



**ASSESSMENT OF THE ETHIOPIAN HUMAN RIGHTS COMMISSION  
VIS-À-VIS THE PARIS PRINCIPLE OF AUTONOMY FROM  
GOVERNMENT: THE LAW AND THE PRACTICE**

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**A Thesis Submitted in Partial Fulfilment of the Requirements for the Degree of Master of  
Laws (LL.M.) in Human Rights Law**

**May 2020  
Addis Ababa, Ethiopia**

**Assessment of the Ethiopian Human Rights Commission vis-à-vis the Paris Principle of  
Autonomy from Government: the Law and the Practice**

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**DECLARATION**

I, Bedilu Tadesse, hereby declare that this master's thesis is original and the result of my own work and has never been submitted to any other institutions. I also confirm that any secondary sources or material used in this thesis have been duly acknowledged.

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Date: May 2020 G.C.

## **Acknowledgements**

I owe a great debt of gratitude to my wife, Meaza Ayalew, and our daughter, Amnen, a dear little angel. I am grateful especially to Mrs. Elleni Tadesse and Mr. Seifu Shanka. I would also like to express my gratitude to my supervisor, Mesenbet Assefa (Ph.D.), for his helpful comments and constructive suggestions from beginning to end. Finally, I would like to extend my gratitude to my classmates whom I knew at Addis Ababa University Law School, my colleagues from Ethiopian Human Rights Commission and many other people for their cooperation in giving interviews and for their help in providing all the necessary information. Without the goodwill of all these good people, I could never have finished this thesis.

### **List of Acronyms/Abbreviations**

CEDAW	Committee on the Elimination of Discrimination against Women
CHRAGG	Commission for Human Rights and Good Governance in Tanzania
CHRAJ	Commission for Human Rights and Administrative Justice in Ghana
CSO	Civil Society Organization
EHRC	Ethiopian Human Rights Commission
EPRDF	Ethiopian People’s Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
FDRE-CSC	FDRE Civil Service Commission
GANHRI	Global Alliance of National Human Rights Institutions
HoF	House of the Federation of the FDRE
HPR	House of Peoples’ Representatives of the FDRE
HRC	Human Rights Committee of the United Nations
KNCHR	Kenya National Commission on Human Rights
MoF	Ministry of Finance of Ethiopia
NANHRI	Network of African National Human Rights Institutions
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
SAHRC	South African Human Rights Commission
SCA	Sub-Committee on Accreditation (of the GANHRI)
UHRC	Uganda Human Rights Commission
UN	United Nations
UNDP	UN Development Program
UNHRC	UN Human Rights Council
UPR	Universal Periodic Review

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## Abstract

*This study seeks to critically assess the practice of EHRC vis-à-vis the Paris Principle of Autonomy from Government. It examines the law and the practice so as to identify and highlight the major challenges faced by EHRC in establishing and maintaining autonomy/independence. Document analysis was the main research tool utilized to garner data from secondary sources. This method was supplemented with in-depth interviews to collect primary data on the practice. Also, the researcher drew on his first-hand, extensive experience of the practice. Independence in the NHRI context is a multifaceted concept embracing legal and operational autonomy, financial autonomy, independence concerning appointment and dismissal procedures, independence through pluralism and composition, and independence with regard to privileges and immunities. The study found that, despite its relatively broad mandate and efforts to achieve its objective, EHRC faced numerous challenges of independence. A few of the key findings are: the EHRC Establishment Proclamation No. 210/2000 has some substantive deficiencies, as its provisions pertaining to the different layers of independence are inexplicit; the criteria for appointments and dismissals laid down in the Establishment Proclamation are inadequate; the practice showed some deviation from the law; the Establishment Proclamation could not insulate the appointment process against political interference and manipulation which remains a menace to EHRC's independence from the Government who used to impose political appointees; and political links seemed to be an unspoken prerequisite for appointment as leaders of EHRC. Without adequate autonomy, a NHRI is at the mercy of the Government. It is thus recommended that EHRC must carve out an independent place for itself in promoting and protecting human rights nationally. Particularly, it is proposed that EHRC in cooperation with the HPR must expedite the ongoing process for the revision of the Establishment Proclamation so that it will be provided with adequate resources to discharge its responsibilities effectively, independently and in full compliance with the Paris Principles. At the same time, the Government must be committed to radically reforming EHRC. A responsive Government in the positive sense is pivotal to the effectiveness of a NHRI. Unless the institution is entirely independent, it is nothing more than an arm of the Government.*

**Keywords:** Human Rights; NHRIs; Paris Principles; Autonomy/Independence

# Chapter One

## Introduction

### 1.1 Background and Justification

Apart from ratification of international and regional human rights treaties, States need to create key mechanisms for achieving the full realization of all human rights and fundamental freedoms at the national level. As the former UN Secretary General underscored, ‘Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner.’<sup>1</sup>

Within the international, regional and national human rights legal frameworks, States assume the primary responsibility to respect, protect and fulfil human rights. However, governance of human rights takes the involvement of all parts of Government along with other distinct national institutions and civil society.<sup>2</sup> Amongst these actors, NHRIs hold a unique place.<sup>3</sup> This position is a mixed blessing, as it offers opportunities and poses challenges for NHRIs’ independence.<sup>4</sup>

International and regional organizations have encouraged and supported the establishment of NHRIs. Since 1946, the UN has greatly undertaken to facilitate establishment and strengthening of NHRIs across the world.<sup>5</sup> Due to ‘UN support for these institutions on the ground’<sup>6</sup> and ‘the strong endorsement they received from the Second World Conference on Human Rights held in Vienna in 1993’,<sup>7</sup> NHRIs have multiplied during the 1990s in the Americas, Africa, Europe and

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<sup>1</sup> Kofi Annan, ‘Report of the Secretary-General, Strengthening of the United Nations: An Agenda for Further Change’ (9 September 2002) UN Doc A/57/387, para. 50.

<sup>2</sup> *National Human Rights Institutions: History, Principles, Roles and Responsibilities* Professional Training Series No. 4 (Rev. 1) (UN/OHCHR 2010) 2.

<sup>3</sup> *ibid.*

<sup>4</sup> Anne Smith, ‘The Unique Position of National Human Rights Institutions: A Mixed Blessing?’ (2006) 28 HRQ 4, 904.

<sup>5</sup> *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No.4, (UN 1995) 4.

<sup>6</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 2.

<sup>7</sup> Chris Sidoti, ‘National Human Rights Institutions and the International Human Rights System’ in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (CUP 2012) 93.

Asia and the Pacific.<sup>8</sup> The Conference formally encouraged the establishment and strengthening of NHRIs, giving due regard to a set of Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (hereinafter the Paris Principles<sup>9</sup>, discussed in more detail in the next chapter) and acknowledging the right of each State to decide on the framework which best suits its particular needs at the national level.<sup>10</sup> NHRIs-compliant-with-the-Paris-Principles were, for the first time, formally recognized as important and constructive actors in the promotion and protection of human rights, particularly, in their advisory capacity to the competent authorities, in remedying human rights violations, and in the dissemination of human rights information and education in human rights.<sup>11</sup> Further, in 2005, the UN Commission on Human Rights, in its resolution 2005/74, reaffirmed the importance of establishing and strengthening independent, pluralistic NHRIs consistent with the Paris Principles. Likewise, since its establishment in 2007 by superseding the Coordinating Committee of African NHRIs set up in 1996, the NANHRI has been encouraging African NHRIs-in-compliance-with-the-Paris-Principles to be more effective and to cooperate. It has recognized the significant role that NHRIs can play in elections and in democratic governance more broadly, promoting democracy and development, and supporting judicial independence.<sup>12</sup>

Moreover, the literature has emphasized the role of NHRIs which are viewed as ‘the cornerstone of national human rights protection systems and increasingly serve as relay mechanisms between international human rights norms and the State’.<sup>13</sup> They are a bridge between international human rights norms and national implementation and ‘in principle, designed to assure the state’s compliance with its international legal obligations.’<sup>14</sup>

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<sup>8</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 2.

<sup>9</sup> UN Principles relating to the Status of National Institutions (adopted by the UN Commission on Human Rights in resolution 1992/54 of 3 March 1992 and endorsed by the UN General Assembly in resolution 48/134 of 20 December 1993) UN Doc A/RES/48/134.

<sup>10</sup> Vienna Declaration and Programme of Action (adopted by the Conference on 25 June 1993) UN Doc. A/CONF.157/23, para. 36.

<sup>11</sup> *ibid.*

<sup>12</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 5.

<sup>13</sup> *ibid.* 13.

<sup>14</sup> Sonia Cardenas, ‘National Human Rights Institutions and State Compliance’ in Goodman and Pegram (n 7) 29.

For NHRIs to play their roles effectively, they must be independent from both the Government and civil society. Independence is the quality underpinning their legitimacy, credibility and ultimately effectiveness.<sup>15</sup> Real independence is the hallmark and the key to the success of a NHRI.<sup>16</sup> Independence constitutes the single most important component of the six Paris Principles.<sup>17</sup> It is arguably the most problematic and contentious principle.<sup>18</sup> If NHRIs are not really or apparently independent and are unable to scrutinize and criticize Government actions, policies and laws inconsistent with international human rights standards, they do not qualify as credible human rights watchdogs,<sup>19</sup> but only a puppet of the Government. Their importance and effectiveness are tied to how truly they are independent from the State where they operate.<sup>20</sup>

Nevertheless, NHRIs' independence is questioned, *inter alia*, when they openly espouse a political stance of the Government; when the Government deliberately cuts their budget, thereby limiting their regular activities; or when the Government fails to supply the initial support necessary for their establishment as independent bodies.<sup>21</sup> Particularly, contrary to popular expectations, some NHRIs legitimized the Governments' relatively poor human rights records.<sup>22</sup> Consequently, they were widely perceived as the mouthpiece for the Government of the day, no matter how quite independently they were addressing.<sup>23</sup> Besides, their indifference, deliberate evasion of the issue and/or inaction could perpetuate the perception.

Therefore, it is necessary to explore why NHRIs matter, how they operate in practice, how they can effectively play their numerous key roles, and under what conditions they can ratchet up State compliance with international human rights standards.

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<sup>15</sup> International Council on Human Rights Policy (ICHRP), *Assessing the Effectiveness of National Human Rights Institutions*, (ICHRP/OHCHR 2005) 12.

<sup>16</sup> Julie Mertus, 'Evaluating NHRIs: Considering Structure, Mandate, and Impact' in Goodman and Pegram (n 7) 79.

<sup>17</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 39.

<sup>18</sup> *ibid.*

<sup>19</sup> Catherine Renshaw and Kieren Fitzpatrick, 'National Human Rights Institutions in the Asia Pacific Region: Change Agents under Conditions of Uncertainty' in Goodman and Pegram (n 7) 170.

<sup>20</sup> Gillian Triggs, 'The Independence of Human Rights Institutions' (2016) *Human Rights Journal* 48.

<sup>21</sup> Renshaw and Fitzpatrick (n 19) 171.

<sup>22</sup> Smith (n 4) 910.

<sup>23</sup> Sidoti (n 7) 105.

## 1.2 Statement of the Problem

It seems that the Government of Ethiopia is committed to respecting, protecting and fulfilling human rights. Yet, the reality remains very different. One way to appreciate the difficulties with the realization of human rights in Ethiopia is to have a sound understanding of the formidable challenges facing NHRIs.

EHRC was established as an independent NHRI on 4 July 2000, pursuant to Article 55(14) of the FDRE Constitution, by the EHRC Establishment Proclamation No. 210/2000 (hereinafter the Establishment-Proclamation or EHRC's founding legislation), although the institution commenced operations in 2006.<sup>24</sup> It was founded with the object of educating the public about human rights, ensuring that human rights are protected, respected and fully enforced as well as having the necessary measures taken by concerned organs, provided it is proved that human rights have been violated.<sup>25</sup>

However, anecdotal evidence suggests that there are some challenges facing EHRC in ensuring its independence.

According to the Chart of the Status of National Institutions Accredited by GANHRI as of 8 August 2018, EHRC was accredited with 'B' status in November 2013, implying it is partially compliant with the Paris Principles and thus granted the status of 'observer'. Indeed, it is arguable whether GANHRI accreditation process adequately reflects the credibility of a NHRI.

Since its inception in 2006, EHRC has come in for a lot of criticism. Perhaps, there might be political overtones to such criticisms. In a discourse on the independence of NHRIs as democratic institutions, it is unwise to dissociate human rights from politics, as the former is next door to the latter.<sup>26</sup> Also, many political theorists consider human rights and democracy as a mutually reinforcing couple.<sup>27</sup>

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<sup>24</sup> የኢትዮጵያ የሰብአዊ ኮሚሽን ጉዞ ከየት ወደዚህ 2011 ዓ.ም. 26.

<sup>25</sup> The-Establishment-Proclamation, art 5.

<sup>26</sup> Andrew Vincent, *The Politics of Human Rights* (OUP Press 2010) 207.

<sup>27</sup> Justine Lacroix, 'Human Rights and Politics 1980–2012'

<[https://booksandideas.net/IMG/pdf/20121024\\_lacroix\\_human\\_rights.pdf](https://booksandideas.net/IMG/pdf/20121024_lacroix_human_rights.pdf)> accessed October 23, 2018.

EHRC was criticised for not being a robust NHRI. In May 2014, under the second-cycle UPR, several UN member States made recommendations to Ethiopia for the reform of EHRC.<sup>28</sup> Amongst those which enjoyed the support of Ethiopia included strengthening the role and mandate of EHRC in order to make it fully compliant with the Paris Principles.

In addition, EHRC drew sharp criticism from the former UN High Commissioner for Human Rights, who openly spoke out that EHRC ‘is not as yet what is called Paris Principle-compliant and not up to the status. Therefore, it is seen as not independent by the human rights community in Geneva.’<sup>29</sup> He also pointed out that it is actually the people of Ethiopia who will make the decision and convey to the human rights community whether they believe EHRC is truly independent. He remarked that now ‘there is a suspicion that the reports are not from a fully-independent commission’.<sup>30</sup>

Furthermore, the HRC commented that EHRC is not yet compliant with the Paris Principles. It also remarked that EHRC has not made any recommendation regarding existing or new laws; it has undertaken very few investigations on alleged human rights violations; and its recommendations and suggestions following its monitoring of correctional facilities were not implemented by the State.<sup>31</sup>

Similarly, CEDAW expressed its concern that EHRC lacks independence, impartiality and resources. It thus recommended that Ethiopia accelerate the ongoing process for revision of the Establishment-Proclamation, so that EHRC could discharge its mandate effectively, independently and in full compliance with the Paris Principles and would be equipped with sufficient human, technical and financial resources to carry out its mandate.<sup>32</sup>

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<sup>28</sup> Recommendation numbers: 155.18, 155.19, 155.20, 155.21, 155.23, 155.24, 155.25, 155.26 and 155.29.

<sup>29</sup> Zeid bin Ra’ad Zeid al-Hussein, ‘Ethiopia’s Human Rights Commission ‘not independent’ – UN’ < <https://ecadforum.com/2018/04/26/ethiopias-human-rights-commission-not-independent-un/> (April 26, 2018) accessed February 1, 2019.

<sup>30</sup> *ibid.*

<sup>31</sup> ‘Concluding observations of the Human Rights Committee: Ethiopia’ (19 August 2011) CCPR/C/ETH/CO/1, para. 6.

<sup>32</sup> ‘Concluding observations on the eighth periodic report of Ethiopia’ (14 March 2019) CEDAW/C/ETH/CO/8, paras. 17 and 18.

Moreover, EHRC attracted harsh criticism from international human rights NGOs such as Human Rights Watch<sup>33</sup> and Amnesty International. Two years ago, EHRC was censured by Human Rights Watch for not addressing the pervasive human rights crisis in Ethiopia. Because, in its two reports submitted to the HPR in June 2016 and April 2017 after its investigations into the alleged human rights violations committed during the mass protests that erupted in November 2015 in the States of Oromia, Amhara and the Southern Nations Nationalities and Peoples (SNNP), it concluded that the lethal force used by security forces in the State of Oromia was proportionate to the risk they faced from the protesters and that security forces had taken ‘proportionate measures in most areas,’ respectively.<sup>34</sup> Similarly, reviewing and analyzing seven human rights investigation reports of EHRC, Amnesty International issued a briefing condemning EHRC for its failure to guarantee respect for, protection and enforcement of human rights and for its inaction in case of violations.<sup>35</sup> By showing how EHRC conducted perfunctory investigation into some allegations of torture and ill treatment, the organization castigated EHRC for glossing over serious human rights violations through ‘compromised methodologies, dismissing credible allegations and eschewing a clear stand on human rights violations,’ and, it recommended the Government of Ethiopia to stand by its pledge to overhaul EHRC, as a component of the ongoing systemic reform of key national institutions, so that it will be an independent and impartial institution capable of advancing respect for human rights.<sup>36</sup>

Besides, some critics contended that the Commissioners were members of the ruling party, the EPRDF, or affiliates thereto, as ‘the appointment of the Chief Commissioner’, who is the top executive of EHRC, ‘may ultimately depend on the will of the political party in power’.<sup>37</sup>

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<sup>33</sup> ‘Protectors or Pretenders: Government Human Rights Commissions in Africa’

<<https://www.hrw.org/legacy/reports/2001/africa/>> accessed February 1, 2019.

