup>337</sup> Ibid.

- A) Annual Plan feedback: the parliament requires different government institutions to send their annual plan for it. The concerned standing committees of the house will give feedback to the specific institutions after discussing on the annual plane. Standing committees give feedback in two ways; one by calling the officials/representatives of the institutions and two through written means. If the institution's annual plan failed to include NHRAP, the standing committees ordered the inclusion via their feedback.
- B) Quarter implementation report: government institutions send their quarter implementation report to the house. Hence, HPR follow-up the implementation, by discussing the report and giving feedback to the institutions. Furthermore, the standing committees make discussions with government institutions by calling them.
- C) EHRC annual report: EHRC makes annual report on the protection and promotion of human rights to the parliament. So through this report, the parliament follow-ups the implementation of NHRAP.
- D) Visit: every standing committee makes a visit to various institutions and areas. Through this visit, MPs makes discussion with government officials concerning the implementation of NHRAP.
- E) Joint platforms: The parliament/standing committee has/have joint conferences, meetings and other events like justice weekend with executives and CSOs. Therefore, HPR has made different discussions on the implementation of NHRAP with these stakeholders through such types of platforms.

Furthermore, the NHRAP is also mandated to oversee the implementation of varies sections of it to HPR. Therefore, HPR follows-up at least those UPR recommendations included in the NHRAP by these mechanisms.

### **3.7 UPR Recommendations to Ethiopia**

Among a summary of the proceeding and the voluntary commitments, the main important outcome of UPR is recommendations given for SuR.<sup>338</sup> McMahon categorized UPR recommendations based on “the verbs used in the recommendation language” into 5

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<sup>338</sup> Allhone Mulugeta, cited above at note 19, Vol.9, P.14.

categories.<sup>339</sup> The categories are; Category 1 are recommendations directed at non-SuR and requires the SuR to request technical assistance or share experience from other States; Category 2 recommendations call upon SuR to continue or maintain the existing effort; Category 3 are recommendations which urge SuR to consider change; Category 4 are general recommendations (actions like address, promote, strengthen, etc) and Category 5 are recommendations which require specific, tangible and verifiable actions. In this part, the researcher intended to see the correlation between the action categories of the recommendations with the acceptance rate and also the action category and acceptance rate of recommendations with regional groups of RSs.<sup>340</sup> Regional groups are Africa, Asia, Western Europe and Other (WEOG), Eastern Europe (EEG) and Latin America and Caribbean Group (GRULAC).

#### **A) Analysis of Ethiopia's UPR recommendations during the first UPR cycle**

Accepted 100 recommendations of I UPR recommendations

| No. | Action | Amount of Recommendations | %of 100 recommendations | Geography |      |      |     |       |                 |
|-----|--------|---------------------------|-------------------------|-----------|------|------|-----|-------|-----------------|
|     |        |                           |                         | Africa    | WEOG | Asia | EEG | GRULA | Observer states |
| 1   | 1      | 6                         | 6%                      | 4         | 1    | 1    | 0   | 0     | 0               |
| 2   | 2      | 21                        | 21%                     | 6         | 3    | 7    | 2   | 3     | 0               |
| 3   | 3      | 6                         | 6%                      | 3         | 1    | 1    | 0   | 1     | 0               |
| 4   | 4      | 52                        | 52%                     | 11        | 24   | 3    | 7   | 5     | 2               |
| 5   | 5      | 15                        | 15%                     | 1         | 10   | 1    | 2   | 0     | 1               |

Table. 1, Illustration of Ethiopia's accepted recommendation in the first UPR Cycle<sup>341</sup>

<sup>339</sup> Edward R. McMahon, *Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council*, (2010), P.7

<sup>340</sup> UPR Info, [https://www.upr-info.org/database/statistics/index\\_sur.php?fk\\_sur=57&cycle=](https://www.upr-info.org/database/statistics/index_sur.php?fk_sur=57&cycle=) accessed on 1 November 2018.

<sup>341</sup>For the purpose of these tables the amount of recommendations given for Ethiopia are 160. Because, recommendations with two or more action type are separated for analyzing the acceptance rate with action type. Also recommendations with 2 or more RS are separated to analyze the acceptance rate with regional block. Hence, recommendation number A-1=2recommendation; P-2=2recommendations; P-4=2recommendations; P-5=3Recommendations; P-6=3Recommendations; NC-7=5recommendations, NC-8=4Recommendations; R-1=4recommendations and R-2=2recommendations.

# Noted 60 recommendations of I cycle UPR recommendation

| No. | Action | Amount of recommendations | % Of 60 recommendations | Geography |      |      |     |        |                 |
|-----|--------|---------------------------|-------------------------|-----------|------|------|-----|--------|-----------------|
|     |        |                           |                         | Africa    | WEOG | Asia | EEG | GRULAC | Observer states |
| 1   | 1      |                           |                         |           |      |      |     |        |                 |
| 2   | 2      | 1                         | 1.67%                   |           |      |      | 1   |        |                 |
| 3   | 3      | 5                         | 8.33%                   |           | 1    |      |     | 4      |                 |
| 4   | 4      | 8                         | 13.33%                  |           | 5    |      | 2   | 1      |                 |
| 5   | 5      | 46                        | 76.67%                  |           | 38   |      | 8   |        |                 |

Table.2, Illustration of Ethiopia's noted recommendation in the first UPR Cycle

Among 160 recommendations given for Ethiopia, only three are among category-1 and gets a full acceptance. Twenty-two recommendations were within a category, which calls upon Ethiopia to continue the existing efforts. Among these 21 were supported. 60 recommendations were among a type of recommendations, which request general action (category 4). Ethiopia accepted 52 of these recommendations. Whereas 11 recommendations urged Ethiopia to consider change, 6 were supported. 61 recommendations seek for the specific action (category 5), from which Ethiopia accepted only 15. Therefore, the order of acceptance rate with categories of recommendation is category 1(100%), category 2 (95.46%), category 4 (86.67%), category 3 (54.54%) and category 5 (24.59%). Actually, not only Ethiopia, but most states also accept the large majority of category 1, 2, and 4. Ethiopia accepted slightly more than half of category 3 but it has rejected the greatest majority of category 5.

Ethiopia has accepted 62.5% of its recommendations in the first UPR cycle. Category 5 and 3 are the most rejected recommendations. Recommendations from Africa, Asia and observer States were totally supported by Ethiopia. Actually, the African and Asian group together gives two specific recommendations. Majority of their recommendations were within category 2 and 4, which have high acceptance rate by Ethiopia. Whereas, WEOG gives 48 out of 61 category5 recommendations that is why it takes the lion share in noted recommendations. Next to WEOG (53.01% of its recommendations were noted), EEG's recommendations have also less acceptance rate. 50% of their recommendations were noted. 35.71% of GRULAC's recommendations were also noted. Edward R. McMahon's conclusion of "Africa and Asia place highest emphasis on

Categories 1, 2 and 4 and by contrast EEG, GRULAC and most notably WEOG emphasize Categories 3 and 5<sup>342</sup> applies mutatis mutandis for Ethiopia in examining the distributions of recommendations given for Ethiopia by regional categories. Ethiopia has highly noted specific recommendations while accepting more of the minimal and general action category recommendations. This practice of the country hampers the effectiveness of UPR.