<sup>34</sup> ‘Addressing the pervasive human rights crisis in Ethiopia’ <<https://www.hrw.org/news/2017/06/02/addressing-pervasive-human-rights-crisis-ethiopia>> accessed February 1, 2019.

<sup>35</sup> Amnesty International, ‘Skirting Human Rights Violations: Recommendations for Reform of the Ethiopian Human Rights Commission’ (UK, London 2019) 4.

<sup>36</sup> *ibid.*

<sup>37</sup> Mohammed A Mohammed, ‘The Human Rights Commission of Ethiopia and Issues of Forced Evictions: A Case-oriented Study of Its Practice’, in Eva Brems et al. (eds), *Human Rights and Development: Legal Perspectives from and for Ethiopia* (Brill Nijhoff 2015) 336.

It is against this backdrop that the study was conducted. The study critically assessed the practice of EHRC vis-à-vis the Paris Principle of Autonomy from Government. It compared between the international normative framework and the mandate and practice of EHRC in ensuring its autonomy/independence.

### **1.3 Research Questions**

The research seeks to answer the following questions:

- (i) What are the international and national normative standards that serve as minimum conditions that EHRC must meet to be considered independent?
- (ii) To what extent does the practice of EHRC conform to the Paris Principle of Autonomy from Government?
- (iii) What are the major challenges of independence faced by EHRC?

### **1.4 Objective(s) of the Study**

The overall objective of this study is to critically assess the compliance of EHRC's practice with the Principle of Autonomy from Government.

The specific objectives of this study are:

- to locate the gap between the law/theory and the practice,
- to identify actual problems and potential challenges facing EHRC in respect of its conformity with the Principle, and
- to make a number of recommendations for institutional reform.

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

This study throws new light on the gap between the normative standards and the realities concerning EHRC's autonomy from Government. Basically, it will benefit EHRC which currently needs to undergo radical overhaul. Assessing the practice over the last five years, the study will yield recent and empirical data/information on enormity of the problems and come up with radical solutions, thereby adding to the literature. It may be a useful source material for the Government to act on the recommendations with a view to creating an environment conducive to EHRC's effective functioning. Further, it will be an invaluable input into formulation of informed projects and programs by multiple stakeholders. It is hoped that the findings will be used as a baseline for further research on related topics.

## 1.6 Research Methodology

This study is essentially qualitative research, inasmuch as it seeks to discover what people think about the proper role of a particular institution and/or its qualities.<sup>38</sup> The selection of which research approach to use depends on the nature of ‘the research problem, the personal experiences of the researcher and the audience(s) for whom the report will be written’.<sup>39</sup> Qualitative research approach was thus chosen, as it is apt for dealing with most-of-the-why-questions that researchers contemplate while designing research projects<sup>40</sup> and for exploring ‘areas of reality that would otherwise remain inaccessible such as people’s subjective experiences and attitudes’ by surmounting spatiotemporal distances.<sup>41</sup> It is particularly invaluable because little research has been undertaken on EHRC’s independence which needs yet to be studied in detail.<sup>42</sup> Also, a wide range of both primary and secondary sources of data/information were used for this study. It drew on diverse strategies of inquiry.

### 1.6.1 Methods of Data Collection

In this study, different data collection methods/techniques were employed. Document analysis was the main research tool utilized to garner data from secondary sources. This method was supplemented with key informant or in-depth interviews to collect primary data on the practice. Also, the researcher drew on his firsthand and extensive experience of the practice of EHRC where he has been working as a senior expert in several different positions for more than eight years, which brought him up against the practical problems. That is, being confined within methodological and ethical parameters, personal observations might be adduced to corroborate information/data obtained through official documents and interviews.

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<sup>38</sup> C R Kothari, *Research Methodology: Methods and Techniques* (2<sup>nd</sup> revised edn, New Age International Publishers 2004) 3.

<sup>39</sup> John W Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (2<sup>nd</sup> edn, SAGE Publications Inc. 2014) 21.

<sup>40</sup> Lisa M Given (ed), *The SAGE Encyclopedia of QUALITATIVE RESEARCH METHODS*, (Sage Publications Inc. 2008).

<sup>41</sup> Peräkylä A & J Ruusuvuori, ‘Analyzing Talk and Text’ in N Denzin & Yvonna Lincoln (eds), *The Sage Handbook of Qualitative Research* (Sage Publications 2011).

<sup>42</sup> Creswell (n 39) 22.

Secondary data was collected from: (i) books most relevant to the topic; (ii) the Paris Principles; (iii) GANHRI SCA's General Observations [adopted by the GANHRI Bureau at its Meeting held in Geneva on 21 February 2018]; (iv) EHRC's founding legislation and enabling laws of some select NHRIs; (v) literature on NHRIs with 'good' legislative practices in ensuring their independence and lessons learned regarding the elements contributing to the effectiveness of NHRIs; (vi) strategic plans of EHRC (2011 – 2015) and (2016 – 2020), annual plans and reports of EHRC 2015 – 2019; (vii) relevant reports and publications of the UN and its subsidiary agencies; (viii) relevant reports and publications of foreign Governments and CSOs working on human rights issues; (ix) relevant scholarly journals; (x) public records and statistics, historical documents or other sources of published information; and (xi) useful trusted Web pages.

In-depth face-to-face interviews were conducted to elicit balanced views and opinions from individuals who have firsthand knowledge and/or experience about the topic. The interview method of collecting data involved oral presentation of questions and reply in terms of oral-verbal responses simultaneously taken down by the researcher. It was normally used through individual and focus-group interviews. The in-person interviews were conducted in a semi-structured way, thereby using sets of open-ended general questions prepared beforehand, along with topical trajectories in the interviews. Recording devices were seldom used to make sure that the replies could be transcribed exactly in the respondent's own words.

### **1.6.2 Sampling Design and Technique**

The sampling design in this study focused on breadth, not representativeness. Due to the complexity of the inquiry, the sample size was determined by theoretical saturation. For the sake of data manageability, this study employed purposive sampling technique. Accordingly, the researcher took a purposefully selected sample of 31 respondents/interviewees from 20 institutions. The target population consisted of representatives from EHRC, the federal legislative organ, select federal executive organs, select federal judicial organs, a select few democratic institutions, select political parties, alliance of religious institutions in Ethiopia, select local CSOs working on human rights issues, select professional associations, the concerned academia and a select few of the national media. The full list of the target population was annexed to the thesis.

### **1.6.3 Techniques of Data Analysis and Interpretation**

In this study, different techniques to analyze and interpret the data gathered were used. The unwieldy data collected through interviews was transcribed, translated into English and organized into notes/texts. Then, it was analyzed and interpreted by iteratively adopting thematic and narrative approaches.

In addition, the internal validity and reliability of the data gathered were checked carefully. The researcher compared the results of the study with the existing findings in the literature by triangulating the data sources.

Authoritative testimonies, EHRC's annual and special reports, writings by numerous Ethiopian and foreign scholars, literature on other countries' good/best experiences in ensuring NHRIs' independence, reports of UN human rights bodies and major international NGOs focused on human rights and the organs of public opinion (i.e., newspapers, television and radio) were invoked to substantiate the researcher's arguments.

### **1.6.4 Ethical Considerations**

In this study, all ethical issues in the course of identifying and defining the research problem, framing the research questions, data collection, analysis and interpretation, and writing the final thesis report have been scrupulously and responsibly considered. Also, every information or idea of others has been duly referenced with the utmost care to avoid plagiarism by acknowledging, paraphrasing and quoting sources.

## **1.7 Review of the Literature**

Several previous graduate research studies were made with reference to EHRC.<sup>43</sup> Nevertheless, all of these studies did not specifically and thoroughly address the topic in hand. They centered

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<sup>43</sup> Yemsrach Endale, 'The Roles and Challenges of Ethiopian National Human Rights Institutions in the Protection of Human Rights in light of the Paris Principles' (LL.M. thesis, Central European University 2010); Meseret Mamo, 'The Effectiveness of Ethiopian Human Rights Commission in Implementing Its Investigative Mandate' (MA thesis, Addis Ababa University Center for Human Rights Studies 2011); Helina Azeze, 'The Effectiveness of Ethiopian Human Rights Commission in light of the Paris Principles' (MA thesis, Addis Ababa University School of Graduate Studies/College of Social Sciences 2014); Derege Sisay, 'The Effectiveness of Ethiopian Human rights Commission in Addis Ababa' (MA thesis, 2014); Mohammed Abdo, 'The Role of National Human Rights Institutions in Enforcing Social and Economic Rights: A Case-Study of the Human Rights Commission of Ethiopia' (Ph.D. thesis,

only on the effectiveness of EHRC by analyzing its general protective and promotional mandates, and they took a narrower, broad-brush approach to the problem. The issue/concern to be addressed in this study was not stressed in the aforesaid studies.

Also, these studies had temporal and spatial limitations, as some assessed the effectiveness of EHRC over the period before 2014, and some were confined to assessment of the practice at Addis Ababa and Hawassa Branch Office levels.<sup>44</sup> Even one of the studies assessed the performance of EHRC's overall functions in light of the Paris Principles and approached the subject only from the perspective of political science.<sup>45</sup>

Besides the theses, there were academic articles critical of EHRC.<sup>46</sup> Especially, Wondemagegn's article aimed at tentatively assessing EHRC's role and effectiveness in the protection of

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Ghent University 2015); Zewdnesch Zegeye, 'An Appraisal of the Effectiveness of the Ethiopian Human Rights Commission to Promote and Protect Human Rights in Ethiopia: with particular emphasis to Hawassa Branch Office' (MA thesis, Addis Ababa University Center for Human Rights Studies 2016); Ayalnesh Alayu, 'Enforcement of the Recommendations of Ethiopian Human Rights Commission: Accomplishments and Challenges' (LL.M. thesis, Addis Ababa University School of Law 2018); Wubshet Girma, 'Election Monitoring Practices of Ethiopian Human Rights Commission: A Comparative Analysis' (MA thesis, Addis Ababa University Center for Human Rights Studies 2018); Imad Abdulfetah Tune, 'A Critical Analysis of the Legal Framework of the Ethiopian Human Rights Commission: Challenges and Prospects' (LL.M. thesis, University of Pretoria Center for Human Rights 2019).

<sup>44</sup> Derege and Zewdnesch (n 43) respectively.

<sup>45</sup> Helina (n 43).

<sup>46</sup> Mohammed Abdo, 'National Human Rights Institutions and Social and Economic Rights: Examination of Mandate and Practice of the Ethiopian Human Rights Commission' (2013) <<https://biblio.ugent.be/person/802000689544>> accessed September 15, 2019; Mohammed Abdo, 'The Ethiopian Human Rights Commission and Its Contribution in the Protection of Human Rights and Building of Good Governance: Challenges and Prospects' (2014) <<https://biblio.ugent.be/person/802000689544>> accessed September 15, 2019; Mohammed Abdo, 'National Human Rights Institutions and Access to Justice: The Role and Practice of Ethiopian Human Rights Commission in Advancing Access to Justice' in Pietro S. Toggia, Thomas F. Geraghty and Kokebe W. Jemaneh (eds), *ACCESS TO JUSTICE IN ETHIOPIA: Towards an Inventory of Issues* (Addis Ababa University Center for Human Rights 2014) 151 – 181; Wondemagegn T. Goshu, 'The Ethiopian [National] Human Rights Commission and its Contribution to Constitutionalism' (2014/15) VI Ethiopian Constitutional and Public Law Series, AAU School of Law 1; Mohammed (n 37); Getahun Kassa, 'THE ETHIOPIAN HUMAN RIGHTS COMMISSION' in Charles M Fombad (ed), *Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa* (Pretoria University Law Press 2019) 293 – 330; Lamessa Gudeta, 'The Ethiopian

constitutional rights by appraising its contribution towards fostering constitutionalism in Ethiopia and by commenting on its performance/effectiveness in respect of formal and public legitimacy, budget, membership and staff, capacity building, monitoring activities, investigation, education and awareness-raising activities, advising the Government, collaboration, accessibility, etc. But, the article relied largely on publicly available documents to find out about EHRC's performance or activities. Further, Getahun's article sought to comprehensively assess how much EHRC could wield its mandate and to dig into the internal and external challenges it faced in that regard. In so doing, this article provided an overview of the historical circumstances that have resulted in the establishment of EHRC, its nomination and appointment procedures, composition, mandate, organizational capacity and staffing, and it critically examined EHRC's financial autonomy, relations with civil society, accessibility, accountability and major activities over the past fifteen years. However, it skimmed the surface of the subject of EHRC's independence which needs to be extensively researched.

Yet, methodical, objective and meticulous study of EHRC's practice vis-à-vis the Paris Principle of Autonomy from Government has not been exclusively conducted. Thus, this study provides a critical analysis of the standards underlying the principle. It explores how the independence granted in law corresponds to the independence in practice. It seeks to identify and highlight the major challenges of independence in the context of EHRC at headquarters and branch office levels.

### **1.8 Scope and Limitations of the Study**

This study is confined to analyzing only one of the Paris Principles, namely, autonomy from Government as defined below. Hence, it is not an assessment of the accomplishments, failures and effectiveness of EHRC since its inception fourteen years ago.

Also, criticism of the legitimacy of the Paris Principles lies beyond the scope of this study. It is also noteworthy that among the three approaches to evaluating NHRIs, only the structural approach has been adopted in this study, because it is the most common approach that employs the Paris Principles as the principal means of assessment with an emphasis mainly on structural

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Human Rights Commission: Critical Analysis of Its Role of Promoting Human Rights' <[https://www.academia.edu/31271791/The Ethiopian Human right commission Critical analysis in its role of promoting human rights](https://www.academia.edu/31271791/The_Ethiopian_Human_right_commission_Critical_analysis_in_its_role_of_promoting_human_rights)> accessed September 15, 2019.

issues.<sup>47</sup> Characteristically, this approach has external source of criteria, and changes in formal rules are signs of progress in the institution.<sup>48</sup>

However, it should be noted that ‘satisfying the Paris Principles does not necessarily mean that a NHRI will be an effective institution in ensuring the protection of human rights and bringing about change,’ but rather ‘the international community has been prepared to accept that Paris Principle compliance will probably increase the likelihood that a NHRI will be responsive and effective.’<sup>49</sup>

In addition, this study has limitations. The detailed requirements of the Paris Principles are often fully appreciated only with reference to good/best practices. And there is a considerable overlap among the Paris Principles.

Besides, a few other limitations and inconveniences encountered during the research work include: flaws inherent in purposive sampling method; inherent drawbacks of structural approach; the intrinsic defects of key informant interviews; a dearth of copious peer-reviewed literature on the subject; a scarcity of comparative study of the best practices or experiences of other States in ensuring the autonomy of their respective NHRIs; unanticipated removal of the incumbent Commissioners; unprecedented occurrence of merger among national political parties and some refusal to grant interviews. The study has also temporal limitations, as it confined itself to assessing the practice for the period from June 2015 to June 2019.

### **1.9 Organization of the Thesis**

This thesis has been organized into three chapters that are further broken down into several sections. Chapter One provides a general introduction to the study which covers background of the study, statement of the problem, research questions, objective(s) of the study, significance of the study, research methodology, review of the literature and scope and limitations of the study. Chapter Two offers an overview of the concept of NHRIs and of the Paris Principles in general

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<sup>47</sup> Mertus (n 16) 76. These approaches are: (i) ‘structural’; (ii) ‘mandate-focused’ and (iii) ‘impact-based’.

<sup>48</sup> *ibid* 77.

<sup>49</sup> Andrew Byrnes, Andrea Durbach, and Catherine Renshaw, ‘Joining the Club: The Asia Pacific Forum of National Human Rights Institutions, the Paris Principles, and the Advancement of Human Rights Protection in the Region’ (2009) 14 *Australian Journal of Human Rights* 63.

and the principle of autonomy/independence in particular. Chapter Three presents a detailed assessment of EHRC's practice vis-à-vis the Paris Principle of Autonomy from Government in concrete terms. Also, the first chapter has been preceded by title and acknowledgements pages, a list of acronyms/abbreviations, a table of contents and an abstract. At the end, a bibliography, interview guides and profiles of respondents/interviewees have been annexed.

## Chapter Two

### General Overview of the Concept of NHRI and the Paris Principles

#### 2.1 NHRI Defined

NHRI is yet under-conceptualized and ill-defined.<sup>50</sup> There is no single universally agreed definition of NHRI.<sup>51</sup> Boundaries of NHRI definition in the international system have shifted over the last twenty-seven years.<sup>52</sup> Still, opinions diverge as to which domestic institutions involved in the protection and promotion of human rights should be categorized as NHRIs. For example, classical ombudsman institutions and sub-national human rights institutions are often excluded from the NHRI definition.<sup>53</sup> Again, courts, administrative tribunals, legislative organs, NGOs, legal aid offices and social welfare structures were eventually excluded from the UN's conception of NHRIs.<sup>54</sup> Even the Paris Principles do not define a NHRI. Rather, they only set the basic standard that 'a national institution shall be vested with competence to promote and protect human rights.'<sup>55</sup> However, the practical utility of delineating definitional boundaries has been acknowledged. NHRI identification is helpful in bringing access to the human rights machinery of the UN and regional organizations and in 'determining important elements of NHRI institutional design and identifying factors that lead to an effective NHRI'.<sup>56</sup>

There are various definitions of NHRIs. But, the following notable definitions will suffice for the purposes of this section.

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<sup>50</sup> Goodman and Pegram (n 7) 5.

<sup>51</sup> UN Handbook on NHRIs (n 5) 6.

<sup>52</sup> Linda C Reif 'The Shifting Boundaries of NHRI Definition in the International System' in Goodman and Pegram (n 7) 52.

<sup>53</sup> *ibid* 53.

<sup>54</sup> UN Handbook on NHRIs (n 5) 6.

<sup>55</sup> UN Principles (n 9) A(1).

<sup>56</sup> Reif (n 52) 52 and 71.

Anna-Elina Pohjolainen defines NHRI as ‘an independent body established by a national Government for the specific purpose of advancing and defending human rights at the domestic level’.<sup>57</sup>

Olivier De Schutter defines NHRI as ‘an officially established and State-funded national entity independent from the Government, mandated to promote and protect international human rights standards at domestic level.’<sup>58</sup>

NHRI is also described as ‘a quasi-governmental or statutory institution with human rights in its mandate’.<sup>59</sup>

In UN parlance, NHRI refers to ‘a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.’<sup>[60][61]</sup>

For the purposes of this study, NHRIs are defined as ‘State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State.’<sup>62</sup> This is the predominant definition used by OHCHR and GANHRI, and basically comprises ‘only national-level human rights commissions and human rights ombudsman institutions’.<sup>63</sup>

Despite these differing definitions, all NHRIs share common features: they are expected to work independently from the Government, cooperate with relevant actors at home and abroad and contribute to the implementation of international human rights standards by acting as independent human rights watchdogs in a given country. That is, the Paris Principles apply equally to all NHRIs.

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<sup>57</sup> *The Evolution of National Human Rights Institutions* (The Danish Institute for Human Rights 2006) 1.

<sup>58</sup> *International Human Rights Law: Cases, Materials, Commentary* (CUP 2010) 781.

<sup>59</sup> R. Carver, *Performance & Legitimacy: National Human Rights Institutions* (ICHRP 2000) 3.

<sup>60</sup> UN Handbook on NHRIs (n 5) 6.

<sup>61</sup> Rachel Murray, ‘The Role of National Human Rights Institutions’ in Mashood A. Baderin and Manisuli Ssenyonjo (eds), *International Human Rights Law: Six Decades After The UDHR and Beyond* (Ashgate 2010) 306.

<sup>62</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 13.

<sup>63</sup> Reif (n 52) 53.

## 2.2 Nature of NHRIs

As defined above, NHRIs are non-judicial, independent institutions created by States under their constitution and/or by statute or decree with the mandate to protect and promote human rights nationally.

NHRIs have some basic distinguishing features. First, they are State-funded, Government administrative or public bodies constitutionally and/or statutorily mandated to protect and promote human rights at the national level, nonetheless acting independently of the Government.<sup>64</sup> They are the core of a strong national human rights system. They link national laws to regional and international human rights systems.<sup>65</sup> The categorization of an NHRI as a public body has significant implications for the regulation of its accountability, funding and reporting arrangements. Second, NHRIs are structurally idiosyncratic, in that they are not under the direct authority of all organs of the Government, notwithstanding they are usually directly or indirectly accountable to the legislature, but operate autonomously.<sup>66</sup> Although they are funded chiefly by the Government, they remain at arm's length from the Government. Third, NHRIs are not NGOs which are not appointed by the people or national legislative body; they form part of the State apparatus and legal fictions, as they have a statutory basis for their existence and action.<sup>67</sup> The distinction between them lies in the investigation of complaints. This is one of the crucial advantages that NHRIs has over NGOs. NHRIs must remain, and be seen to be, independent of both the Government and CSOs. They are impartial fact-finders, not advocates for either side. Fourth, NHRIs link civil society with the Government.<sup>68</sup> They connect the duties of the State with the rights of citizens. Their sitting at the crossroads between civil society and Government distinguishes them from being a NGO or a classic Government agency. But, it is unsurprising that NHRIs often point a condemning finger at the Governments that founded and finance them, because allegations of human rights violations are made primarily against States.<sup>69</sup>

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<sup>64</sup> UN Handbook on NHRIs (n 5) 6.

<sup>65</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 13.

<sup>66</sup> *ibid.*

<sup>67</sup> *ibid.*

<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*

Fifth, there is no universal naming (and model) for NHRIs.<sup>70</sup> The nomenclature by itself is nothing except that it merely conveys both what NHRIs do and that they are public bodies, not NGOs. Indeed, some NGOs incorporate the appellation ‘commission’ into their name, though not NHRIs.<sup>71</sup> Finally, NHRIs normally have geographic reach across the whole national territory, except that in some cases they have extraterritorial jurisdiction.<sup>72</sup>

### **2.3 Overview of the Paris Principles in General**

In 1978, the then UN Commission on Human Rights convened a seminar which yielded draft guidelines for the structure and functioning of NHRIs.<sup>73</sup> Thirteen years later, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held on October 7 – 9, 1991 in Paris and culminated in formulation of the Paris Principles.<sup>74</sup> These are the international normative framework for fully functioning NHRIs. They provide yardsticks against which proposed, new and existing NHRIs can be assessed. They lay down the minimum requirements that must be met for a NHRI to be considered credible by its peer institutions and within the UN system.

The Paris Principles consist of six core criteria that NHRIs should meet to be effective (otherwise known as effectiveness factors): (i) mandate and competence: a broad mandate based on universal human rights standards; (ii) autonomy from Government; (iii) independence guaranteed by constitution or statute; (iv) pluralism including through membership and/or effective cooperation; (v) adequate resources; and (vi) adequate powers of investigation.<sup>75</sup>

Although the Paris Principles as such are not binding in international law, the document is practically regarded as the most authoritative instrument in the area.<sup>76</sup> Now, the Paris Principles

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<sup>70</sup> *ibid.*

<sup>71</sup> For example, this is the case with Kenyan Human Rights Commission (KHRC) as contrasted with KNCHR.

<sup>72</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 14.

<sup>73</sup> *ibid* 7. However, the idea of NHRIs was traced back to 1946 when the Economic and Social Council invited Member States to consider the desirability of establishing information groups or local human rights committees. The first NHRI in the world, the French National Consultative Commission on Human Rights, was established in 1947.

<sup>74</sup> *ibid.*

<sup>75</sup> *ibid* 31.

<sup>76</sup> Murray (n 61) 306.

are broadly recognized as the gauge of a NHRI's legitimacy and credibility, and they have become part of the human rights vocabulary.<sup>77</sup>

But, some critics contend that the Paris Principles are externally imposed.<sup>78</sup> That is, they were devised by 'authorities outside the State who may have different expectations and priorities based on their own situation'.<sup>79</sup> Further, it is argued that the provisions of the Paris Principles are vague and unworkable; hence, 'it is not in the human rights movement's best interest to give them more importance than they deserve in light of their weaknesses and limited nature'.<sup>80</sup> For instance, the section on the composition and guarantees of NHRIs' independence and pluralism provides very little guidance to the States as to how to achieve this independence.<sup>81</sup> Yet, it can be counter-argued that the Paris Principles were not meant as an evaluative tool, but rather they were intended to actually protect the gatekeeper responsibility of NHRIs to delineate their own role.<sup>82</sup> Their purpose is to ensure that NHRIs maintain their legitimacy and credibility as independent human rights bodies free to determine their own priorities and activities.

Moreover, in order to elaborate on the existing content and scope of the Paris Principles, GANHRI-SCA has developed general observations which are regularly updated and reflect established practice of the SCA on common and important interpretative issues concerning the implementation and application of the Paris Principles. The revised observations were adopted by the GANHRI Bureau at its Meeting held in Geneva on 21 February 2018.

Drawing on the Paris Principles, currently 122 countries around the world have established NHRIs.<sup>83</sup> Seventy-nine of these NHRIs were accredited by GANHRI with A-status (meaning they are fully compliant with the Paris Principles and thus entitled to vote or hold office in

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<sup>77</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 7.

<sup>78</sup> C Raj Kumar, 'National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights' (2003) 19 American University Law Review 259 – 290.

<sup>79</sup> Mertus (n 16) 78.

<sup>80</sup> Kumar (n 78).

<sup>81</sup> *ibid.*

<sup>82</sup> Mertus (n 16) 78.

<sup>83</sup> GANHRI, 'Chart of the Status of National Institutions' (Accreditation status as of 8 August 2018)

<<https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%288%20August%202018.pdf>>

accessed November 20, 2018.

GANHRI or its regional groups); thirty–three NHRIs with B-status (meaning they are partially compliant with the Paris Principles), and ten NHRIs with C-status (meaning they are not compliant with the Paris Principles and can only participate as observers).

#### **2.4 The Principle of Autonomy/Independence<sup>84</sup> in NHRIs**

The Paris Principles serve as a point of departure for discussion on independence of NHRIs. They provide comprehensive guidance how NHRIs' independence should be established and strengthened. A NHRI should be able to 'perform its functions without interference or obstruction from any branch of Government or any public or private entity.'<sup>85</sup>

Yet, the Paris Principles omit a definition of independence. But rather, they reflect some strata of meaning of independence.

For the purposes of this study, the term 'independence' refers to a NHRI's freedom from the control or influence of another in the sense that the institution must be truly autonomous and be capable of discharging its responsibilities without external interference, control, influence or hindrance from any organ of Government or from any public or private body or person.<sup>86</sup> An independent NHRI acts autonomously from Government, party politics, civil society/NGOs, the media or other entities in society that may be in a position to interfere with its work. This entails providing the institution with the necessary resources, autonomy and powers to effectively fulfil its duties.

Given the legally defined relationship between a NHRI and the Government, independence is multifaceted. It is expressed in terms of five different layers: legal and operational autonomy, financial autonomy, independence regarding appointment and dismissal procedures, independence concerning composition and pluralism and independence in respect of privileges and immunities.<sup>87</sup> Below, all these layers will be discussed in detail one by one.

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<sup>84</sup> Although some writers draw the subtlest distinctions in meaning between autonomy and independence, in this study these issues are treated as inextricable, and the two terms have been used interchangeably, because such differences only serve to confuse the main issue further.

<sup>85</sup> UN Handbook on NHRIs (n 5) 10.

<sup>86</sup> Smith (n 4) 912.

<sup>87</sup> UN Handbook on NHRIs (n 5) 10–12.

### 2.4.1 Independence through Legal and Operational Autonomy

The Paris Principles provide that a NHRI should have its sphere of competence clearly set out in a constitutional provision or a legislative act.<sup>88</sup> This implies that NHRIs should be set up by a constitution or a statute or both rather than by an executive order or decree.<sup>89</sup> The constitutional or statutory basis is the most secure means of safeguarding NHRIs' independence and endowing them with powers that can be defended in court proceedings if challenged. A greater measure of formal independence is guaranteed when the powers of a NHRI are clearly defined constitutionally or statutorily, and it has formal legal standing. But, if the institution were established by an executive instrument, it would be more susceptible to Government influence and more easily dissolved.<sup>90</sup> Generally, constitutions provide a NHRI with greater protection against Governments hostile to its work, as they are more difficult to amend than ordinary legislation.<sup>91</sup> Yet, it is argued that although some NHRIs were created under executive decrees, they have gained credibility by their actions.<sup>92</sup>

Another equally important element of NHRIs' independence is operational autonomy which denotes the full range of capabilities and legal competence at a NHRI's disposal. Among the most notable indicators of operational independence are the institution's capacity to appoint its own staff members and manage its resources and affairs free from Government interference, and its capacity to undertake investigations autonomously.<sup>93</sup> Within the framework of its operation, a NHRI should be able to freely consider any questions falling within its competence.<sup>94</sup> This

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<sup>88</sup> UN Principles (n 9) A(2).

<sup>89</sup> Commonwealth Secretariat, *National Human Rights Institutions: Best Practice* (2001) 10–11.

<sup>90</sup> Brian Burdekin, *National Human Rights Institutions in the Asia-Pacific Region*, vol 27 (Martinus Nijhoff Publishers 2007) 18.

<sup>91</sup> *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions* (UNDP/OHCHR December 2010) 5.

<sup>92</sup> Binaifer Nowrojee, 'HUMAN RIGHTS WATCH, PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS COMMISSIONS IN AFRICA' (2001)

<http://www.hrw.org/reports/2001/africa/overview/factors.html>.> accessed 19 November 2018.

<sup>93</sup> Bertrand G. Ramcharan (ed), *The Protection Role of National Human Rights Institutions* (Brill 2005).

<sup>94</sup> UN Principles (n 9) C(a).

requires the existence of a substantive level of political will to promote and protect human rights by providing the NHRI with a secure and conducive working environment.

The Paris Principles prescribe that a NHRI should be vested with the appropriate powers of human rights investigation which encompass the quasi-judicial powers to subpoena evidence, to compel answers to questions, to threaten court action if a duty-bound person or organization is uncooperative, to publish findings after investigations and to gain access to prisons and places of detention.<sup>95</sup> But, without these powers, the institution will lack independence. This poses much risk of losing credibility and public confidence, as the institution fails to deal with sensitive human rights issues. If the institution has no adequate and concrete powers to facilitate the carrying out of its mandate, its work will be stymied. Indeed, a NHRI's independence can be strengthened, *inter alia*, by including a provision in the enabling legislation that specifies some criminal offences constituting interference with or obstruction of the institution in the exercise of its powers/functions and prescribes penalties to be imposed for such offences.<sup>96</sup>

In addition, transparency of a NHRI's work is a crucial factor in helping it establish its independence and allows the public to ascertain its independence. The credibility of the institution can be undermined by absence of transparency. The institution exhibits transparency by publishing the findings of its investigations and its overall work.<sup>97</sup>

Furthermore, independence entails accountability. As recommended by the Paris Principles, NHRIs should be answerable to an authority other than the executive, preferably to the national legislature.<sup>98</sup>

#### **2.4.2 Independence through Financial Autonomy**

The Paris Principles require that an NHRI should have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding.<sup>99</sup> The purpose of this funding

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<sup>95</sup> *ibid* C(2).

<sup>96</sup> See UHRC Act of 1997, s. 23; KNCHR Act No. 14 of 2011, s. 52; CHRAJ Act, 1993 (Act 456) s. 24; SAHRC Act No. 40 of 2013, s. 22.

<sup>97</sup> Nowrojee (n 92).

<sup>98</sup> ICHRP (n 15) 12.

<sup>99</sup> UN Principles (n 9) B(2).

should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence. An NHRI with no control over its funds or how they may be utilized cannot be independent.

This requirement covers both financial and administrative independence. A NHRI should be able to decide and pursue its own strategic plans, programs and projects and have the freedom to appoint its own staff and have adequate resources to have its own staff and premises and sufficient funding to fulfil its mandated responsibilities effectively. It should also be able to determine which of its functions is given priority in the performance of its mandate.

Moreover, provision of adequate funding by the State should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the institution's operations and the fulfilment of its mandate and should, at least, include: (i) the allocation of funds for adequate accommodation at its headquarters; (ii) salaries and benefits awarded to its staff, comparable to public service salaries and conditions; (iii) remuneration of commissioners (where appropriate); and (iv) the establishment of communications systems including telephone and the Internet.<sup>100</sup>

Hence, the budget of a truly independent NHRI should not be subject to interference by the executive or any other Government branch. Unmitigated reliance on the Government to obtain sufficient financial resources engenders tension with the institution's need to maintain its independence from the hand that feeds it. Also, to which Government department the institution technically reports is a question that matters to financial independence. When the institution is wholly dependent on some Government's finance department for its overall budget, it will be relegated to a dependent extension of the Government. Further illustrations of the Government's control over the NHRI's financial autonomy include minuscule budget allocations and impediments to the institution's ability to employ its own staff without approval. Also, literature indicates that some NHRIs have historically been reported to suffer arbitrary budget cuts for allegedly criticizing the Government.<sup>101</sup>

Furthermore, the founding legislation should specify the source and nature of funding for a NHRI, and the core funding of the NHRI should not come from external sources such as

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<sup>100</sup> GANHRI-SCA's General Observations 1.10.