## B) Analysis of Ethiopian recommendations in the second UPR cycle

Accepted 191 II UPR recommendations

| No. | Action | Amount of Recommendations | % of 191 Recommendations | Geography |      |      |     |        |                 |
|-----|--------|---------------------------|--------------------------|-----------|------|------|-----|--------|-----------------|
|     |        |                           |                          | Africa    | WEOG | Asia | EEG | GRULAC | Observer states |
| 1   | 1      | 2                         | 1.04%                    | 2         |      |      |     |        |                 |
| 2   | 2      | 48                        | 25.13%                   | 18        | 1    | 15   | 3   | 8      | 3               |
| 3   | 3      | 7                         | 3.66%                    | 4         |      | 1    | 1   | 1      |                 |
| 4   | 4      | 109                       | 57.08%                   | 37        | 23   | 26   | 5   | 15     | 3               |
| 5   | 5      | 25                        | 13.089%                  | 4         | 9    | 3    | 5   | 4      |                 |

Table.3, Illustration of accepted II UPR cycle recommendations

Noted 70 II UPR cycle recommendations

| No. | Action | Amount of Recommendations | % of 70 Recommendations | Geography |      |      |     |        |                 |
|-----|--------|---------------------------|-------------------------|-----------|------|------|-----|--------|-----------------|
|     |        |                           |                         | Africa    | WEOG | Asia | EEG | GRULAC | Observer states |
| 1   | 1      |                           |                         |           |      |      |     |        |                 |
| 2   | 2      |                           |                         |           |      |      |     |        |                 |
| 3   | 3      | 12                        | 17.14%                  | 4         | 2    | 1    | 1   | 4      |                 |
| 4   | 4      | 6                         | 8.57%                   | 1         | 3    |      | 1   | 1      |                 |
| 5   | 5      | 52                        | 74.28%                  | 6         | 26   |      | 13  | 7      |                 |

Table. 4, Illustration of Noted II cycle recommendations<sup>343</sup>

<sup>342</sup> Edward R. McMahon, cited above at note 339, p.16.

<sup>343</sup> Note for the purpose of these tables the totality of Ethiopia's II cycle UPR recommendation is 261. Because recommendation No. 155.8, 155.86, 157.5, 158.8, 158.14, 158.16 and 158.18 are taken as 2 recommendations each and 158.4 is taken as 3 recommendations.

Unlike I UPR cycle, 11 recommendations of Africa (15.71% of noted recommendations) and 1 recommendation of Asia (1.42% of noted recommendations) are noted. Nonetheless, all 6 recommendations of observer states are accepted. 44.28% of noted recommendations are from WEOG and followed by EEG, which covers 21.42%. GRULAC's 12 recommendations (17.14% of noted recommendations) are also not accepted by Ethiopia. African group is the first by giving 76 recommendations (29.11% of the total recommendations) and followed by WEOG with 64 recommendations.

EEG is the least performing group regarding the acceptance rate of recommendations. 51.72% of its recommendations are not supported. Rejection in WEOG becomes second far behind with 48.43%. GRULAC is the third with 30% rejection rate of its recommendations. Only 14.47% of African recommendations are rejected. Asia is the first regional group with a high acceptance rate. 2.17% of its recommendations are noted. Both of the 2 recommendations of category 1 and all of 48 recommendations of category 2 are supported by Ethiopia. 94.78% of category 4 recommendations are also supported. However, only 36.84% of category 3 and 32.46% of category 5 recommendations got the support of Ethiopia. Both the number of recommendations and acceptance rate of recommendation are increased in the II UPR cycle compared to the first. The acceptance rate of recommendations increased from 62.5% in I UPR cycle to 73.19%. One factor for enhancement of acceptance rate is the increment of ratio of category 2 and 4 from 13.75% to 18.39% and from 37.5% to 44.061% respectively from I UPR cycle to II UPR cycle and the reduction of the ratio of category 5 from 38.12% to 29.50% from the I UPR cycle to the II UPR cycle.

### **3.8 Follow-up Mechanism**

Implementation of UPR recommendation is central for the achievement of the objective of UPR. In this regard, UPR Info depicted that:

*National Mechanisms for Reporting and Follow-up (NMRF) are the condition sine qua non for the sustainable implementation of recommendations. Without a NMRF, it can prove difficult for governments to maintain regular follow-up and reporting.*<sup>344</sup>

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<sup>344</sup> UPR Info, Ensuring sustainable UPR implementation: A call to action for States to strengthen the third cycle of the Universal Periodic Review, available on <https://www.upr-info.org/sites/default/files/general-document/pdf/> Accessed on 12 November, 2018, P. 3.

But as stated at the beginning of this chapter Ethiopia is yet to establish such type of structure. Especially until it develops the first NHRAP, following-up the implementation of UPR recommendations was the mandate of MoFA. It was responsible for; “responding to issues and concerns raised in relation to the implementation of the international and regional human rights instruments ratified by Ethiopia, in consultation, as appropriate, with the relevant executive bodies”,<sup>345</sup> which includes responding on the implementation of UPR recommendations. Generally, until 2016 the MoFAs’ International Legal Affairs Directorate takes up the work on implementation of recommendations or decisions of global and regional human rights systems by “communicating the concerned ministries on the specific recommendation made in their spheres of operation and managing liaison with concerned stakeholders such as NGOs to work on the follow up.”<sup>346</sup> But after the development of the first NHRAP in 2013, the responsibility to follow-up UPR recommendations is shared with organ mandated to follow-up implementation of NHRAP, that is MoJ (now FAG) and National Human Rights Action Plan Affairs coordinating committee.<sup>347</sup> Because UPR accepted, recommendations served as one source for its development. Hence, at that time UPR recommendations implementation follow-up activities were done by MoFA and indirectly by MoJ (now FAG) and National Human Rights Action Plan Affairs coordinating committee in following-up the implementation of NHRAP.

Nonetheless, starting from May 2016 the mandate to prepare national reports for global and regional human rights mechanisms and to follow-up implementation of recommendations or decisions is taken from MoFA and given to FAG.<sup>348</sup> The FAG has not established a separate and specific mechanism to follow-up implementation of UPR recommendations. Rather it utilized NHRAP and Office of NHRAP within it. Ethiopia uses NHRAP as a holistic approach to implementing and follow-up implementation of recommendations or decision of human rights mechanisms, including UPR recommendations.<sup>349</sup> The government believed that since accepted UPR recommendations are incorporated in NHRAP, it serves as UPR recommendation

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<sup>345</sup> Proclamation No. 790/2013, cited above at note 202, art. 3 (7).