<sup>101</sup> UNDP Report, 'Study on the State of National Human Rights Institutions (NHRIs) in Africa' (2016) 40.

development partners, because it is the responsibility of the State to ensure a minimum activity budget in order to allow it to operate towards fulfilling its mandate.<sup>102</sup> Also, financial systems should ensure the NHRI's complete financial autonomy through a separate budget line item over which it has absolute management and control.<sup>103</sup>

Thus, it is suggested that the institution's budget should be set by national legislative bodies to which most NHRIs are accountable, and such practice is compatible with the Paris Principles.<sup>104</sup>

### **2.4.3 Independence through Appointment and Dismissal Procedures**

Appointment and dismissal procedures are the other mechanism for guaranteeing a NHRI's independence. Generally, a NHRI is only as independent as the individuals who compose it.<sup>105</sup> Its independence will not be ensured if its members, individually and collectively, are unable to establish and maintain independence of action.<sup>106</sup>

The Paris Principles require that the founding legislation set out terms and conditions applicable to the appointment and dismissal of members of a NHRI's governing body, including appropriate safeguards against arbitrary dismissal or non-renewal.<sup>107</sup> Also, the founding legislation should clearly specify procedures and time-limits for filling vacancies caused by removal on the grounds of end of term of office, resignation or death.

The appointment procedure must be open and democratic. The members should be appointed in a manner that guarantees independence from the executive, and there must be a more credible, transparent and politically-neutral appointment process.<sup>108</sup> Independence may be ensured by involving both the legislature and civil society in the formal selection/appointment process through 'wide consultation and a process for public nomination of candidates.'<sup>109</sup> Without

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<sup>102</sup> GANHRI-SCA's General Observations 1.10.

<sup>103</sup> *ibid.*

<sup>104</sup> Smith (n 4) 922.

<sup>105</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 42.

<sup>106</sup> UN Handbook on NHRIs (n 5) 9.

<sup>107</sup> UN Principles (n 9) B(1)(3).

<sup>108</sup> GANHRI-SCA's General Observations 1.9.

<sup>109</sup> Smith (n 4) 923.

consultation with all stakeholders including civil society, the institution fails to meet the minimum international standards of the Paris Principles, and it is unlikely that the institution will gain national and international legitimacy and support. Further, a transparent process, broad consultation throughout, advertising vacancies broadly, independent scrutiny of candidates, maximizing the number of potential candidates from a wide range of societal groups, and selecting members to serve in their own individual capacity are critical factors in the selection and appointment process.<sup>110</sup>

Also, there should be clear and well-known criteria for appointment. The members should have the requisite professional qualifications and experience to carry out their jobs. These include ‘recognized competence and experience in human rights and a personal history that demonstrates integrity, competence and independence’.<sup>111</sup>

Equally critical to NHRIs’ independence is freedom from arbitrary dismissal. In order to protect the institution from retaliation for commenting on governmental action, the founding legislation should meticulously stipulate the conditions under which the members can be dismissed.<sup>112</sup> Dismissals should be restricted only to such good reasons as serious wrongdoing, clearly inappropriate conduct or serious incapacity, and the dismissal procedures should be independent of the executive. Also, even if this authority may be vested in the national legislature, a majority vote is often inadequate to cause dismissal.<sup>113</sup> This helps to reduce the likelihood of a ruling political party acting arbitrarily. Further, it should be emphasized that: (i) the dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI; (ii) dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law; and (iii) dismissal should not be allowed based on solely the discretion of appointing authorities.<sup>114</sup>

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<sup>110</sup> GANHRI-SCA’s General Observations 1.8.

<sup>111</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 41.

<sup>112</sup> *ibid* 42.

<sup>113</sup> *ibid*.

<sup>114</sup> GANHRI-SCA’s General Observations 2.1.

#### 2.4.4 Independence through Composition and Pluralism

Ensuring the pluralistic composition of a NHRI is a prime requirement of the Paris Principles as a guarantee of institutional independence. They specify that the composition of a NHRI should be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces involved in the protection and promotion of human rights.<sup>115</sup> In this regard, GANHRI-SCA has further noted that there are different ways in which pluralism may be achieved through the composition of the institution, and especially consideration should be given to ensuring pluralism in the context of gender, ethnicity or minority status.<sup>116</sup> Also, pluralism will be enhanced if social forces are involved in the selection and appointment process, though difficult to achieve. The importance of pluralistic representation is further stressed in societies divided among ethnic, religious and/or political lines.

Pluralism refers to broader representation of national society. It is recognition of existence of many societal groups with different ethnic, religious, cultural, political or other backgrounds within a country. This diversity should be reflected in the composition of the NHRI. Both the members of the NHRI's governing body and staff should be drawn from the diverse segments of society as referred to in the Paris Principles. Pluralist representation helps the NHRI to establish and increase the quality of its conceptually independent space, as it contributes to the impartiality of the institution's work.<sup>117</sup> It reinforces the impression that people can identify themselves with the individuals in the institution, as the public tends to have confidence that the institution will be more responsive to its specific needs.<sup>118</sup> Also, it averts domination of a particular group or approach. If the members and staff have a diverse range of professional backgrounds, multiplicity of opinion is ensured, and issues are not narrowly framed.<sup>119</sup>

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<sup>115</sup> UN Principles (n 9) B(1)(3).

<sup>116</sup> GANHRI-SCA's General Observations 1.7.

<sup>117</sup> Carver (n 59) 112.

<sup>118</sup> GANHRI-SCA's General Observations 1.7.

<sup>119</sup> *ibid.*

Besides, ensuring the integrity and quality of the members is vital to the independence and effectiveness of the NHRI.<sup>120</sup> The NHRI's governing body should be composed of individuals with strong integrity, knowledge and preferably practical experience in the field of human rights and who are appointed on the basis of qualifications, not political affiliation. Indeed, the responsibility for achieving an independent institution rests with those who appoint the members. But, no matter what the appointment process is, the members should be demonstrably politically-neutral, committed to human rights and persons of high integrity and standing.<sup>121</sup> Otherwise, the institution will fail to gain the confidence of the public. Especially, the legitimacy and credibility of the institution is heavily dependent on the reputation, integrity and leadership of the chief commissioner. Usually, the leader's personality is likely to influence the institution, with a good or bad effect. In theory, 'the leader should be prestigious and well-respected commissioner so as to give credibility to the work of the institution. He or she should also have the ability to negotiate with different sectors of society.'<sup>122</sup> His/her 'political will, vision and willingness' to speak out when necessary are the important requirements.'<sup>123</sup>

On the one hand, GANHRI-SCA advises avoidance of criteria that may unduly narrow and restrict the diverse and pluralistic composition of the NHRI's membership and staff, such as the requirement to belong to a specific profession.<sup>124</sup> These may restrict the capacity of the NHRI to fulfil effectively all its mandated functions. On the other hand, it is argued that 'the effort to address diversity does not become tokenism that weakens the work of the commission by the presence of political appointees who know nothing about human rights.'<sup>125</sup>

The requirement of political neutrality also applies to the staff independently appointed and employed by the NHRI.<sup>126</sup> Staff should be recruited according to an open, transparent and merit-based selection process that ensures pluralism and staff composition possessing the skills required to fulfil the NHRI's mandate. As a matter of good practice, senior level posts should not

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<sup>120</sup> *ibid.*

<sup>121</sup> Commonwealth (n 89) 29.

<sup>122</sup> Smith (n 4) 927.

<sup>123</sup> *ibid.*

<sup>124</sup> GANHRI-SCA's General Observations 1.7.

<sup>125</sup> Nowrojee (n 92).

<sup>126</sup> Smith (n 4) 926.

be filled with secondees, and the number of seconded staff should not exceed 25% and never be more than 50% of the total workforce of the NHRI.<sup>127</sup>

#### **2.4.5 Independence through Privileges and Immunities**

Members of a NHRI's decision-making body should enjoy appropriate privileges and immunities that help guarantee institutional independence.<sup>128</sup> Particularly, these protections may be necessary for NHRIs-with-quasi-judicial-powers. The members and staff of the NHRI should not be frustrated by court proceedings to be initiated by external parties who seek to influence the institution's independent operation.<sup>129</sup> Also, they should be shielded against retaliation from disgruntled parties who object to recommendations/decisions of the NHRI.<sup>130</sup> Hence, there are two types of immunity: functional and general.<sup>131</sup> The first is a legal guarantee from criminal and civil liability for acts undertaken in good faith in an official capacity. It is restricted to acts performed under the founding legislation and lifted for offences committed beyond the powers. The second immunity is meant to protect the members and staff from malicious accusations/prosecutions and from using such accusations/prosecutions as a pretext for ousting the members or harassing the staff member.

GANHRI-SCA has strongly recommended that provisions meant to protect against legal liability for actions undertaken in the official capacity of the NHRI should be included in the NHRI's enabling law or another law of general application.<sup>132</sup> Also, such protection may exist by virtue of the specific legal context in which the NHRI operates.

In addition, the members and staff of the NHRI should be immune from all forms of interference in their archives, files, documents, communications, property, funds and assets of the office or in their possession.<sup>133</sup> This immunity is a precondition for the NHRI to discharge its responsibilities, because these often involve dealing with allegations of human rights violations

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<sup>127</sup> GANHRI-SCA's General Observations 2.4.

<sup>128</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 42.

<sup>129</sup> GANHRI-SCA's General Observations 2.3.

<sup>130</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 42.

<sup>131</sup> UNDP-OHCHR Toolkit (n 91) 250.

<sup>132</sup> GANHRI-SCA's General Observations 2.3.

<sup>133</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 42.

regarding those in positions of power in society including the police, the armed forces and the security services. The purposes of this immunity are twofold: to protect the ability of the NHRI to amass and keep enough evidence/documentation, and to guarantee the safety of complainants and witnesses.

## Chapter Three

### Assessment of the Practice of EHRC vis-à-vis the Paris Principle of Autonomy from Government

This chapter presents an in-depth assessment of the practice of EHRC vis-à-vis the Paris Principle of Autonomy from Government. EHRC's independence is analyzed in terms of the five layers of NHRIs' independence as discussed in the preceding chapter. In so doing, the major challenges of independence for EHRC are highlighted. The assessment is primarily based on the Establishment-Proclamation, data collected via interviews and official statistics/figures gleaned from a series of five-year strategic plans, annual plans and performance reports of EHRC.

#### 3.1 Independence through Legal and Operational Autonomy

EHRC has a legal basis entrenched in the FDRE Constitution and the Establishment-Proclamation. There are no executive regulations that curtail its independence.

Given EHRC's powers and duties,<sup>134</sup> it has a relatively broad mandate to promote and protect human rights in Ethiopia. Particularly, EHRC has quasi-judicial competence (i.e., the power to conduct both upon-complaint and *suo moto* investigations into human rights situations/violations/issues). But, it has no its own specialized tribunal and does not impose binding decisions on the parties after investigations.<sup>135</sup> Further, the Establishment-Proclamation is fraught with some shortcomings.

Unlike the CHRAJ Act 456 of 1993,<sup>136</sup> the SAHRC Act No. 40 of 2013,<sup>137</sup> and the CHRAGG Act No. 7 of 2001,<sup>138</sup> the Establishment-Proclamation does not clearly affirm EHRC's autonomy from the Government control; instead it has merely stated that EHRC is an autonomous organ of the Federal Government having its own legal personality.<sup>139</sup> A legal safeguard against external control/supervision should have been clearly spelled out in the Establishment-Proclamation.

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<sup>134</sup> The Establishment-Proclamation, art. 6.

<sup>135</sup> The Establishment-Proclamation, art. 26.

<sup>136</sup> s. 6.

<sup>137</sup> s. 4.

<sup>138</sup> s. 14(1).

<sup>139</sup> The Establishment-Proclamation, art. 3.

Also, the provisions of Article 6(1) are somewhat vaguely-worded, as it remains unclear whether EHRC has concrete powers to conduct unannounced visits to maximum security prisons or detention places (with a view to monitoring the human rights of convicted prisoners or persons held in custody) and to monitor human rights in the context of elections and in arbitrary detention or detention without trial and inhumane treatment during *de facto* states of emergency. Again, the purport of Article 7 seems to be equivocal. The limitation of jurisdiction under this provision raises doubts as to which complaints of human rights violations/abuses are admissible under EHRC's rules of procedure. It is also doubtful whether EHRC may deal with allegations of human rights violations (especially, torture and other cruel, inhuman or degrading treatment or punishment) made by complainants suspected and/or arrested by the police, while the cases still remain pending before the HPR, the HoF, Regional Councils or courts of law at any level, and without its intervention in the merits of the cases during the judicial process.

In addition, the-Establishment-Proclamation has included specific penalty provisions.<sup>140</sup> However, in order to enforce these provisions, EHRC should demand the goodwill of an executive organ, as it must refer cases of refusal to comply with its recommendations/decisions made in respect of complaints within the specified time-limit to the prosecuting authorities, but to no effect. Consequently, EHRC has long been perceived as a toothless watchdog. One recent study found that EHRC's inability to wield its powers to ensure the criminal liability of respondents defying its recommendations is attributable to lack of clarity in Article 41(2) of the-Establishment-Proclamation which is silent about the responsible body that initiates criminal proceedings.<sup>141</sup> And, in order to avoid the obscurity, EHRC adopted Investigation and Mediation Directive in December 2014. Nonetheless, EHRC is yet unable to ensure that the perpetrators (individuals in positions of power) are held accountable for their actions. Indeed, it is debatable whether EHRC should have coercive quasi-prosecutorial powers as an enforcement mechanism for non-compliance with its recommendations. Further, the-Establishment-Proclamation should have prescribed in general terms that a person who fails to cooperate with EHRC while exercising its legal powers would be punishable by fine and/or imprisonment.<sup>142</sup>

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<sup>140</sup> The-Establishment-Proclamation, art. 41(1)(2).

<sup>141</sup> Ayalnesh (n 43) 2.

<sup>142</sup> The-Establishment-Proclamation, art. 38.

Regarding EHRC's operational autonomy, although EHRC conducted *suo moto* investigations into some incidents/situations of alleged human rights violations/abuses,<sup>143</sup> it was reproached for failing to deal with sensitive human rights issues or dismissing complaints involving politically sensitive matters.<sup>144</sup> Despite the absence of explicit restrictions on EHRC's investigative powers concerning allegations of human rights violations by members of sensitive State organs, EHRC did not proactively investigate gross human rights violations allegedly committed by members of the police and/or the army, *inter alia*, in Gura Farda Woreda in Bench Maji Zone of the SNNP State in April 2013, in Chelenqo Town in East Hararghe Zone of Oromia State in December 2017, in Gende Wuha and Kokit in West Gonder Zone of Amhara State in January 2018, and during peaceful demonstrations in Addis Ababa in September 2019.<sup>145</sup> This was so while no nationwide state of emergency was officially declared by the Council of Ministers and approved by the HPR.<sup>146</sup> But, even during states of emergency, NHRIs will exercise their mandate with a heightened level of vigilance and independence.<sup>147</sup> Further, EHRC failed to probe into individual and group complaints of forced eviction in urban and rural areas and/or internal displacement of thousands of people caused by ethnically-based attacks and implementation of the Government's development policies.<sup>148</sup>

In December 2017, the then EHRC's Chief Commissioner was invited to join the Ad hoc Joint Task Force formed to look into the incident in Chelenqo Town and went to there in company with some members of the executive by helicopter to determine what actually occurred.<sup>149</sup>

Often, EHRC's investigative powers were disregarded by officials of the Federal Police, the National Defence Forces, and the National Intelligence and Security Service.<sup>150</sup>

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<sup>143</sup> የኢትዮጵያ የሰብአዊ ኮሚሽን ጉዞ ክፍት ወዴት 2011 ዓ.ም. (n 24) 175–176.

<sup>144</sup> Mohammed (n 37) 329.

<sup>145</sup> የኢትዮጵያ የሰብአዊ ኮሚሽን ጉዞ ክፍት ወዴት 2011 ዓ.ም. (n 24) 175–176.

<sup>146</sup> The FDRE Constitution, art. 93(5)(6).

<sup>147</sup> GANHRI-SCA's General Observations 2.5.

<sup>148</sup> Mohammed (n 37) 343–355.

<sup>149</sup> Interview with Yosef Girma, Human Rights Violations Investigation Team Leader in EHRC (Addis Ababa, Ethiopia, September 10, 2019).

<sup>150</sup> Interview with Molla Abera, Former Director for Human Rights Violations Investigation in EHRC (Addis Ababa, Ethiopia, September 9, 2019).

Besides, the Government hardly looked with favour upon EHRC's advice/recommendations for revision of existing laws, enactment of new laws and formulation of policies in conformity with the international human rights instruments adopted by Ethiopia.<sup>151</sup>

Another important factor in establishing independence is transparency of work. That is, EHRC should publicize its human rights work generally and the results of its investigations into human rights violations by taking into consideration the confidentiality needs of the complainants,<sup>152</sup> because this allows the public to ascertain its independence. But, EHRC often suppressed its investigation findings. So far, it published only one investigation report.<sup>153</sup> Again, it has not yet issued its final report on the findings of election monitoring conducted during the 2015 General Elections of Ethiopia.<sup>154</sup> Indeed, it has been biannually/annually submitting reports to the HPR on its overall activities.<sup>155</sup>

In fact, the former Chief Commissioner Ambassador Tiruneh Zena, after resignation on account of termination of his tenure, testified that he was awkwardly thwarted in his attempt to insist on EHRC's responsibility to monitor human rights issues during the 2010 General Election of Ethiopia and publish the findings, and afterwards there was some governmental interference or obstruction with a view to manipulating him into suppressing the original manuscript of the final report on the findings.<sup>156</sup>

EHRC failed to persistently practice naming and shaming against perpetrators of gross human rights violations following its investigations.<sup>157</sup> This signals that EHRC lacked the courage of its

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<sup>151</sup> Interview with Girmaye Negash, Human Rights Consultancy Service Senior Expert in EHRC (Addis Ababa, Ethiopia, September 11, 2019).

<sup>152</sup> UN Principles (n 9) C(2).

<sup>153</sup> Report on the Findings of the Ethiopian Human Rights Commission's [sic] Investigations into the Human Rights Situation during the Disturbances in Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self-determination by the Qemant Nationality in Amhara Regional State and the Resolution Passed by the HPR (Addis Ababa June 2016) (Official Translation).

<sup>154</sup> Wubshet (n 43) 67.

<sup>155</sup> The-Establishment-Proclamation, art. 19(2)(g).

<sup>156</sup> አስቲር ኤልያስ 'በአፌ ያስቀመጡትን ሳላኝክ ዝም ብዬ የምውጥ ሰው አይደለሁም' አዲስ ዘመን (አዲስ አበባ, ነሐሴ 7 ቀን 2011 ዓ.ም) 3. [In an interview published in Addis Zemen newspaper on August 13, 2019]

<sup>157</sup> Ayalnesh (n 43) 9.

convictions and could not exercise its independence at the expense of its external credibility and public legitimacy. It did not make its voice heard in the fight against impunity of the perpetrators.<sup>158</sup>

Further, EHRC has never monitored the country's human rights situation nor published national status reports yearly.<sup>159</sup> Indeed, most NHRIs do not monitor and report on every aspect of a country's human rights situation every year.<sup>160</sup> Rather, EHRC is empowered to forward its opinion on human rights reports to be prepared by the Federal Government/Attorney General<sup>161</sup> and submitted to international organs.<sup>162</sup> Also, in common with many other NHRIs,<sup>163</sup> EHRC hardly dealt with human rights issues concerning the private sector; but it should have lobbied private companies/corporations in assessing the impact of their business/work on human rights.

Moreover, EHRC was not in a position to set its own staffing as it thinks fit. EHRC's employees fall into the category of public/civil servants, insofar as they are not excluded from the coverage of the federal civil servants administration legislation by other relevant one.<sup>164</sup> Consequently, they are legally required to willingly take oath of fidelity by solemnly swearing, *inter alia*, to unquestioningly execute government policies, thereby owing allegiance to the Government.<sup>165</sup> However, EHRC's employees should arguably not be considered civil servants. Further, all laws governing recruitment, promotion, transfer, redeployment, conditions of work and discipline of civil servants equally applied to EHRC's staff. The-Establishment-Proclamation provides that the Council of Commissioners is authorized to adopt internal staff regulations in conformity with the basic principles of federal civil service laws,<sup>166</sup> and that the Chief Commissioner may employ

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<sup>158</sup> Interview with Dan Yirga, Senior Expert in Ethiopian Human Rights Council (EHRCO) (Addis Ababa, Ethiopia, October 14, 2019).

<sup>159</sup> Interview with Adham Duri, Human Rights Protection and Monitoring Directorate Director in EHRC (Addis Ababa, Ethiopia, December 9, 2019).

<sup>160</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 117.

<sup>161</sup> The Federal Attorney General Establishment Proclamation No. 943/2016, art. 6(8)(e).

<sup>162</sup> The-Establishment-Proclamation, art. 6(7).

<sup>163</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 33.

<sup>164</sup> The Federal Civil Servants Proclamation No. 1064/2017, art. 2(1) cum art. 4.

<sup>165</sup> *ibid*, art. 17. Also, any civil servant is required to fulfill many other obligations enumerated in art. 66.

<sup>166</sup> The-Establishment-Proclamation, art. 31(3).

and administer the staff in accordance with the directive to be adopted by the Council.<sup>167</sup> Hence, the first-mentioned provision is understood to imply that the FDRE-CSC only technically supports EHRC's Human Resources Development Management Directorate, but does not evaluate the performance of EHRC's staff.<sup>168</sup> Indeed, the Council issued EHRC Employees' Education and Training Directive and Code of Conduct Directive No. 3/2016. Still, EHRC's endeavours to decide its own organizational structure were thwarted by the requirements of validation and approval from the FDRE-CSC, as it must align with the nationally implemented Job Evaluation and Grading (JEG) system.<sup>169</sup> Currently, EHRC is ranked Grade 17 among the twenty-two grades under which all Federal Government institutions were classified by the JEG Project Office under the auspices of the FDRE-CSC,<sup>170</sup> which arguably misjudged the size and nature/complexity of EHRC's functions.

Also, the last five years witnessed that EHRC's employees were individually coaxed into joining the ruling political party, EPRDF.<sup>171</sup> EHRC personnel administration by-law prohibits that they should not engage in the activities of cells or groups organized under the umbrella of EHRC by representing any political organization.<sup>172</sup> But, in contravention of such prohibition, those employees who became the cadres of EPRDF's four constituent ethnically-based parties used to hold caucuses on Friday every 15 days and were entrusted to recruit and co-opt other new members among the employees into their respective party.<sup>173</sup>

Finally, it should be noted that independence and accountability are inextricably linked. EHRC is accountable to the HPR<sup>174</sup>, which is the highest authority of the Federal Government and

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<sup>167</sup> The-Establishment-Proclamation, art. 19(2)(a).

<sup>168</sup> Interview with Mulugeta Nega, Human Resources Development Management Directorate Director in EHRC (Addis Ababa, Ethiopia, December 9, 2019).

<sup>169</sup> *ibid.*

<sup>170</sup> *ibid.*

<sup>171</sup> *ibid.*

<sup>172</sup> የኢትዮጵያ ሰብዓዊ መብት ኮሚሽን ሠራተኞች መተዳደሪያ ደንብ ቁ. 1/2000 ታህሣሥ 2000 ዓ/ም:: አንቀጽ 73 – 'ኮሚሽኑ እንደአካል ከማንኛውም የፖለቲካ ፓርቲ ጋር ያልወገነ፣ ገለልተኛ በመሆኑ ሠራተኞች ማንኛውንም ወይም የትኛውንም የፖለቲካ ድርጅት ወከለው በኮሚሽኑ ጥላ ስር በሌል ወይም በቡድን ተደራጅተው መንቀሳቀስ የለባቸውም::' Since July 2015, this Directive has been practically suspended.

<sup>173</sup> Interview with Mulugeta (n 168).

<sup>174</sup> The-Establishment-Proclamation, art. 13(1).

responsible to the People.<sup>175</sup> Nonetheless, the practice demonstrated that there was a fine line between guaranteeing formal accountability and interfering in EHRC's work, as the HPR exceeded its authority to hold EHRC accountable. There seemed to be a boss-subordinate relationship between the HPR Legal, Justice and Democracy Affairs Standing Committee and EHRC which acted as an advisory wing of the HPR. Particularly, in the years 2016 – 18, EHRC subordinated its regular activities to the demands of the HPR Secretariat, specifically to the Secretariat's emergency orders during unrest or serious crisis situations in the country.

### **3.2 Independence through Financial Autonomy**

Since its inception in 2006, EHRC has not its own premises. EHRC's headquarters in Addis Ababa (the capital of Ethiopia) and its eight branch offices<sup>176</sup> performed their functions in rented offices and expended too large sums of Birr (the unit of currency in Ethiopia) in office rental. For instance, its annual rent payment totalled Birr 13, 075, 170.37 in the fiscal year of 2011 E.C.<sup>177</sup>

EHRC has not the competence to set salaries as it wishes. Determination of salary scale and allowance rate to be applied nationally is at the mercy of the executive (i.e., the Council of Ministers upon the recommendation of the FDRE-CSC).<sup>178</sup> The salary scale for EHRC's staff is almost indistinguishable from that of the civil service, whereas the salary rate applicable to EHRC's appointees is identical with that of Government officials with the rank of Minister, State Minister or Director-General. EHRC's monthly payroll showed that the take-home pay broadly ranged from Birr 8,837.58 for the Chief Commissioner through Birr 10,057.03 for a line-function director and Birr 8,206.76 for a line-function team leader (including housing and transportation allowances) to Birr 1,099.99 for an office cleaner.<sup>179</sup> In 2015, the Council of Commissioners adopted a directive<sup>180</sup> entitling a large number of staff members to monthly pays of housing and transportation allowances at a differential rate. But, such fringe benefits package was arranged

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<sup>175</sup> The FDRE Constitution, art. 50(3).

<sup>176</sup> i.e., Mekelle, Semera, Bahir Dar, Hawassa, Jimma, Jigjiga, Asossa and Gambela Branch Offices.

<sup>177</sup> Interview with Alemayehu Jemal, Finance Team Leader in EHRC (Addis Ababa, Ethiopia, December 10, 2019); Annual Report of EHRC (2011 E.C.) (unpublished).

<sup>178</sup> The Federal Civil Servants Proclamation No. 1064/2017, art. 7.

<sup>179</sup> Interview with Alemayehu (n 177); Annual Report (n 177).

<sup>180</sup> The-Establishment-Proclamation, art. 31(1).

and came into operation only by endorsement of MoF.<sup>181</sup> Low salary or meagre remuneration caused a high turnover/attrition of EHRC's staff.<sup>182</sup> With such salary scale, it is difficult for EHRC to find professionals with the requisite level of expertise for line positions.<sup>183</sup> Nevertheless, pursuant to the Paris Principles, the purpose of adequate funding to be provided to a NHRI is to permit employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate, independent of the Government.<sup>184</sup> Further, such funding should allow for salary levels, terms and conditions of employment applicable to the NHRI's staff to be equivalent to those of similarly independent State agencies and members of the public service undertaking similar work and with similar qualifications and responsibilities.<sup>185</sup> Comparatively, EHRC's line-staff remains in the lower reaches of the civil service.<sup>186</sup> Salaries fixed for non-civil-servant posts requiring the same educational qualifications and involving largely similar jobs (i.e., federal judges and prosecutors) are at the upper end of the federal pay scale. The same holds true for employees of some Federal Government institutions which are accountable to directly to the FDRE Prime Minister. But, this is inconsistent with both the Paris Principles and the universal principle of equal pay for equal work.

EHRC has been authorized to draw its budget from two sources: (i) the recurrent budget and subsidy to be allocated by the government, and (ii) assistance, grant and any other source.<sup>187</sup> Regarding disbursement of the monies obtained these sources, every three months, only one fourth portion of the monies must be deposited, in advance, at the National Bank of Ethiopia or at another bank designated by the National Bank and be utilized for fulfilling EHRC's objectives but only in accordance with financial rules and regulations of the Government.<sup>188</sup> In order to ensure accountability and transparency as to how the public finances from whatever source are

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<sup>181</sup> The Federal Government of Ethiopia Financial Administration Proclamation No. 648/2009, art. 2(3).

<sup>182</sup> Interview with Mulugeta (n 168).

<sup>183</sup> 'Ethiopia Human Rights Boss Battles Scant Resources' <[www.nytimes.com](http://www.nytimes.com)> accessed November 19, 2019.

<sup>184</sup> GANHRI-SCA's General Observations 1.10.

<sup>185</sup> *ibid.*

<sup>186</sup> Interview with Mulugeta (n 168).

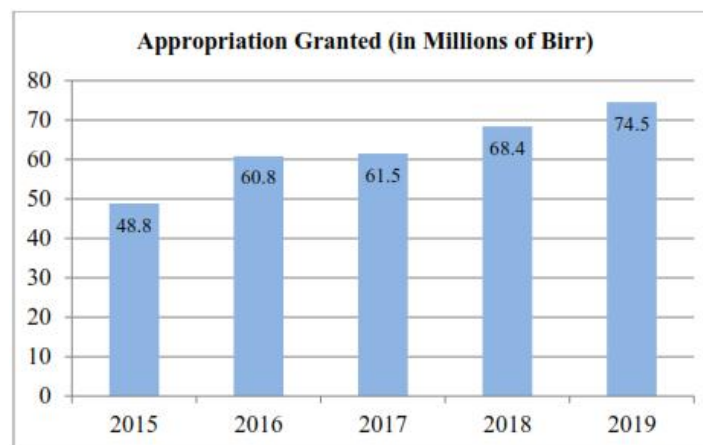
<sup>187</sup> The-Establishment-Proclamation, art. 36(1).

<sup>188</sup> The Financial Administration Council of Ministers Regulations No. 190/2010 in conjunction with the relevant directives and some 'circulars' issued by MoF.

managed and utilized by EHRC, the-Establishment-Proclamation requires that EHRC’s accounts should be audited annually by an organ to be designated by the HPR, not by MoF.<sup>189</sup>

Generally, budget estimates of recurrent and capital expenditures for the upcoming fiscal year should be prepared on the basis of the macro-economic and fiscal framework to be approved by the Council of Ministers and in accordance with the financial limits and formats prescribed by MoF in its annual budget calls for EHRC.<sup>190</sup> Yet, capital budget for EHRC was never endorsed by MoF.<sup>191</sup> Even if it were approved, the capital expenditure would not exceed the ceiling set in respect of each sector by this framework.<sup>192</sup> Additionally, to qualify for capital budget, EHRC must meet the requirements of lawful possession of land, design of buildings, payment for the design and commencement of building.<sup>193</sup>

The bulk of EHRC’s funding comes from the Federal Government’s coffers. But, in view of the enormousness of NHRIs’ roles and responsibilities, EHRC did not receive adequate budget allocations to fulfil its functions effectively. Funding shortage is tantamount to a distinct lack of the Government’s commitment to EHRC’s effectiveness.



*Diagram 1: Allocated Annual Budgets from the Federal Government to EHRC (2015 - 2019)*

<sup>189</sup> The-Establishment-Proclamation, art. 37(2).

<sup>190</sup> The Financial Administration Regulations (n 188), art. 4(1). The budget preparation and submission is governed by the principles set out in arts. 3–5.

<sup>191</sup> Interview with Biniam Gidey, Budget Planning, Monitoring and Evaluation Team Leader in EHRC (Addis Ababa, Ethiopia, December 9, 2019).

<sup>192</sup> The Financial Administration Regulations (n 188), art. 3(5).

<sup>193</sup> Interview with Biniam (n 191).

From the above bar chart, it is clear that despite the upward trend in every year's allocation, EHRC's annual budget remained to be minuscule (not enough to perform EHRC's core functions, especially to undertake timely investigation and monitoring tasks).<sup>194</sup>

In particular, in 2019 fiscal year, of EHRC's annual budget, Birr 32, 838, 000.23 was earmarked for spending on salaries, housing and transportation allowances, and pension contributions.<sup>195</sup> Additionally, it was avowed that salary plus housing and transportation allowances made up 62% of the overall budget allocated to EHRC in 2020 fiscal year, while the funds for human rights protection activities and violations investigation accounted for 9% and 12% respectively.<sup>196</sup> The rest of the budget was allotted for recurrent expenditure.<sup>197</sup>

This encouraged too much reliance upon foreign donors (the so-called development partners) such as Democratic Institutions Program, Irish Aid, Save the Children International, UN Women, World Health Organization, International Labour Organization, British Embassy's Foreign and Commonwealth Office/Department for International Development and UNDP.<sup>198</sup> Indeed, without donor support, EHRC is prone to pander to the whims of the Government which may prevent it from fulfilling its mandate effectively by imposing budgetary constraints.

Under the-Establishment-Proclamation, it is the Chief Commissioner who should prepare and submit EHRC's budget (after it was deliberated by the Council of Commissioners<sup>199</sup>) directly to the HPR and put into action the same upon approval by the HRP.<sup>200</sup> This implies that EHRC's funding should not be allocated, nor should any amendments to its budget be approved by MoF. Although the law complies with the Paris Principles, EHRC has never submitted its budget directly to the HPR. However, it was in 2019/20 fiscal year that EHRC presented, in line with the law, its draft annual budget directly to the HPR, accompanied by expert opinion for further

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<sup>194</sup> Interview with Nigussie Simie, Budget Planning, Monitoring and Evaluation Directorate Director in EHRC (Addis Ababa, Ethiopia, December 9, 2019).

<sup>195</sup> Interview with Alemayehu (n 177); Annual Report (n 177).

<sup>196</sup> 'ኮሚሽኑ ህዝቡ የሚጠብቀውን የሰብአዊ መብት አጠባበቅ አገልግሎቶችን [sic] ለመስጠት የሚያስችለው የለውጥ ስራዎች ላይ ነው- ዶ/ር ዳንኤል በቀለ' <<http://fanabc.com/2019/11/>> accessed November 19, 2019.