<sup>346</sup> M. Killander, *The Universal Periodic Review From Recommendations to Implementation: African Regional Experience in Respect of the UPR Process*, (2013), P.2, available at, [https://eiuc.org/tl\\_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2013-14/1.%20African%20region%E2%80%99s%20experience%20in%20respect%20of%20the%20UPR%20process.pdf](https://eiuc.org/tl_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2013-14/1.%20African%20region%E2%80%99s%20experience%20in%20respect%20of%20the%20UPR%20process.pdf) Assessed on 18 November, 2018.

<sup>347</sup> The Federal Democratic Republic of Ethiopia, National Human Rights Action Plan 2013-2015, P.189.

<sup>348</sup> Proclamation No. 943/2016 cited above at note 215, art. 6(8)(e)

<sup>349</sup> Interview with Ephrem Bizuayehu, cited above at note 209.



implementation plan.<sup>350</sup> NHRAP could contribute for the implementation UPR recommendations and voluntary pledge. There are other States undertaking follow-up the implementation of UPR recommendation by including UPR recommendations within NHRAP.<sup>351</sup>

However, NHRAP is not the ideal means to follow-up implementation of UPR recommendations. Because since it is huge and has diverse sources this may contribute to the non-inclusion of accepted recommendations. For instance, recommendation No. 155.162, 155.163 155.112, 155.113, 155.64, 155.66, 155.6 and 155.114 are not directly addressed in NHRAP I.<sup>352</sup> Furthermore; it does not fully address recommendations in relation to freedom of associations. For instance, CSOs have not been included in the monitoring of the implementation of such recommendations.<sup>353</sup> Secondly, there may be a difference between the session of Ethiopia's UPR and the time for preparation of NHRAP, as happened between the first and the second NHRAP. Ethiopia was secondly reviewed in 2014, but NHRAP II was developed in 2016. This creates difficulty in implementing UPR recommendations and also contravenes the evolutionary nature of UPR.

Now the question will be, can NHRAP serve as a following-up tool for implementation of UPR recommendations? As stated it can contribute for implementation of UPR recommendations. A human rights action plan is necessary to identify the ministries responsible for implementation and to develop SMART (Specific, measurable, achievable, relevant and time-bounded) indicators to measure implementation. It should ideally encompass the recommendations received from all human rights mechanisms, not solely from the UPR.<sup>354</sup> NHRAP is a comprehensive and practical approach for strengthening the realization of human rights and aimed to improve human rights within the context of public policy. And it should be established by the government and NMRF in collaboration with NHRIs and CSOs.<sup>355</sup> In addition, NHRAP lacks engagement capacity of NMRF. Therefore, in the existence of NHRAP, the development of NMRF is essential. Furthermore, for the reasons stated above NHRAP is not an ideal means to

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<sup>350</sup> Interview with Yibekal Gizaw, Head of Office of NHRAP, September 8, 2018.

<sup>351</sup> Lis Dhundale and Lisbeth Arne Nordager Thonbo (eds), cited above at note 228, P.19.

<sup>352</sup> Getachew Assefa, Thematic Cluster: Accepted UPR Recommendations for Ethiopia: Civil and Political Rights; in Post-UPR Conference on Ethiopia Accepted Recommendations, (UPR Info and Addis Ababa University), 2015 , p.8.

<sup>353</sup> Ibid.

<sup>354</sup> UPR Info, cited above at note 226, P.4.

<sup>355</sup> Ibid.

follow-up the implementation of UPR recommendations. It should be supported by NMRF and there should be complementarity between NHRAP and NMRF. So Ethiopia's approach to using NHRAP as the only means to follow-up implementation of UPR recommendations is mistaken.

## **Chapter Four**

### **Challenge and Prospect to UPR in Ethiopia**

Under this chapter, the problems or challenges of the UPR process from the perspective of the government and CSOs will be scrutinized. In addition, the potential of the UPR Mechanism in enforcing human rights in Ethiopia is examined by using the existing legal, institutional and political situation of the country as a standing point.

#### **4.1 Challenges to UPR in Ethiopia**

UPR has its own challenges in all stages of the process for both SuR and CSOs.

##### **4.1.1 Challenges of UPR from the Government Side**

Different problems from the side of the government starting from preparation of national report up-to implementation of UPR recommendations hampers the effectiveness of UPR in enforcing human rights in Ethiopia. The following are major problems attributable to the government in its engagement in the UPR process.

##### **1. Lack of well-established institutions and system**

National report of the SuR is required to depict the actual human rights situation of the State comprehensively. As the data for the report is collected from different government institutions, institutional capacity of factual knowledge, data analysis capacity, reporting ability and diligence and replying to the letters of a request for data is vital. But in the preparation of the first UPR national report, not responding for information request, response with inadequate information, “not our concern” replies, response with yes or no answer for questions required explanations and statistics and lack of cooperation with legal expertise committees in data gathering field were the major challenges.<sup>356</sup> The government institutions did not document and analyze data relevant for assessing the human rights situation of the country appropriately.<sup>357</sup>

In the preparation of the second national UPR report too, though the Drafting Team and MoFA asked the relevant institutions to send a report through envelope, telephone and emails on their area to be included in the report, lack of response, delay in response and failure to send relevant

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<sup>356</sup> Wondemagegn Tadesse, cited above at note 203, vol.1, p.233.

<sup>357</sup> Ibid.

data makes the communication ineffective.<sup>358</sup> Therefore, strong and broad-based limitation from the government side in information gathering for reporting purpose is the key challenge in preparing a national report for UPR.<sup>359</sup> In Ethiopia, the National UPR report is more of depends on reports sent from different federal and regional institutions. However, the ad-hoc committees, which have prepared the previous two national reports, have not checked the accuracy of those institutional reports and not developed a system to do so.<sup>360</sup> These problems are the result of institutional incapacity and lack of appropriate system within the structure of the government.

## **2. Weak statistics trend**

Statistics office and other government institutions are the sources of data for monitoring implementation and for preparing national reports.<sup>361</sup> Hence, available statistical information and administrative records could be reconfigured into suitable indicators to highlight the human rights situation of a country. However, lack of appropriate statistical data regarding the situation of human rights in Ethiopia is the major problem for monitoring the implementation of UPR recommendations. Even if the statistics are available, it would be more of general and not aggregated.<sup>362</sup> Not only monitoring, but reports also need quantitative data. However, in Ethiopia except for few institutions like Central Statistics Agency and Ministry of Finance and Economic Cooperation in most institutions quantitative data “is either unavailable or are not organized.”<sup>363</sup> Weak and out-dated statistics is the major challenge in preparing national reports for global and regional human rights systems in general and for UPR mechanism in particular.<sup>364</sup>

## **3. Lack of Political Commitment**

As UPR is state driven process, it needs the political commitment of states for its effectiveness. Contrary to its trend in treaty bodies, Ethiopia has timely submitted its national report to both of the previous UPR cycles and attended the interactive dialogue with delegations from various government agencies and ministries led by high-ranking officials.<sup>365</sup> “This could be indicative of

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<sup>358</sup> Interview with Zewdu Mengesha, cited above at note 247.