<sup>197</sup> The Financial Administration Regulations (n 188), art. 2(2).

<sup>198</sup> Interview with Biniam (n 191).

<sup>199</sup> The-Establishment-Proclamation, art. 31(2).

<sup>200</sup> The-Establishment-Proclamation, art. 19(2)(b).

elaboration/clarification. Yet, even if the same budget was approved by the HPR, only one twelfth portion of the budget would be requested and deposited every one month, in advance, at the National Bank of Ethiopia or at Commercial Bank of Ethiopia and used for achieving EHRC's objectives.<sup>201</sup>

In practice, EHRC's budget is still subject to confirmation and financial control by the MoF to which it technically reports. In fact, there were no instances when the Government deliberately reduced EHRC's budgets because it criticized government abuses in thematic reports or because it critically commented on human rights violations committed by State agents.<sup>202</sup>

Further, EHRC has not its own directives regulating financial matters, including the convoluted and obstructive procurement procedures. Even its requisition of procurement of essential goods/services worth about Birr 500, 000 was refused by the Public Procurement and Property Administration Agency for want of the required information.<sup>203</sup> Indeed, when the Council of Commissioners adopted a directive/bylaw on financial matters, EHRC's Finance and Procurement Directorate automatically implemented it without the sanction of MoF.<sup>204</sup>

Previously, when EHRC entered into bilateral agreements (e.g., with Embassy of Republic of Ireland), it would only notify MoF of the same. It also signed multilateral/tripartite agreements (e.g., with MoF and UNDP). Thus, in both cases, all the monies obtained from such assistance/grant were deposited in a distinct account at the National Bank and should have been disbursed in a manner that entirely promotes the best interests of the donors in accordance with the terms and conditions stipulated in the agreements plus relevant official manuals.<sup>205</sup> However, MoF issued a directive dictating how funds obtained from donors/development partners should

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<sup>201</sup> Interview with Biniam (n 191).

<sup>202</sup> Interview with Nigussie (n 194) and Biniam (n 191).

<sup>203</sup> Interview with Teshome Guta, Finance and Procurement Directorate Director in EHRC (Addis Ababa, Ethiopia, December 9, 2019).

<sup>204</sup> *ibid.*

<sup>205</sup> UN Delivery as One, 'Program Implementation Manual for UN Agencies Assisted Programs in Ethiopia,' Addis Ababa, Ethiopia (April 2007).

be spent for achieving institutional goals. This directive became effective since April 9, 2016 and was revised in January 2019 and is still in use.<sup>206</sup>

### **3.3 Independence through Appointment and Dismissal Procedures**

The criteria for appointment and dismissal of members of EHRC's governing body have been set out in the-Establishment-Proclamation.

It is the HPR that appoints the Chief Commissioner, the Deputy Chief Commissioner and other Commissioners.<sup>207</sup> Nevertheless, although all the Commissioners are appointed by the HPR, only the Chief Commissioner is accountable to it. The other Commissioners should report to the Chief Commissioner.<sup>208</sup>

The selection process requires that: (i) the appointees be recruited by a Nomination Committee which is composed of the Speaker of the HPR, the Speaker of the HoF, seven members to be elected from among members of the HPR, two members of the HPR to be elected by joint agreement of opposition parties having seats in the HPR, the President of the Federal Supreme Court, a representative of the Ethiopian Orthodox Tewahedo Church, a representative of the Ethiopian Islamic Affairs Supreme Council, a representative of the Ethiopian Evangelical Church Mekane Yesus and a representative of the Ethiopian Catholic Church<sup>209</sup>; (ii) the nominees receive the support of a two-thirds vote of the members of the Committee; (iii) the list of nominees be presented by the Speaker to the HPR for vote; and (iv) the nominees be appointed upon receipt of the support of a two-thirds vote of the HPR.<sup>210</sup>

The prerequisites for appointment are: (i) loyalty to the FDRE Constitution; (ii) a duty to uphold respect for human rights; (iii) training in law or other relevant discipline or acquisition of extensive knowledge from experience; (iv) a reputation for diligence, honesty and good conduct; (v) no previous conviction for a crime other than petty offences; (vi) Ethiopian citizenship; (vii)

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<sup>206</sup> Directive on Modes of Payment of Per Diem for Projects/Programs to be Implemented under the auspices of Development Partners (Addis Ababa, Ethiopia, January 2011 E.C.)

<sup>207</sup> The-Establishment-Proclamation, art. 10(1).

<sup>208</sup> The-Establishment-Proclamation, art. 13(2).

<sup>209</sup> The-Establishment-Proclamation, art. 11.

<sup>210</sup> The-Establishment-Proclamation, art. 10(2).

good health enough to assume the post; and (viii) above thirty-five years of age.<sup>211</sup> But, these criteria seem to be inadequate and somewhat open to manipulation.

Unlike some counterpart enabling laws, the-Establishment-Proclamation excluded other essential requirements from the list. The KNCHR Act of 2011 specifies that the candidate for chairman of the Commission has knowledge and at least fifteen years' experience in matters concerning law and human rights.<sup>212</sup> Similarly, the SAHRC Act stipulates that any person to be appointed as a commissioner has applicable knowledge or experience in matters regarding the objects of the Commission.<sup>213</sup> Further, it requires that the candidate should not be an office-bearer or a staff member of a political party...<sup>214</sup> The requirement of practical experience in the human rights field is an indication of real commitment to upholding human rights and helps to sort out fully qualified candidates in the selection process.

All Commissioners are to be appointed for a fixed term of five years in office, and upon the expiry of this five-year tenure, they may be reappointed.<sup>215</sup> However, it is unclear whether a Commissioner appointed to fill a vacancy should serve for a term of five years and be eligible for reappointment. Indeed, a five-year tenure is a reasonable period to ensure secure, long-term and stable leadership, as it affords the Commissioners the necessary space to enunciate a vision and realize it, thereby contributing much to EHRC's effectiveness.

Under the-Establishment-Proclamation, any appointee should be removed from office or discharged from responsibility only on grounds of: (i) resignation subject to a three-month prior written notice; (ii) incapability of properly discharging his/her duties, owing to illness; (iii) committing an act of human rights violation; (iv) corruption or an act of committing any other unlawful act; (v) manifest incompetence; or (vi) termination of his/her tenure.<sup>216</sup> But then, the appointee removed from office or discharged from responsibility accordingly should not assume a post in legislative, executive and judicial organs of government for about six months thereafter,

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<sup>211</sup> The-Establishment-Proclamation , art. 12.

<sup>212</sup> s. 10.

<sup>213</sup> s. 5(1)(a)(iii).

<sup>214</sup> s. 5(1)(b)(v).

<sup>215</sup> The-Establishment-Proclamation, art.14(1)(2).

<sup>216</sup> The-Establishment-Proclamation, art. 15(1).

unless he/she is reappointed.<sup>217</sup> And, he/she must be succeeded by another appointee within six months of the removal/discharge.<sup>218</sup>

Further, the dismissal procedure under the-Establishment-Proclamation requires that an appointee should be removed from office on the above grounds other than resignation and termination of tenure only after the matter has been investigated by a Special Inquiry Tribunal, provided the HPR finds that the recommendation submitted to it, as supported by the majority vote of the Tribunal, is correct and if it upholds the same by a two-thirds majority vote.<sup>219</sup> The Tribunal is comprised of the Deputy Speaker of the HPR (acting as chairperson), the Deputy Speaker of the HoF, three members to be elected by the HPR, a member of the HPR to be elected by joint agreement of opposition parties having seats in the HPR, and the Vice-President of the Federal Supreme Court.<sup>220</sup>

Notwithstanding the above-listed criteria for appointments and dismissals, the practice showed some deviation from the law. The-Establishment-Proclamation did not secure the process against political manipulation which is a threat to EHRC's independence. Political links seem to be a tacit prerequisite for appointment as Commissioners, thereby resulting in a politicized NHRI.

Usually, the practice followed the procedure laid down in the-Establishment-Proclamation, except some alleged irregularities. The onus of managing the process lies with the Nomination Committee (often consisting of fourteen members out of sixteen) under the chairmanship of the Speaker of the HPR. In a bid to find the ideal candidate for the post of a Chief Commissioner of EHRC, the HPR/Committee invites the general public to propose the eligibles within three weeks in office hours via telephone, fax, e-mail or by post. In so doing, it publicizes the nomination criteria listed in Article 12 of the-Establishment-Proclamation. Then, it develops a shortlist of nominees to be laid before the HPR for final selection.<sup>221</sup>

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<sup>217</sup> The-Establishment-Proclamation, art.14(3).

<sup>218</sup> The-Establishment-Proclamation, art. 15(2).

<sup>219</sup> The-Establishment-Proclamation, art. 16(1)(2).

<sup>220</sup> The-Establishment-Proclamation, art. 17.

<sup>221</sup> Interview with Temesgen Bayissa (Ph.D.), Chairperson of HPR Legal, Justice and Democracy Affairs Standing Committee (Addis Ababa, Ethiopia, November 20, 2019).

Nevertheless, the appointment process for the Chief Commissioner was somewhat erratic. The Committee was criticized for obfuscating the process. Some commentators decried the existence of bias towards political affiliation in the process.<sup>222</sup> Indeed, the HPR was not seen when it consulted with local CSOs to obtain their input, though four major religions were nominally represented on the Committee. Especially, CSOs working on human rights were resentful at not having actively involved in the process.<sup>223</sup>

The first Chief Commissioner was appointed by the HPR in July 6, 2004, subsequent to broad public consultations which eventually attracted 550 candidates from all over the country.<sup>224</sup> Then, the Deputy Chief Commissioner and Commissioner for Children and Women Affairs were appointed in July 2005.<sup>225</sup> Likewise, the second Chief Commissioner and other two Commissioners were nominated and appointed after all the necessary procedures were gone through. However, the selection process for appointing the third batch of Commissioners at headquarters together with eight Branch Commissioners on 2 July, 2015 was not transparent and credible, because certain necessary procedures were bypassed. In contrast, following the HPR's broad advertisement of the vacancy and nomination criteria on 10 – 29 March 2019, the fourth Chief Commissioner was appointed on July 2, 2019 among 89 nominees. Nonetheless, the legitimacy of the composition of the Nomination Committee<sup>226</sup> was impugned by some opposition party leaders, alleging that they were not represented on the Committee as prescribed by the law. Indeed, currently the parties have no seats in the HPR. Also, the appointment process created unfavourable impression on the press that the executive (specifically, the FDRE Prime Minister) cherry-picked and appointed the incumbent Chief Commissioner earlier.<sup>227</sup>

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<sup>222</sup> Interview with Molla (n 150).

<sup>223</sup> Interview with Dan (n 158).

<sup>224</sup> የኢትዮጵያ የሰብአዊ ኮሚሽን ጉዞ ከየት ወዴት 2011 ዓ.ም. (n 24) 25–26.

<sup>225</sup> *ibid* 26.

<sup>226</sup> On January 7, 2019, the HPR approved the proposal for appointing the members of the Committee which was composed of, among others, Temesgen Bayissa (Ph.D.) (then Chairperson of the Committee and later Chairperson of HPR Legal, Justice and Democracy Affairs Standing Committee), Mohammed Bolko, Adhana Haile (Ph.D.), Mrs. Beletu Edris, Mrs. Bekelech Feye, Alemu Yimer and Mrs. Askal Tilahun.

<sup>227</sup> Ethiopia Human Rights Boss (n 183).

Besides, it is arguable whether the age threshold of above-thirty-five-years allows for appointment of persons who reached the retirement age determined by law (i.e., 60 years) and simply considered the position as a stepping-stone in their political career. The practice illustrated that the first Chief Commissioner (i.e., the late Ambassador Kassa Gebrehiwot (Ph.D.)) and the second Chief Commissioner (Ambassador Tiruneh Zena) were, at the date of their appointment, aged 79 and 63 respectively. Even the incumbent Commissioner for Women and Children Affairs, Mrs. Meseret Mamo, was appointed after retirement. That is why EHRC was derided as a den of retired persons.

Furthermore, there is no provision in the-Establishment-Proclamation requiring that the Chief Commissioner must carry out his/her functions free of any partisanship to any political organization(s). The practice capitalized on such loophole. Though not overtly identified as political party members, the former three Chief Commissioners were adherents of or affiliated to the EPRDF.<sup>228</sup> In addition, the Deputy Chief Commissioners and other Commissioners were members of the EPRDF and of associate parties:<sup>229</sup> At the invitation of the EPRDF Secretariat, the second and third Chief Commissioners used to attend the annually-held EPRDF Congress as VIP guest of honour.<sup>230</sup> Hence, critics argued plausibly that the appointment of the Chief Commissioner, who *ipso facto* exercises EHRC's powers and duties, 'may ultimately depend on the will of the political party in power.'<sup>231</sup>

Once they held office as members of EHRC's governing body, all Commissioners were normally supposed to abandon their respective party. But, no official information was available on whether they cut their covert ties with the party afterwards.

Moreover, the nomination process should have proved the innocence of the Commissioners with due care and attention. The appointees should have been cleared by the process that they had no a criminal record in their past life. Less scrupulous nominees could find ways to circumvent the lax procedure. This was not pure speculation intended to smear the Commissioners. Even an out-of-time, unfounded allegation against one of the former Chief Commissioners that he had

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<sup>228</sup> Mohammed (n 37) 336.

<sup>229</sup> *ibid.*

<sup>230</sup> Interview with Mulugeta (n 168) substantiated this fact.

<sup>231</sup> Mohammed (n 37) 336.

previously abused some members of the marginalized *Manja* community residing in Konta Special Woreda<sup>232</sup> (in the SNNP State) would send a cautionary signal to the Nomination Committee how it should make the process more stringent.

Regarding the dismissals procedure, two exceptional cases will suffice to illustrate how the practice was not in accord with the law. First, as a member of the Cabinet reshuffled by Prime Minister Abiy Ahmed (Ph.D.) in April 2018, Mrs. Ubah Mohammed, the former Commissioner for Women and Children Affairs (since 2015 – 2018), was appointed as the then Minister of Communications and Information Technology. She did not request resignation from the HPR prior to three months as prescribed by the law.<sup>233</sup> She just vacated her office in EHRC (with a farewell party) and took over the new office. Secondly, when the Government of Ethiopia appointed new ambassadors to 17 countries as part of its political reform, the third Chief Commissioner was designated as Ethiopia's Ambassador to Zimbabwe in December 2018.<sup>234</sup> This amounted to the executive's call for resignation, because he was ousted as the head of EHRC out of the blue by bypassing the rigorous procedure prescribed by the law.<sup>235</sup>

### **3.4 Independence through Composition and Pluralism**

EHRC is led by a Chief Commissioner; a Deputy Chief Commissioner, a Commissioner for Children and Women Affairs, and other eight Commissioners of Branch Offices, who collectively constitute a Council of Commissioners.<sup>236</sup> It is staffed by forty-five directors, hundreds of experts and administrative support personnel.<sup>237</sup> The Chief Commissioner is the EHRC's top executive who exercises its powers and duties under the-Establishment-Proclamation,<sup>238</sup> while the Council is the supreme decision-making organ entrusted with several

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<sup>232</sup> Interview with Tilahun Dessalegn, Development Planning Preparation, Monitoring and Evaluation Work Process Coordinator in Konta Special Woreda Administration Finance Department (Ameya November 2012).

<sup>233</sup> The-Establishment-Proclamation, art. 15(1)(a).

<sup>234</sup> 'Ethiopia Appoints New Ambassadors To 17 Countries' <<https://newbusinessethiopia.com/politics/ethiopia-appoints-new-ambassadors-to-17-countries/>> accessed December 28, 2018.

<sup>235</sup> The-Establishment-Proclamation, art. 16(2).

<sup>236</sup> The-Establishment-Proclamation, art. 30.

<sup>237</sup> The-Establishment-Proclamation, art. 8 cum art. 2(2).

<sup>238</sup> The-Establishment-Proclamation, art. 19(1).

distinct powers and functions.<sup>239</sup> All the eleven Commissioners are proposed by the Nomination Committee<sup>240</sup> and are appointed by the HPR.<sup>241</sup>

As a principle, members of a NHRI's decision-making body should include full-time, remunerated members in order to ensure the independence of the NHRI free from real or perceived conflict of interests.<sup>242</sup> The-Establishment-Proclamation requires that an appointee be prohibited from engaging in other gainful, whether public or private, employment during his/her term of office, unless the HPR allowed otherwise, considering the particular profession to which the appointee should make a contribution.<sup>243</sup> However, it seems that this provision doesn't afford adequate safeguard against the likelihood for conflict of interests.

As noted above, there is no provision in the-Establishment-Proclamation stipulating that the nominees have specifically demonstrated experience in human rights. Accordingly, the majority of the former Chief Commissioners and the incumbent Branch Office Commissioners lacked the right qualifications and notable previous human rights experience to perform their jobs.<sup>244</sup> Particularly, while the first Chief Commissioner was an author and lecturer in Literature, the second Chief Commissioner was an Economics and International Finance expert by profession, though both were veteran diplomats.<sup>245</sup> In contrast, the third Chief Commissioner had a law background. Indeed, EHRC used to regard knowledge of human rights issues as desirable but not essential. Yet, it would seem ludicrous to think that knowledge of human rights is not a prerequisite for commissioners and staff of an institution mandated to promote and protect human rights nationally.

Further, the-Establishment-Proclamation is silent on a pluralistic representation which should be reflected in the composition of EHRC's Commissioners and staff. In practice, ethnic diversity was constantly taken into consideration when the HPR successively appointed a batch of three

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<sup>239</sup> The-Establishment-Proclamation, art. 31.

<sup>240</sup> The-Establishment-Proclamation, art. 11.

<sup>241</sup> The-Establishment-Proclamation, art. 2(1).

<sup>242</sup> GANHRI-SCA's General Observations 2.2.

<sup>243</sup> The-Establishment-Proclamation, art. 18.

<sup>244</sup> Interview with Mulugeta (n 168).

<sup>245</sup> የኢትዮጵያ የሰብአዊ ኮሚሽን ጉዞ ክፍት ወዴት 2011 ዓ.ም. (n 24) 228/231.

Commissioners for the headquarters. Consequently, the Chief Commissioner, the Deputy Chief Commissioner and the Commissioner for Women and Children were of three different ethnic origins: namely, the first batch from Tigrayan, Oromo and Amhara respectively; the second batch from Dawro, Tigrayan and Amhara respectively; and the third batch from Tigrayan, Amhara and Somali/Gedeo respectively. By the same token, the eight Branch Office Commissioners represented one of the ethnic groups inhabiting within the first eight regional States enumerated in Article 47(1) of the FDRE Constitution.

Statistics showed that, as of August 2019, EHRC had a total of 432 permanent staff with different backgrounds such as gender, ethnicity, religion, education, disability.<sup>246</sup> The majority (nearly 56%) of the workforce were female, whereas the rest (about 44%) were male. But, most female staff were at the secretarial and support level. In terms of ethnicity, ethnic Amhara employees constituted more than 70% of the staff, whereas the rest were employees of several ethnic origins; namely, Oromos, some of the Southern Nations, Nationalities and Peoples, Tigrayans and other diverse ethnicities who are ranked second, third, fourth and fifth respectively. In terms of religion, Christians made up more than 85% of the staff, while the rest represented Muslims and others. In terms of educational qualifications (as illustrated in Table 1 below), only 18.7% (81) of EHRC's staff represented the legal profession. Indeed, it is argued that 'human rights' is a multidisciplinary field encompassing some social sciences;<sup>247</sup> hence, the staff should include a sufficient number of fully-qualified experts in these academic disciplines. Also, employees with disabilities accounted for a negligible percentage (0.9%) of EHRC's staff.

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<sup>246</sup> Interview with Mulugeta (n 168); Annual Report (n 177).

<sup>247</sup> Yves Laberge, 'The Basics of Human Rights from Interdisciplinary Approaches: Four Reference Books' <<http://webjcli.org/article/view/208/278>> accessed October 12, 2019.

S.No	Workplace	Doctorate			LL.M.			MA			LL.B.			BA			Diploma			TVET			< Grade 10			Total		
		M	F	T	M	F	T	M	F	T	M	F	T	M	F	T	M	F	T	M	F	T	M	F	T	M	F	T
1.	Headquarters	1	-	1	1	1	2	12	2	14	14	11	25	22	29	51	1	12	13	2	3	5	21	26	47	74	84	158
<b>Branch Offices</b>																												
2.	Mekelle	-	-	-	-	1	1	1	-	1	7	2	9	6	6	12	-	4	4	1	1	2	4	3	7	19	17	36
3.	Semera	-	-	-	-	-	-	-	-	-	4	-	4	4	9	13	1	4	5	-	-	-	5	4	9	14	17	31
4.	Bahir Dar	-	-	-	1	-	1	3	-	3	1	1	2	10	9	19	3	1	4	3	1	4	2	2	4	23	14	37
5.	Hawassa	-	-	-	2	-	2	1	-	1	7	2	9	4	10	14	2	2	4	-	1	1	4	2	6	20	17	37
6.	Jimma	-	-	-	3	-	3	3	1	4	5	1	6	11	5	16	1	5	6	-	-	-	3	2	5	26	14	40
7.	Jigjiga	-	-	-	1	-	1	1	-	1	7	-	7	5	6	11	-	-	-	-	-	-	5	3	8	19	9	28
8.	Asossa	1	-	1	-	-	-	2	-	2	5	-	5	9	3	12	3	3	6	-	-	-	4	2	6	24	8	32
9.	Gambela	-	-	-	-	-	-	2	-	2	1	-	1	13	7	20	1	2	3	-	-	-	4	3	7	21	12	33
<b>Legend: - M stands for Male; F stands for Female; T stands for Total; BA stands for Bachelor of Arts; LL.B. stands for Bachelor of Laws; LL.M. stands for Master of Laws; MA stands for Master of Arts; TVET stands for Technical &amp; Vocational Education &amp; Training.</b>																												
<b>Grand Total</b>		<b>2</b>	<b>-</b>	<b>2</b>	<b>8</b>	<b>2</b>	<b>10</b>	<b>25</b>	<b>3</b>	<b>28</b>	<b>51</b>	<b>17</b>	<b>68</b>	<b>84</b>	<b>84</b>	<b>168</b>	<b>12</b>	<b>33</b>	<b>45</b>	<b>6</b>	<b>6</b>	<b>12</b>	<b>52</b>	<b>47</b>	<b>99</b>	<b>240</b>	<b>192</b>	<b>432</b>

*Table 1: Educational Qualifications of EHRC's Staff (as of August 2019)*

Given that there are many different groups coexisting in Ethiopia, coupled with limited posts for officials, the composition of EHRC did not seem to be representative of the diverse sections of society in the country, especially the social forces. The staff composition did not visibly reflect societal realities across all parts of EHRC and all levels of seniority. Only members from the majority or dominant group may diminish the institution's credibility among other parts of society. In fact, because an institution's membership is changeable, full pluralism can be achieved over time. All groups cannot be represented at any one time. However, it is argued that sheer pluralistic composition in EHRC may not necessarily contribute to increased independence.

Another factor critical to EHRC's independence is strong leadership. The quality of a NHRI's independent space turns on the chief commissioner's leadership. His/her personality is likely to influence the institution, for good or bad. In practice, EHRC repeatedly witnessed disunity/division within the top management when the second batch of Commissioners was in office. Again, a large membership at the helm proved too costly and inhibited swift decision-making, as this was so since July 2015 when the Council of Commissioners was composed of eleven Commissioners who must have worked collectively.<sup>248</sup> Further, public confidence in EHRC was undermined by the third Chief Commissioner's meddling in a civil case brought before the Federal Supreme Court and pending before the HoF (i.e., a dispute between Mrs.

<sup>248</sup> Interview with Mulugeta (n 168).

Kokebie Yilma v. Mrs. Roza Mohammed about invalidation of a contract for sale of immovable common property) under the guise of combating miscarriage of justice suffered by the one side.<sup>249</sup> His intervention went beyond EHRC's limitation of powers<sup>250</sup> or its complementary role and engendered controversy which was broadcast in different versions on Walta and Addis TVs. Indeed, the judiciary is generally exempt from oversight by NHRIs. The regular courts or quasi-judicial institutions have independence that is indispensable for ensuring full respect of the rule of law. However, this does not prevent NHRIs from monitoring and reporting on court activities and making independent recommendations intended to advance the application of human rights principles in the court setting or to get rid of undue delays in judicial proceedings.<sup>251</sup>

In addition, all successive Chief Commissioners adopted quite different styles of leadership and approaches to priority thematic areas.<sup>252</sup> The first Chief Commissioner was not seen as much in the media and preferred to remain in the background taking a passive approach, while the second Chief Commissioner focused largely on promotional (human rights education and research) and monitoring activities and was more advocacy-oriented.<sup>253</sup> And, the third Chief Commissioner concentrated his efforts apparently on investigating gross human rights violations and attracted the local media's attention by holding several press conferences to announce EHRC's 'success stories', including the findings of its investigations. Nevertheless, he adhered to a style of leadership usually placing too much trust in EHRC's directors and experts who stuck by him and were staunch supporters of the EPRDF.<sup>254</sup>

### **3.5 Independence through Privileges and Immunities**

The-Establishment-Proclamation provides that an appointee or investigator of EHRC may not be arrested or detained without the permission of the HPR or the Chief Commissioner respectively, except if caught red-handed for a serious offence.<sup>255</sup> Further, because complaints of human rights

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<sup>249</sup> የኢትዮጵያ ሰብአዊ መብት ኮሚሽን በዋልታ ቴሌቪዥን የለምን ፕሮግራም ላይ የሰጠው መግለጫ - ክፍል ሁለት via YouTube

<sup>250</sup> The-Establishment-Proclamation, art 7.

<sup>251</sup> UN/Professional/Training/Series/4/Rev.1 (n 2) 33.

<sup>252</sup> የኢትዮጵያ የሰብአዊ ኮሚሽን ጉዞ ክፍት ወዴት 2011 ዓ.ም. (n 24).

<sup>253</sup> የኢትዮጵያ የሰብአዊ ኮሚሽን ጉዞ ክፍት ወዴት 2011 ዓ.ም. (n 24).

<sup>254</sup> Interview with Molla (n 150).

<sup>255</sup> The-Establishment-Proclamation, art. 35.

violations lodged to EHRC do not entail liability for defamation,<sup>256</sup> no legal action may be taken against the appointee or investigator in respect of acts performed in their official capacity. That is, civil and criminal proceedings may not be brought against the appointee or investigator acting under the direction of EHRC in respect of anything done in good faith or in pursuance of investigation into the complaints. Also, the same immunity applies to EHRC's reports submitted to the HPR on the findings of its investigations and to any other EHRC's correspondence relating to its activities.<sup>257</sup> This immunity helps to protect the Chief Commissioner against unwelcome governmental interference or obstruction. Yet, it is questionable whether such immunities extend to external professionals employed by EHRC with appropriate remuneration for a specific task and for a definite duration.<sup>258</sup>

In practice, there were a few instances in which some members of the police and/or prison wardens tried to frustrate several EHRC's investigators in the line of duty in the field by wilfully or misguidedly obstructing/interfering with their investigations.<sup>259</sup>

Under the-Establishment-Proclamation, the Chief Commissioner has been given *carte blanche* to take a final decision on the aggrieved party's objection to the remedy proposed by an EHRC's subordinate appointee/official in an investigation report.<sup>260</sup> However, it is arguable whether the Chief Commissioner's decision should be subject to judicial review by the competent court.

Besides, while holding and leaving their offices, the Chief Commissioner and other two Commissioners at headquarters enjoy all the rights and benefits provided for a Minister and Ministers of State of the Federal Government respectively and governed by the applicable laws.

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<sup>256</sup> The-Establishment-Proclamation, art. 40(1).

<sup>257</sup> The-Establishment-Proclamation, art. 40(2).

<sup>258</sup> The-Establishment-Proclamation, art. 33.

<sup>259</sup> Interview with Yosef (n 149).

<sup>260</sup> The-Establishment-Proclamation, art. 27(1)(3).

### **3.6 Conclusion and Recommendations**

#### **3.6.1 Conclusion**

From the foregoing findings, it is evident that there remains a chasm between theory and practice. In reality, EHRC has not met the fundamental requirements which are indispensable both for defining an NHRI and accounting for its overall influence. It was not given a commendable degree of formal independence from the Government control. It lacked the requisite adequate resources, including well-qualified staff and sufficient financial means. It could not establish close, positive working relations with civil society. Further, the practice showed that it could not successfully wield its far-reaching powers which should have been defended in legal proceedings if challenged.

Independence in the NHRI context is a multifaceted concept embracing legal and operational autonomy, financial autonomy, independence concerning appointment and dismissal procedures, independence through pluralism and composition and independence with regard to privileges and immunities.

Despite lots of efforts to achieve its objective, EHRC has been facing numerous challenges of independence analyzed thematically in the preceding sections.

The majority of the respondents interviewed agreed that, over the last five years, EHRC has achieved little in earning public trust in being truly independent from the Government. It did not live up to public expectations, because too many human rights violations committed here and there in the country met with a deafening silence. The process of nomination and appointment of its Commissioners had been politically-affiliated. Still, EHRC is financially dependent overly on the Government.

Nevertheless, one cannot conclude that EHRC is not every bit independent, but it is by far not compliant with the Paris Principle of Autonomy from Government, as the practice falls substantially short of the standards articulated in the Principle and the GANHRI SCA's General Observations.

Finally, it must be noted that independence is a relative concept. Inevitably, it is impossible to completely divorce EHRC from the executive. Rather, the Establishment-Proclamation defines its operational parameters and its reporting relationship to the State, and imposes restrictions on the

degree of its institutional independence. Thus, independence must be seen in the light of several fundamental structural and procedural guarantees put in place to ensure a high degree of operational independence for EHRC. Yet, EHRC's actions and its members' commitment to upholding human rights remain to be the key to and proof of its independence.

### **3.6.2 Recommendations**

Based on the above-mentioned findings and conclusion, the following general and specific recommendations have been made to the concerned bodies at national and international levels.

The Government will have to:

- strengthen EHRC which is still partially-compliant with the Paris Principles and in want of sweeping reforms in many respects. It is in the interest of democratic States to ensure NHRIs' independence in accordance with the Paris Principles. The Government needs to positively consider and adopt EHRC's proposals for the strongest possible guarantees of its legal and operational autonomy. The HPR and the executive (especially, the Office of the Prime Minister and the MoF) have decisive roles in relation to law-making, appointments/dismissals and sufficient budgetary allocations. EHRC may not enact/amend its founding legislation, appoint its members and determine its budget. It is thus important to maximize the independence of EHRC by ensuring that the Establishment-Proclamation is sound. Approval of budget by the executive is inconsistent with independence. It is the issue of funding that clearly affects the publicly perceived independence of NHRIs and has plagued the financial independence of numerous NHRIs. Therefore, the Government must do away with the tendency to establish a NHRI, but then to appoint inappropriate people to lead it and give it inadequate resources to fulfil its mandate.
- ensure that the nomination and appointment process of EHRC's' leadership is merit-based, transparent and participatory/inclusive, and scrupulously respect the independence of EHRC. The dominant role of the HPR in the appointment process needs to be reconsidered so as to ensure that civil society will be part of the selection process, thereby reducing the risk for political manipulation and influence from the Government.
- provide EHRC with sufficient resources and staffing to ensure that it can effectively carry out its mandate.

- make sure that EHRC enjoy adequate access to policy makers, including timely consultations on draft legislation and policies/strategies with human rights implications.
- implement EHRC's recommendations in a timely fashion and provide regular reports on this implementation.

EHRC will need to:

- find and defend its conceptually independent space while simultaneously bolstering its independence from the Government and increasing its public legitimacy and credibility. EHRC needs to continuously look for innovative ways to engage with the Government and strengthen its compliance with the Paris Principles by working on all relevant human rights issues.
- initiate the reform of its founding legislation. EHRC should expedite the ongoing process for the revision of the Establishment-Proclamation so that it can discharge its mandate effectively, independently and in full compliance with the Paris Principles.
- carry out adequate assessment and measure its effectiveness with the aid of widely accepted benchmarks and indicators.
- apply for "A status" accreditation by GANHRI, as this allows it special access to the UN human rights system, including speaking rights at the UNHRC and treaty committees.
- have a pluralistic composition of its governing body and ensure its staff diversity in accordance with the Paris Principles.
- develop strong and effective leadership. The Commissioners need to tactfully strike a balance between EHRC's two roles of human rights watchdog and advisory.
- closely cooperate with other national human rights bodies, civil society and human rights defenders as well as regional and international human rights mechanisms.
- establish some protection mechanisms when facing pressure, and resort to available assistance from the UN System, especially OHCHR, if need be.

Global and regional networks as well as development partners (as key stakeholders) ought to:

- assist EHRC with technical and financial support for conducting standard assessment and evaluation of its effectiveness with the aid of widely accepted benchmarks and indicators.
- facilitate EHRC's application in the GANHRI accreditation process.