<sup>359</sup> Interview with Ephrem Bizuayehu, cited above at note 209.

<sup>360</sup> Ibid.

<sup>361</sup> Manuel Guzman And Bert Verstappen, *Human rights monitoring and documentation series*; vol. 1, 2003, <https://www.huridocs.org/wp-content/uploads/2010/08/whatismonitoring-eng.pdf>, accessed on 23 September 2018, P.23.

<sup>362</sup> Interview with Confidential, cited above at note 292.

<sup>363</sup> Wondemagegn Tadesse, cited above at note 203, Vol.1, p.233

<sup>364</sup> Interview with Ephrem Bizuayehu, cited above at note 209.

<sup>365</sup> Mizanie A. Tadesse, cited above at note 45, Vol.28, P.37.

the special attention Ethiopia paid to UPR<sup>366</sup> and it seems that Ethiopia has a political commitment for UPR process. However, it lacks seriousness in preparing a quality report and involving CSOs in preparation of the report. As stated in chapter three, the government has prepared I UPR national report within 2 months and II UPR national report within 4 or 5 months. Therefore, the reports are prepared within a short time, which creates doubt regarding the adequate assessment of the human rights situation of the country and the implementation of UPR recommendations and in taking adequate input from CSOs.

In addition, the government calls CSOs for a consultation on the draft national report selectively and without letting them to know the draft report. The government neither attaches the report with calling letter nor uploads it on the internet. Therefore, CSOs attend the consultation without adequate preparation. Moreover, the government is not open enough to accept the recommendations of CSOs. As Mr. Ephrem Bizuayehu of MoFA and Ms. Askale of HPR testified, it is hard to say that the comments and suggestion of CSOs forwarded during the consultation and validation workshops were included on the final version of national UPR report.<sup>367</sup>

#### **4. Principles of the Government for Accepting and Noting UPR Recommendations**

Ethiopia has its own principles, which serve as a guideline for accepting or noting UPR recommendations. Therefore, the decision for accepting or noting recommendations is based on the following principles:<sup>368</sup>

- ♣ Conformity with Ethiopian Laws: recommendations, which contravene domestic legislation, could not be accepted. In this regard, Ethiopia has continuously noted recommendations that require for amendment of CSOs, Anti-Terrorism and Freedom of the Mass Media and Access to Information proclamations.<sup>369</sup> The government justifies

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<sup>366</sup> Ibid.

<sup>367</sup> Interview with Ephrem Bizuayehu, cited above at note 209 and Interview with Askale Tilahun, cited above at note 330.

<sup>368</sup> Interview with Ephrem Bizuayehu, cited above at note 209.

<sup>369</sup> You can see Recommendation No. R-23 –R-27 and R-32 of I UPR and Recommendation No.N-158.34-N.158.47 and N-158.50-N.158.53 of II UPR.

the non-acceptance of such and other recommendations, as their implementation would contravene FDRE constitution.<sup>370</sup>

- ♣ Conformity with social norms; UPR recommendations to be accepted should not contravene the social norms of the nation, nationalities, and peoples of Ethiopia. On its view on recommendations of I UPR, the government stated the implementation of some of the recommendations noted by Ethiopia would “undermine the culture and societal assets of the various nations, nationalities, and peoples of the country.”<sup>371</sup>
- ♣ Attainability; Ethiopia accepts only recommendations which are achievable by the capacity of the country.
- ♣ The Absence of political affiliation: to be accepted the recommendations should not have the intention to set the political system of the country. For example, the recommendations, which call for privatization and a presidential system, could not be accepted.
- ♣ It should not undermine the solidarity of developing countries; for instance recommendations which ask to put sanction or unilateral coerce measures on developing countries shall not be accepted.

The existence of such kind of principle is advisable and avoids inconsistency in accepting and noting recommendations. But conformity with domestic laws should not be considered as a standard for accepting or noting recommendations. Because the existence of contrary domestic law could not be a justification for violating global and regional human rights obligations of Ethiopia.<sup>372</sup> Attainability and free from political affiliation principles are political oriented principles. Therefore, such principles may result for illogical rejection of recommendations, unless the government’s delegation takes appropriate care.

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<sup>370</sup> H RC, Report of the Working Group on the Universal Periodic Review Ethiopia Addendum Views on Conclusions and/or Recommendations Voluntary Commitments and Replies Presented by the State under Review Para. 11 (18 March 2010).

<sup>371</sup> Ibid.

<sup>372</sup> Vienna Convention on the Law of Treaties, adopted on 23 May 1969, Entered into force on 27 January 1980, art.27.

## **5. Lack of the culture of self-evaluation**

“State reporting aims at inward looking as well as out-ward looking objectives, termed introspection and inspection, respectively.”<sup>373</sup> National report of UPR, which assess the whole human rights situation of the country, is ideal for introspection if the state has prepared its report honestly. But to achieve it, reports should not be prepared hastily or rashly and the State should assure the engagement of CSOs and take appropriate recommendations from them. Moreover, the government should assure the accuracy of the data it used for the report. Nonetheless, previously UPR national reports were prepared within the short time, with a hesitation to take recommendations from CSOs and without checking the accuracy of reports of government institutions. The government of Ethiopia does not have a trend of self-evaluation,<sup>374</sup> which affects the quality of the report and have the effect for increasing the amount of recommendations given for Ethiopia.

## **6. Lack of Standing Institution for Reporting and Follow-up Implementation of Recommendations**

As stated in chapter three there is no standing institution responsible for the preparation of reports for global and regional human rights mechanism including the national report for UPR. Both of the previous UPR national reports, were prepared by ad-hoc committees. Due to this, the previous national reports of UPR lefts no institutional memory and have no chance for sharing experience. Therefore, it affects the improvement of the quality of reports.

Regarding monitoring the implementation of UPR recommendation there is a blatant problem in Ethiopia. On this point, the outcome of a discussion organized by VECOD and UPR-Info and attended by representatives from government institutions, CSOs, media, and other stakeholders suggested for ‘the establishment of a permanent inter-ministerial UPR implementation committee that includes CSOs’ and also recommended office of NHRAP to serve as a secretariat for the committee.<sup>375</sup> Even if such a recommendation was made in 2016, the committee has not yet been established. Rather, before the development of NHRAP, MoFA simply informs the responsibility of government institutions derived from accepted UPR recommendations, but not

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<sup>373</sup> Takele Tseboka Bulto, “Beyond the Promises: Resuscitating The State Reporting Procedure Under The African Charter On Human and Peoples’ rights” Buffalo Human Rights Law Review, Vol. 12, (2006), P.58.

<sup>374</sup> Interview with Ephrem Bizuayehu, cited above at note 209.

<sup>375</sup> Mizanie A. Tadesse, cited above at note 45, Vol.28, P. 34.

actually follow-up the implementation of recommendations. After the development of the action plan, the office of NHRAP in FAG assumed the responsibility to follow-up recommendations or decisions from global and regional human rights mechanism, including UPR recommendations while monitoring the implementation of NHRAP.<sup>376</sup> This approach shadows the implementation of recommendations due to the non-inclusion of some recommendations in the action plan, and the non-existence of the NMRF structure.

#### **4.1.2 Challenges to UPR from the CSOs Side**

Generally, Africa is not convenient for the engagement of CSOs in human rights activities.<sup>377</sup> Ethiopia is not an exception to this. CSOs engagement on national reporting as well on monitoring the implementation of UPR recommendation is confronted with challenges elaborated below.

##### **1. The Law**

When one asks every CSO, working in the human rights area about their challenge their direct reply is proclamation No.621/2009.<sup>378</sup> The proclamation oddly classified CSOs as Ethiopian, Ethiopian resident and Foreign CSOs. Ethiopian CSOs are organizations that are “wholly controlled” by Ethiopians and “which receive not more than 10% of their funding from foreign sources” are permitted to work on human rights.<sup>379</sup> Ethiopian resident CSOs and Foreign CSOs are not allowed to engage in human rights activities. Ethiopian CSOs are allowed to solicit fund from abroad only not more than 10% of their annual budget. But this is Ethiopia, a country “literally no philanthropists” and gets 10% of its annual budget from foreign aid.<sup>380</sup> Therefore, the proclamation makes CSOs, which allowed working on human rights toothless by restricting their fund, which is a backbone of human rights work in general and UPR process in particular. This financial restriction also highly affected their human resources.<sup>381</sup> For instance, due to the restriction, HRCO reduced 80% of its staff.<sup>382</sup>

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<sup>376</sup> Interview with Yibekal Gizaw, cited above at note 350.

<sup>377</sup> Takele S. Bulto cited above at note 193, P. 245.

<sup>378</sup> Charities and Societies Proclamation, Proclamation No. 621, *Fed.Neg. Gaz.* Year 15, no. 25, (2009) [the CSOs Proclamation].

<sup>379</sup> *Id.*, Art.2 (2).

<sup>380</sup> Takele S. Bulto, cited above at note 193, P.245.

<sup>381</sup> Interview with Kumlachew Dagne, cited above at note 239.

<sup>382</sup> Human Rights Council, The Impact of the CSO proclamation on the Human Rights Council, (2011), P.1.



## 2. The perception of the Government towards CSOs

The government views CSOs as opponents rather than a complimentary body.<sup>383</sup> Moreover, any human rights criticism in Ethiopia is taken as “opposition discourse” and “can endanger critics” position, income, and possibly physical wellbeing. This has had its own negative consequences on the CSOs sector.<sup>384</sup> To add the representatives of government institutions on validation workshop of domestic CSOs alternative report to I UPR rejected the report, by reasoning that the report is the unfounded allegation of an opponent political group called HRCO.<sup>385</sup> The government at its most tries to discredit the allegation of CSOs. Even in consultation for national reports, the government doesn’t accept recommendations of those few audacious CSOs usually by reasoning that they are agenda takers from foreign NGOs like Amnesty International and their argument is based on desktop research.<sup>386</sup> Therefore, in the existence of such kind of attitude, CSOs have very limited opportunity to contribute for the effectiveness of UPR Mechanism in Ethiopia.

## 3. Limited Access to Government Information

Generally, CSOs engagement in the UPR process both nationally and internationally needs information from government institutions. Even though article 12(1) of FDRE Constitution declares for transparency of the action of the government, mostly government institutions consider information within them and about their activities as secret. Therefore, lack of access to government information is a prominent challenge for CSOs in their UPR work. Yeshiwas Eshete of HRCO stated that it is very hard to get information from the government institutions, even if they are volunteer to access, they usually give information which is very general or expired or about the structural adjustment (about laws and institutions in the area). For instance, if you want information about the situations of arrested persons in *Maekelawi* they will give information about the situation of arrested persons in Ethiopia generally, which is like Amharic proverb

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<sup>383</sup> Interview with Yeshiwas Eshete, cited above at note 241 and Interview with Meron Aragaw, cited above at note 257.

<sup>384</sup> Takele S. Bulto, cited above at note 193, p. 246.

<sup>385</sup> Interview with Kumlachew Dagne, cited above at note 239.

<sup>386</sup> Interview with Ephrem Bizuayehu, cited above at note 209.

“Endayamah Tiraw Endaybela Gifaw.”<sup>387</sup> Bureaucracies and procedural barriers are also de-facto information prohibition strategy in various government institutions.<sup>388</sup>

#### **4. Problems Pertaining CSOs Themselves**

As stated in the above paragraphs in Ethiopia, engagement in the UPR process is not a neat activity for CSOs. But in the existence of such challenges, they could do more than what they have done. For instance, they could publicize recommendations given for, both accepted and noted, and voluntary pledge undertaken by Ethiopia with their limited economic capacity and limited space they have. They can also use UPR recommendations for intensifying advocacy on selected issues, for awareness raising and making themselves better known to the public. Other-stakeholders are also encouraged to submit a mid-term report to HRC.<sup>389</sup> Even if submitting mid-term report is not an easy task for CSOs in Ethiopia, but the researcher believed that, it is not something impossible for them to do so. Compared to their reporting practice to the regular session, absence of mid-term report and undoing of these stated activities can be traced to their trend towards excuse. In addition, their weak capacity also contributed for their poor engagement in the UPR process.<sup>390</sup>

### **4.2. Prospect of UPR in Ethiopia**

Though the UPR process faces the above-mentioned challenges, there are potentials for its future effectiveness.

#### **1. The Development of a New Institutional Structure**

Though a new mechanism for monitoring implementation of UPR recommendation is not developed or not planned to develop, the government is now proposed for the establishment of a standing national mechanism for preparing the national reports for all appropriate human rights mechanism. To this effect International Affairs, Human Rights and Anti-Human Trafficking directorate of FAG proposed for the preparation of a national report for all appropriate human rights mechanism through the directorate itself in collaboration with the office of NHRAP.<sup>391</sup> The proposal also indicated for the engagement of the focal persons of the office of NHRAP for

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<sup>387</sup> Interview with Yeshiwas Eshete, cited above at note 241.

<sup>388</sup> Interview with Meron Aragaw, cited above at note 257.

<sup>389</sup> UPR Info, cited above at note 283, P.9.

<sup>390</sup> Mizanie A. Tadesse, cited above at note 45, Vol.28, P. 58.