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## **Interviews**

Interview with Megabi Zerihun Degu, General Secretary of Inter-Religious Council of Ethiopia, held on August 2, 2019

Interview with Miss Soliyana Shimelis, Communications Adviser at National Board of Election of Ethiopia, held on October 15, 2019

Interview with Mr. Abesha Anley, Journalist at Amhara Mass Media Agency, held on November 24, 2019

Interview with Mr. Adham Duri, EHRC Human Rights Protection and Monitoring Directorate Director, held on December 9, 2019

Interview with Mr. Alemayehu Jemal, Finance Team Leader in EHRC, held on December 10, 2019

Interview with Mr. Biniam Gidey, Budget Planning, Monitoring and Evaluation Team Leader in EHRC, held on December 9, 2019

Interview with Mr. Dan Yirga, Senior Expert in Ethiopian Human Rights Council (EHRCO), held on October 14, 2019

Interview with Mr. Eyob Eshetu, Journalist at Ethiopian Broadcasting Corporation, held on September 2, 2019

Interview with Mr. Habib Mohammed, Journalist at Fana Broadcasting Corporate, held on September 3, 2019

Interview with Mr. Ibrahim Ahmedin, Registrar at Federal First Instance Court Yeka Division Bench, held on September 1, 2019

Interview with Mr. Molla Abera, Human Rights Monitoring Team Leader in EHRC, held on September 9, 2019

Interview with Mr. Mulugeta Nega, EHRC Human Resources Development Management Directorate Director, held on December 9, 2019

Interview with Mr. Natnael Feleke, Head for Public Relations, EZEMA – Ethiopian Citizens’ for Social Justice Party, held on October 30, 2019

Interview with Mr. Nigussie Sime, EHRC Budget Planning, Monitoring and Evaluation Directorate Director, held on December 9, 2019

Interview with Mr. Shimelis Abebe, Vice President of Ethiopian Teachers Association, held on August 22, 2019

Interview with Mr. Simeneh Bayferis, Journalist at Walta Media and Communication Corporate, held on September 4, 2019

Interview with Mr. Teshome Guta, EHRC Finance and Procurement Directorate Director, held on December 9, 2019

Interview with Mr. Tibeso Bezabih, Legal Affairs Officer, Federal Prisons Administration Commission, held on August 30, 2019

Interview with Mr. Tilahun Dessalegn, Development Planning Monitoring and Evaluation Work Process Coordinator in Konta Special Woreda Administration Finance Department (Ameya) , held on November 2012

Interview with Mr. Yibekal Gizaw, Head for National Human Rights Action Plan Office in Federal Attorney General, held on October 1, 2019

Interview with Mr. Yosef Girma, Human Rights Violations Investigation Team Leader in EHRC, held on September 10, 2019

Interview with Mrs. Meron Aragaw, Executive Director of Ethiopian Women Lawyers Association (EWLA), held on August 21, 2019

Interview with Prof. Merera Gudina, Leader of Oromo People's Congress (OPC), held on July 22, 2019

Interview with Temesgen Bayissa (Ph.D.), Chairperson of HPR Legal, Justice and Democracy Affairs Standing Committee, held on November 20, 2019

## Appendixes

### **Appendix I: Interview Guide 1**

This is an interview guide developed by BEDILU TADESSE, who is a graduate student in human rights law at Addis Ababa University, College of Law and Governance Studies, School of Law. I am working on my master's thesis titled '**Assessment of the Ethiopian Human Rights Commission vis-à-vis the Paris Principle of Autonomy from Government: the Law and the Practice**', which involves in-depth interviewing. The interview questions listed below are useful to assess the EHRC's compliance with the Principle and aimed at eliciting your balanced views and opinions on the topic, because you have been selected as one of a few target key informants who are knowledgeable about the EHRC's independence and its leading role in promoting and protecting human rights at national level. I assure you that any views and opinions expressed and any information provided will be used solely for academic purposes and treated with complete confidentiality (or remain to be strictly confidential). So, I would be extremely grateful to you for any information you can willingly and genuinely give me at your earliest convenience, and I thank you in advance for your consideration and cooperation in devoting your precious time to give the interview.

#### **Respondent's/Interviewee's Profile:-**

- Name of the respondent/interviewee: \_\_\_\_\_
- Sex: Male  Female
- Age: \_\_\_\_\_
- Educational background: \_\_\_\_\_
- Name of the institution represented: \_\_\_\_\_
- Official capacity/position in the institution represented: \_\_\_\_\_
- Length of service with the institution represented: \_\_\_\_\_

Questions for Individual Interviews with Representatives of the EHRC and of Its Stakeholders  
and CSOs and Political Parties

**Questions on Independence through Legal and Operational Autonomy**

1. Do you think that EHRC has the ability to appoint its own staff members and to manage its resources and affairs from government interference?
2. Why do you think that the EHRC had not proactively investigated the alleged human rights abuses committed by the State agents or law enforcement officers in some parts of the country over the last five years?
3. Why do you think that the EHRC had not proactively investigated individual and group complaints or cases of forced evictions in urban areas? What about the inaction on investigation of communal or ethnic violence causing forced evictions as well as issues of large-scale land transfer to investors and of religious conflicts? What about its continued inaction on monitoring and investigating complaints in the context of development policy?
4. Can you mention some specific instances when EHRC's investigations were hampered due to government interference? Or when EHRC was obstructed during investigations? Or when EHRC decided not to investigate or failed to take on politically sensitive issues because it knew that the investigation would be thwarted? Or when EHRC's powers relating to violations of human rights by the armed forces have been restricted?
5. Do you think that there exist structural limitations imposed on EHRC in which the Government creates/manipulates methods to limit the independence of the institution in protecting the people against the Government and/or its agencies?
6. Do you think that the EHRC is acting as a sister department in or the advisory arm/wing of the HPR as its annual operational planning and decision-making processes have been enslaved to the HPR Secretariat's emergency orders/requests in order to cope with various crises or by serving the interests/needs of the HRP?
7. Why do you think that the EHRC had increasingly subordinated its day-to-day activities to the demands of the HPR order/emergency work schedule, especially in case of unexpected and sudden event that must be dealt with urgently?

8. How do you explain the existing chain of command (boss-subordinate relationship) between the HPR and the EHRC?
9. How do you explain the particular occasion where the Chief Commissioner was invited to join the Ad hoc Joint Task Force formed by the HPR or the Executive specifically to probe into the allegedly gross human rights violations committed by the Ethiopian defence forces against innocent civilians in Oromia State or as a consequence of ethnic conflicts or forced evictions on the border between Oromia and Somali States?
10. Do you think that EHRC has the capacity to publish the findings of its investigations and its work generally? How often has EHRC made its findings and reports public? (*as regards transparency of work*)

### **Questions on Independence through Financial Autonomy**

1. Do you think that EHRC is financially and administratively independent of government or EHRC's budget is not subject to approval by the executive or interference by any other government branch?
2. Is EHRC able to receive adequate budget allocations and to have its own staff and premises (i.e., the ability to set staffing and structures and salaries as the EHRC wishes), independent of government and not subject to financial control?
3. To which government department does EHRC technically (professionally/practically) report?
4. Does EHRC wholly rely on the government to provide sufficient finances/financial resources?
5. Do you mention some specific instances when the Government has deliberately dramatically reduced the budget of EHRC because EHRC criticized government abuses in a thematic report or because it commented on human rights abuses committed by government agents?
6. What do you suggest about the usefulness of receiving funds/ financial support from outside/international donors for the purposes of carrying out specific projects of EHRC?
7. What are the possible risks involved in allowing EHRC to make use of international financial support? (*concerning the increased reliance on donor funding*)

## **Questions on Independence through Appointment and Dismissal Procedures**

1. Do you think that the appointment process for EHRC's Commissioners is transparent and politically neutral?
2. Does the process involve the legislature/a parliamentary committee/ and civil society in making the appointments through wide consultation and a process for public nomination of candidates? (*as to the open and inclusive nature of the selection process*)
3. Do you think that the EHRC Establishment Proclamation No. 210/2000 set out appropriate safeguards against arbitrary dismissal or non-renewal or clearly set out effective procedures and time limits in the event of a vacancy of a position due to the ending of tenure, resignation or death?
4. Do you think that these procedures and time limits are clear and precise (or open, transparent and democratic appointment procedures) in order to prevent a crisis or long periods/hiatus without a head or Commissioner?
5. Is EHRC at the mercy of the Government who has the final say as to who and when appointments are made?
6. Do you think that the successively appointed EHRC's appointees (both outgoing and incumbent) are demonstrably politically neutral and persons of high integrity and standing?
7. Do you think that the public believes the appointees are politically neutral and committed to human rights (willing to speak out against their appointers if necessary)?
8. Do you think that knowledge of human rights is not a prerequisite for members at the level of the staff, the Chief Commissioner or other Commissioners; or do you just jettison it as too restrictive criterion?
9. Does EHRC itself employ its members at the level of staff independently of deputation from government departments or secondment or re-employment after retirement?
10. How do you see the hitherto EHRC's Chief Commissioners' leadership, as the leader's personality generally tends to influence the institution, for good or bad (because the leader's political will, vision and willingness to speak out when necessary are the important requirements)?
11. Was there any risk of the EHRC becoming a 'retired persons' den' and adopting an overly legalistic approach?

12. Why (On what basis) the hitherto Chief Commissioners used to be invited to attend the annually-held EPRDF Congress/Council's regular meeting /general assembly/ as VIP guest of honour?

### **Questions on Independence through Composition and Pluralism**

1. Given that there are many different groups active in Ethiopia, and EHRC needs to accommodate and recognize these differences across a wide spectrum (including different cultures, languages, education, religion and so forth), do you think that the composition of EHRC is representative of the diverse sections of society in the country, including ethnic minorities, persons with disabilities and other vulnerable groups?
2. In societies divided among ethnic, political, and/or religious grounds, the criterion of pluralist representation takes on an added significance. What do you reflect on the validity of this proposition?
3. What do you suggest to the effect that the tension between the Government's desire to avoid interference with EHRC's independence and failing to discharge its responsibility (i.e., the Government's failure to defend the appointments made to the EHRC) would be eased?

### **Questions on Independence through Privileges and Immunities**

1. Have provisions been included in the EHRC Establishment Proclamation No. 210/2000 to protect legal liability for acts performed in an official capacity of the EHRC?
2. How many types of immunity do both appointees and staff avail themselves?
3. To what extent are they held inviolable and immune from search, seizure, requisition, confiscation or any other form of interference in their archives, files, documents, communications, property, funds and assets of the EHRC or in their possession?

## Appendix II: Interview Guide 2

This is an interview guide developed by BEDILU TADESSE, who is a graduate student in human rights law at Addis Ababa University, College of Law and Governance Studies, School of Law. I am working on my master's thesis titled '**Assessment of the Ethiopian Human Rights Commission vis-à-vis the Paris Principle of Autonomy from Government: the Law and the Practice**', which involves in-depth interviewing. The interview questions listed below are useful to assess the EHRC's compliance with the Principle and aimed at eliciting your balanced views and opinions on the topic, because you have been selected as one of a few target key informants who are knowledgeable about the EHRC's independence and its leading role in promoting and protecting human rights at national level. I assure you that any views and opinions expressed and any information provided will be used solely for academic purposes and treated with complete confidentiality (or remain to be strictly confidential). So, I would be extremely grateful to you for any information you can willingly and genuinely give me at your earliest convenience, and I thank you in advance for your consideration and cooperation in devoting your precious time to give the interview.

### Respondent's/Interviewee's Profile:-

- Name of the respondent/interviewee: \_\_\_\_\_
- Sex: Male  Female
- Age: \_\_\_\_\_
- Educational background: \_\_\_\_\_
- Name of the institution represented: \_\_\_\_\_
- Official capacity/position in the institution represented (*optional*): \_\_\_\_\_
- Length of service with the institution represented (*optional*): \_\_\_\_\_

### QUESTIONS FOR GROUP INTERVIEW

- 1) How can the EHRC, which was set up by the Government, funded by the Government, given powers and a mandate by the Government, and financially accountable to the Government, at the same time be visibly and clearly independent of the Government?

- 2) Given this intricate set of relationships and different levels at which the EHRC must work with Government, is it possible for the EHRC to be truly independent of Government? If it is possible, how? If not, what are the consequences?
- 3) The EHRC is disparaged for its lack of systemic inquiry (*suo moto* and/or systemic investigation) into legal, policy, administrative and institutional issues that give rise to recurring human rights problems in the country. Do you accord/agree with such criticism? Why or why not?
- 4) In view of the composition of the EHRC and/or the process of nomination/appointment of its Commissioners/top executives, do you think that the EHRC has not been politically affiliated since its inception? Why or why not? How?
- 5) What do you reflect upon the legitimacy of composition of the Nomination Committee recently formed pursuant to Article 11 of Proclamation No. 210/2000 to recruit the incumbent Chief Commissioner for Human Rights?
- 6) Does the past and present political and democratic experience/environment of the country permit the EHRC to carry out its mandate independently? In light of this, what do you reflect on the EHRC's capacity for differentiating human rights concerns from opposition politics?
- 7) How do you describe the hitherto EHRC's relationship with the civil society? Do you think that it worked/has been working in collaboration with the civil society? What do you reflect on the implications of the recently enacted CSO law for the expected collaboration with each other?
- 8) Among the various duties/activities falling clearly within the province/sphere of influence of the EHRC, which one(s) do you rate as a success or its achievements on your list of priorities? To what extent do you think that the EHRC has so far achieved in earning public trust in its independence/autonomy from the Government? (regarding its credibility and legitimacy in the eyes of the public)
- 9) What are the possible obstacles (ranging from easy or insurmountable) to guaranteeing and strengthening the EHRC's multifaceted independence or new challenges faced by the EHRC with respect to the same aspect?

- 10) How should the EHRC grapple with the uncomfortable dilemma of how to be independent from both Government and the civil society/NGOs, while at the same time forging working relationships with both actors?
- 11) Overall, how do you assess the EHRC's independence in practice as an indispensable part of its leading role in promoting and protecting human rights at national level?

### Appendix III: Profile of Interviewees/Respondents

#### EHRC's Appointees, Directors and Senior Experts

S. N	Name	Sex	Institution represented	Position	Date of interview
1.	Eshet Gebre (Ph.D.)	M	EHRC	Deputy Chief Commissioner	November 8, 2019
2.	Adham Duri	M	EHRC	Human Rights Protection and Monitoring Directorate Director	August 9, 2019
3.	Tsige Gebreamlak	M	EHRC	Former Media Documentation Team Leader	September 9, 2019
4.	Molla Abera	M	EHRC	Human Rights Monitoring Team Leader	September 9, 2019
5.	Yosef Girma	M	EHRC	Human Rights Violations Investigation Team Leader	September 10, 2019
6.	Girmaye Negash	M	EHRC	Human Rights Consultancy Service Senior Expert	September 11, 2019
7.	Mulugeta Nega	M	EHRC	Human Resources Development Management Directorate Director	December 9, 2019
8.	Teshome Guta	M	EHRC	Finance and Procurement Directorate Director	December 9, 2019
9.	Nigussie Sime	M	EHRC	Budget Planning, Monitoring and Evaluation Directorate Director	December 9, 2019
10.	Biniam Gidey	M	EHRC	Budget Planning, Monitoring and Evaluation Team Leader	August 26, 2019
11.	Alemayehu Jemal	M	EHRC	Finance Team Leader	August 19, 2019
12.	Tigist Fisseha	F	EHRC	Human Resources Development Management Senior Expert	August 12, 2019

## Appendix IV: Profile of Interviewees/Respondents

### Select Government Institutions, Political Parties, CSOs and the Media

S. N	Name	Sex	Institution represented	Position	Date of interview
1.	Temesgen Bayissa (Ph.D.)	M	HPR Legal, Justice and Democracy Affairs Standing Committee	Chairperson	November 20, 2019
2.	Anonymous	M	FDRE MoF	Senior Expert	October 11, 2019
3.	Anonymous	M	FDRE Civil Service Commission	JEG Project Office Head	July 15, 2019
4.					
5.	Yibekal Gizaw	M	Federal Attorney General	Head for National Human Rights Action Plan Office	October 1, 2019
6.	Tibeso Bezabih	M	Federal Prisons Administration Commission	Legal Affairs Officer	August 30, 2019
7.	Ibrahim Ahmedin	M	Federal First Instance Court Yeka Division Bench	Registrar	September 1, 2019
8.	Soliyana Shimelis	F	National Board of Election of Ethiopia	Communications Adviser	October 15, 2019
9.	Natnael Feleke	M	Ethiopian Citizens' for Social Justice Party – EZEMA	Head for Public Relations	October 30, 2019
10.	Prof. Merera Gudina	M	Oromo People's Congress (OPC)	Leader	July 22, 2019
11.	Megabi Zerihun Degu	M	Inter-Religious Council of Ethiopia	General Secretary	August 2, 2019
12.	Dan Yirga	M	Ethiopian Human Rights Council (EHRCO)	Senior Expert	October 14, 2019
13.	Meron Aragaw	F	Ethiopian Women Lawyers Association (EWLA)	Executive Director	August 21, 2019
14.	Shimelis Abebe	M	Ethiopian Teachers Association	Vice President	August 22, 2019
15.	Anonymous	M	Confederation of Ethiopian Trade Unions	President Representative	September 15, 2019
16.	Eyob Eshetu	M	Ethiopian Broadcasting Corporation	Journalist	September 2, 2019

17.	Habib Mohammed	M	Fana Broadcasting Corporate	Journalist	September 3, 2019
18.	Simeneh Bayferis	M	Walta Media and Communication Corporate	Journalist	September 4, 2019
19.	Abesha Anley	M	Amhara Mass Media Agency	Journalist	November 24, 2019