<sup>391</sup> International Affairs, Human Rights and Anti-Human Trafficking directorate of FAG, proposal for the establishment of standing national mechanism for preparing national reports, P.3.

collecting data not existed in the office of NHRAP.<sup>392</sup> This proposal was submitted for General Prosecutor on 15/05/2009 E.C and has adopted.<sup>393</sup>

However, monitoring recommendations or decisions from all human rights mechanism to which Ethiopia is a party is the mandate of the office of NHRAP. The government believed that NHRAP is the best mechanism for monitoring the implementations of recommendations or decisions of human rights mechanisms and any ineffectiveness on following-up implementation raised from poor implementation capacity of government institutions, lack of focus for implementing NHRAP or because of their tendency to consider the NHRAP as an additional duty. Hence, it is not from the problem on the structure.<sup>394</sup> Though no new development in monitoring, the proposal has the potential to solve problems of reporting. For instance, it will provide an institutional memory on national reporting process for UPR Mechanism.

## **2. Current Law and Justice Reforms**

Starting from the coming of the new Prime Minister, Dr. Abiy Ahmed, a lot of changes were introduced in Ethiopia. In his inaugural statement, he said that “we need the of respect all human and democratic rights, especially to freedom of expression, assembly, and organization, by upholding the constitution.”<sup>395</sup> In this regard, he has done a lot like releasing political detainees. The government is in a way to implement the most noted recommendations on the amendment of CSOs, anti-terrorism, and Information and mass media proclamations. The government planned to finish the amendment process of CSOs proclamation within 2011 E.C calendar year.<sup>396</sup> Detail consultation has been undertaking on the draft CSOs proclamation with all stakeholders all over the country (in the two Federal Cities and in all capitals of regional governments). Though CSOs still have a concern on some provision, the draft proclamation brought a remarkable development on the current law governing the operation of CSOs. The draft addresses long-standing concerns over funding constraints, the intrusive powers of the CSO Agency, and the lack of an appeal

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<sup>392</sup> Ibid.

<sup>393</sup> Interview with Yibekal Gizaw, cited above at note 350.

<sup>394</sup> Ibid.

<sup>395</sup> Hassan Hussein, Full English Transcript of Ethiopian Prime Minister Abiy Ahmed’s Inaugural Address, available at <https://www.opride.com/2018/04/03/english-partial-transcript-of-ethiopian-prime-minister-abiy-ahmeds-inaugural-address/> accessed on 12 November 2018.

<sup>396</sup> Ibid.

process over registration.<sup>397</sup> Therefore, it brings a better way for CSO engagement in UPR activities, which will enhance the effectiveness of UPR in enforcing human rights in Ethiopia.

### **3. Resuscitation in CSOs**

After Ethiopia's review of second UPR cycle, the OHCHR-EARO in collaboration with the EU delegation to Ethiopia and other four European Embassies build up a project with a primary goal to support the promotion of human rights in Ethiopia and enhance the concerted efforts of Ethiopian CSOs. The project is designed to support Ethiopian CSOs and build up their capacity in monitoring and effectively follow-up the implementation of the second cycle UPR recommendations by developing and using a practical monitoring tool.<sup>398</sup> The project established a Monitoring Working Group composed of CSOs through a voluntary basis based on their interest and capacity on the thematic areas identified on the monitoring tool. The Working Group has five thematic sub-committees working on civil and political rights, socio-economic rights, women's rights/gender equality, institutional issues and the rights of vulnerable groups (including children, persons with disabilities, refugees/migrants and PLWHA).<sup>399</sup>

The Working Group is intended to strengthen the capacity of CSOs in UPR activities through bringing together their diverse experts and resources. It is responsible for fact finding regarding the implementation of Ethiopia's second cycle UPR accepted recommendations and compiling an assessment report that will feed into the third cycle review process.<sup>400</sup> To this effect, the Thematic Groups prepared a maximum of 20 pages report with the support of external legal expert (consultant) and sub-mitt to OHCHR-EARO.<sup>401</sup> The project is also intended to extend the partnership for other UPR cycles and treaty body periodic reporting. Actually, this project has helped domestic CSOs to make an assessment on implementation of II UPR recommendations and to submit alternative reports to third cycle. Furthermore, it provides successive training and organizes conferences on UPR. Therefore, the project has built-up CSOs' capacity on monitoring the implementation of recommendations, which is helpful for their effective engagement in the future UPR cycles.

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<sup>397</sup> Joint Letter on Ethiopia's New Draft NGO Law, Address Restrictions in Draft CSO Proclamation and Protect Freedom of Association, <https://www.hrw.org/news/2018/11/29/joint-letter-ethiopias-new-draft-ngo-law> accessed on 23 September 2018.

<sup>398</sup> Terms of Reference for the Civil Society UPR Monitoring Working Group, P.1.

<sup>399</sup> Id., P.2

<sup>400</sup> Id., P.1 and 4.

<sup>401</sup> Id., P.4 and UPR Monitoring Working Group Meeting, report, (Hotel Lobelia, Addis Ababa, 21 December 2017). P.3 .

## **Chapter Five**

### **Conclusion and Recommendations**

#### **5.1 Conclusion**

The cardinal aim of this paper is to see the practice of UPR, analysis challenges and to forecast its potential for enforcement of human rights in Ethiopia. Ethiopia has actively engaged in the negotiation process for the establishment of HRC and its UPR mechanism by holding the same approach with the African group. Ethiopia has engaged in UPR I and II and received a totality of 394 recommendations, from which it has supported 72.84% of the recommendations. Ethiopia has submitted its national report to both of the previous two UPR cycles by preparing with ad-hoc committees, even if the reports have their own defects. It has also consulted other stakeholders though it is not effective. Then the representatives of the government have participated in its interactive dialogue phase and it tries to implement and monitor the implementation of UPR recommendations by incorporating the recommendations in the NHRAP. CSOs also have limited involvement in the UPR process in Ethiopia. The parliament has engaged in documentation, interactive dialogue and at least indirectly in implementation of stages of UPR process in both of the previous UPR cycles. EHRC as NHRI is also involved in both of the previous UPR cycles. As result, the UPR mechanism brought some new developments in the human rights situation of Ethiopia like the adoption of NHRAPs, ratification of treaties and increments of the branch of EHRC. However, UPR is not effective in enforcing human rights in the country. A number of factors contributed for the ineffectiveness of UPR Mechanism, which among others includes lack of well-established institutions and systems, lack of appropriate statistical data regarding the situation of human rights in Ethiopia, the absence of political commitment, and the principles adopted by the government of Ethiopia for accepting and noting UPR recommendations. The absence of a culture of self-evaluation in the government of Ethiopia, lack of standing institutions which prepare and submit national reports and follow-up implementation of recommendations, and 10% fund limitation of CSOs proclamation no. 621/2009, which has adversely affect local human rights CSOs' financial and human resource capacity, are also problems for the UPR process in Ethiopia. In addition, governments' bad perception towards human rights CSOs, limited access to government information and problems

pertaining towards to CSOs like their tendency of excuse and weak capacity are factors for the ineffectiveness of UPR in Ethiopia.

However, better opportunities are evolving for the future effectiveness of the UPR Mechanism for enforcing human rights in Ethiopia. One, FAG's adoption of a proposal for establishing standing national mechanism for preparing national reports for all human rights mechanism to which Ethiopia is a party, including for the preparation of UPR national. Second, the existing new development in a country which includes the new Prime-Minister's (Dr. Abiy Ahmed) hope and political commitment for protection of human rights and the existing process of amending three proclamations, namely, Charities and Societies Proclamation No.621/2009, the 2009 Anti-Terrorism Proclamation and the 2008 Mass Media Proclamation, though request for their amendment was the most noted in recommendations in I and II UPR. Thirdly, starting from 2017 CSOs shows resuscitation in their engagement on UPR process.

## **5.2 Recommendations**

The author has made the following recommendations to enhance the effectiveness of UPR Mechanism in enforcing human rights in Ethiopia.

- ♣ The government should build the capacity of various institutions on data collections and disaggregation on the situation of human rights in a country. This is helpful both for the preparation of national and stakeholders report and monitoring the implementation of UPR recommendations.
- ♣ The government has to establish a UPR specific recommendation implementation plan. Monitoring the implementation of UPR recommendations through NHRAP is problematic.
- ♣ The government has to establish NMRF structure, which has an online database platform, which contains recommendations from regional and global human rights systems and the actions for implementation. It should be publicly accessible and periodically updated to indicate new development in the implementation of recommendations and identify challenges in monitoring the implementation recommendations from appropriate global and regional human rights systems including

UPR recommendations. The online tool will also facilitate the drafting of national reports.

- ♣ It is necessary to request assistance from UN to implement UPR recommendations. Voluntary Fund for Financial and Technical Assistance is established by article 2 of HRC resolution no.6/17 to help countries in implementing UPR recommendations. Paragraph 19 and 20 of HRC resolution 16/21 also emphasized that particularly Least Developed Countries could ask the assistance of UN to implement UPR recommendations. So asking such assistance will help the government to improve its implementation capacity of UPR recommendations.
- ♣ The government should work together with RS, CSOs and UN Agencies on the implementation of accepted UPR recommendations.
- ♣ Avoid principles, which hamper the very purpose of UPR Mechanism. Conformity to domestic law principle for accepting recommendations is contrary to its obligation on global and regional human rights treaties and should be avoided.
- ♣ It is important to accept specific (category 3 and 5) recommendations for the effectiveness of UPR Mechanism. Hence, the government should be open-enough for supporting such recommendations.
- ♣ The government should change its attitude towards human rights CSOs and work together on the UPR process.
- ♣ The government should conduct consultations on the draft of the national report for a self-evaluating purpose, honestly and be open enough to accept genuine recommendations from other stakeholders. Therefore, the government should avoid preparing consultation for the purpose of formality.
- ♣ The engagement of the parliament/HPR should be reinforced. To that effect, MPs should get pieces of training on UPR Mechanism in general and the methods for their engagement in the UPR process in particular.
- ♣ Domestic human rights CSOs should strive to effectively engage in UPR processes even in challenges.
- ♣ It is better domestic human rights CSOs to strategies their engagement with government, EHRC, and other stakeholders involved in UPR.

- ♣ Domestic human rights CSOs have to create sub-organ responsible for facilitating the UPR process within their arrangements and give the necessary attention for UPR and to use it in their advocacy role.
- ♣ The EHRC should work together with RSs regarding recommendations required to be given for Ethiopia and regarding implementation of recommendations given by specific RSs. It has also lobby the government of Ethiopia to accept recommendations given for it.



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## V. Interviews

- ♣ Interview with Mr. Allhone Mulugeta, the then First Secretary at the Permanent Mission of Ethiopia in Geneva, September 10, 2018.
- ♣ Interview with Mr. Ephrem Bizuayehu, formerly Ministry Councilor in Genève Mission and the incumbent Cabinet Advisory of MoFA, September 15, 2018.
- ♣ Interview with (confidential), Human Rights Officer of UNOHCHR-Eastern Africa Regional Office, October 13, 2018.
- ♣ Interview with Mr. Wondimagegn Tadesse, Coordinator of the Legal Expert committee, October 10, 2018.
- ♣ Interview with Mr. Kumlachew Dagne, EHRS founder and board chair and HRCO Chair until April 2018, September 14, 2018.
- ♣ Interview with Mr. Yeshiwas Eshete, HRCO Program Coordinator, September 13, 2018.
- ♣ Interview with Mr. Zewdu Mengesha, the then Member of drafting Team and the incumbent Lecturer of Bahir Dar University, September 12, 2018.
- ♣ Interview with Ms. Rakeb Messele Abera, consultant who drafted the joint submission for the CSO Taskforce, October 10, 2018.
- ♣ Interview with Ms. Meron Aragaw, Executive Director of EWLA, August 13, 2018

- ♣ Interview with Confidential, the former special advisor of EHRC Commissioner and the incumbent, October 1, 2018.
- ♣ Interview with Mr. Adham Duri, Human Rights Protection & Monitoring Directorate at EHRC, August 25, 2018.
- ♣ Interview with Mr. Danu Yirga, Human Rights and Human Rights Violation Report preparation officer of HRCO, October 11, 2018.
- ♣ Interview with Mr. Taddelle Derso, Executive Director of VECOD, August 22, 2018.
- ♣ Interview with Mr. Mesud Gebeyehu, Secretary of CERO, September 28, 2018.
- ♣ Interview with Ms. Askale Tilahun, Deputy Chairman of Legal sub-committee of Legal, Justice and Administrative Standing Committee of HPR, October 28, 2018.

## **Annex**

### **Interview Guide for MoFA**

- 1) How was the three committees (legal expert committee, drafting committee and inter-ministerial committee) prepared the national report of the first UPR Cycle? How they were created? Which ministries do the ad hoc National Inter-Ministerial Committee encompassed? In which institutions do the focal persons were identified?
- 2) How the committee did established a team, which composes of mid-level official? How CSOs were engaged in the preparation of the previous UPR national report?
- 3) When did the preparation of the second UPR national report commenced? Or did you had a calendar of activities for the drafting of UPR report? How many CSOs were participated in preparing the previous two UPR cycles national report?
- 4) How the governments did assured the involvement of CSOs, NHRIs and other relevant actors in follow-up of the implementation of UPR recommendation?
- 5) Since both of the bodies which prepared national reports are ad hoc how did the government follow-up the implementation of UPR recommendation?
- 6) Does Ethiopia have principles, which serve as a base to accept and reject UPR recommendations?
- 7) What are the major problems, which hinder the proper implementation of UPR Recommendations?
- 8) Is there any new plane for upgrading the implementation of UPR recommendation?
- 9) Why the government failed to submit mid-term report in the previous two UPR cycles? In addition, what it planes to the future in this regard?
- 10) Why the state failed to establish standing national mechanism for reporting and follow-up after its commitment undertaken in the first national report to UPR?

### **Interview Guide for CSOs**

- 1) Did you engage in the preparation of a national report for UPR and in following-up of the implementation of UPR Recommendations?
- 2) Is there any training workshop organized by the government before the commencement of the preparation of the first UPR cycle national report? If any, was it inclusive of CSOs?

Have you engaged by representing your CSOs? Do you remember the objective, date and participant of the workshop?

- 3) Did the government prepare consultation workshop on the draft national report of the first UPR cycle? Do you know the date, and participants of the workshops? How many CSOs were participated (including their name)? Was the government open enough to accept the comments of CSOs?
- 4) How the government calls CSOs for the workshops? Was it public or selective?
- 5) Is there any training workshop organized by the government before the commencement of the preparation of the second UPR cycle national report? If any, was it inclusive of CSOs? Have you engaged by representing your CSOs? Do you remember the objective, date and participant of the workshop?
- 6) Did the government prepare consultation workshop on the draft of the second UPR cycle national report? Do you know the date, and participants of the workshops? How many CSOs were participated (including their name)?
- 7) Do you have a strategy for engagement with the government, media, NHRIs and the community at large on the effectiveness of UPR?
- 8) Do you have UPR recommendations implementation action plans and strategies?
- 9) Do you have tried to pursue the government of Ethiopia to accept recommendations?
- 10) Do you have tried to deal with other States through their embassy or their ambassador on recommendations that should be given for Ethiopia?
- 11) What are the major drawbacks that hinder local CSOs from effectively engage in UPR mechanism?
- 12) Did you face reprisal from the government in your UPR work?

### **Interview Guide for OHCHR-EARO**

- 1) How many training workshops on UPR were undertaken with the assistance of the office? Do you know the objective, date and participant of the trainings?
- 2) Did OHCHR East Africa regional office's assistance on Ethiopia's reporting project for overdue treaties obligation, assists the preparation of the first UPR national report? How?
- 3) What type of assistance was given for a workshop on the "Government of Ethiopia Reporting to the Human Rights Council under the Universal Periodic Review" held in

February 2009? What was the major goal of the conference? What were the participants in the conference?

- 4) What was your role in December 2010 national consultative workshop, co-organized by the Ministry of Foreign Affairs and the Ethiopian Human Rights Commission (EHRC)? Did CSOs take part in the conference?
- 5) Do you ever provide assistance for CSOs in their role to UPR mechanism in Ethiopia?
- 6) Did you give any support on the preparation of the second national UPR report and implementation of recommendations?
- 7) What type of technical support you had given for the government of Ethiopia regarding UPR Mechanism?
- 8) Do you have the plane to support Ethiopia in the third UPR cycle?
- 9) What activities done by the running project in monitoring the implementation of the second cycle accepted UPR recommendations and in preparing CSOs report for the third UPR cycle? What activities were done to build-up CSOs capacity regarding to UPR activities by the project? What challenges you faced in implementing this project?

### **Interview Guide for EHRC**

- 1) What activities did the Commission performed before the reporting stage of UPR?
- 2) How the Commission engaged in preparation of national UPR Report?
- 3) Did the institution ever work with Recommending States or other stakeholders concerning UPR?
- 4) How the Commission play its inter-mediatory role between the government and CSOs in the process of UPR?
- 5) Did the Commission engaged in the interactive dialogue session of Ethiopia in the previous two UPR cycles?
- 6) Did the Commission tried to pursue the government of Ethiopia to accept its noted recommendations?
- 7) How the Commission engaged in monitoring implementation as well implementation of UPR recommendations?
- 8) Are there any barriers, which hinder the Commission from participating in UPR Mechanism both nationally and internationally?

## **Interview Guide for Office of NHRAP**

- 1) What type of institutional set-up is established to perform UPR activities?
- 2) Did you have any project concerning Ethiopia's engagement in UPR?
- 3) Did you believe that NHRAP served as Recommendation Implementation Plan?
- 4) How did you follow-up the implementation of UPR recommendations?
- 5) Did the Office have UPR specific strategies and plans?
- 6) What planed on preparation of the third national report?
- 7) Is there any new plan to up-grade the effectiveness of UPR in Ethiopia?
- 8) To what extent did NHRAPs incorporate accepted UPR recommendations?

## **Interview Guide for HPR**

የቃለ-መጠይቁ አላማ

የዚህ ቃለ-መጠይቅ ዋና አላማ የህዝብ ተወካዮች ምክር ቤት በ UPR (Universal Periodic Review) ሂደት ውስጥ ያለውን ሚና መገምገም ሲሆን፡ በተለይም በባለፉት ሁለት የ UPR ዙር ያከናወናቸውን ዋናዋና ተግባራት ማወቅ፤ እንደሁም ለሶስተኛው የ UPR ዙር የታቀደ ነገር ካለ ማወቅን ይጨምራል፤

ጥያቄዎች

- 1) የህዝብ ተወካዮች ምክር ቤት በባለፉት ሁለት የ UPR (Universal Periodic Review) ዙር መንግስት ሪፖርት ላይ ምን አይነት ተሳትፎ አድርጓል? ረቂቅ ሪፖርቱ ላይ በተደረገው ምክክር ላይ ተሳፏል?
- 2) ኢትዮጵያ ለ UPR Working Group ወደ ጀኔቭ የላከችው ልኡክ ውስጥ የፓርላማ አባላት ተካተው ነበርን? ከተካተቱ በየትኛው ዙር ላይ ነበር የተካተቱት?
- 3) ፓርላማው በመንግስት አካላት እና በሲቪክ ማህበራት መካከል የ UPR ስራን በተመለከተ ድልድይ ሆኖ የማገናኘት ሥራ ሰርቷል? ከሰራ መቼ እና እንዴት?
- 4) ፓርላማው በመንግስት ተቀባይነት ያገኙትን UPR Recommendations (የመፍትሄ ሀሳቦች) መፈጸማቸውን ከትትል አድርጓል? ካደረገ እንዴት?
- 5) ፓርላማው የብሄራዊ ሰብዓዊ መብት ዲርጊት መርሃ ግብር (NHRAP) ትግበራን ከትትል የሚያደርገው እንዴት ነው?
- 6) ፓርላማው የብሄራዊ ሰብዓዊ መብት ዲርጊት መርሃ ግብር (NHRAP) ቢሮ እና የመንግስት አካላትን መንግስት የተቀበላቸው የመፍትሄ ሀሳቦችን ትግበራ በተመለከተ የመጠየቅ ልምድ አለው?

- 7) ፓርላማው UPR ስራ ላይ ከመሳተፍ አኳያ የሚያጋጥመው ተግዳሮት አለን? ካለ ምንምን ናቸው?
- 8) ሶስተኛው የ UPR ዙር ላይ ከመሳተፍ አንጻር የታሰበ ነገር አለን?
- 9) አድስ የተቋቋመው የ ሰብ-አዊ መብት ቋሚ ኮሚቴ ስልጣን እና ተግባር ምንድን ነው? UPR ላይ ሊያሳትፍ የምችል ስልጣን ተሰጦታል?

ስለትብብር ከልብ አመሰግናለሁ