

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
CENTER FOR HUMAN RIGHTS

**ELECTION MONITORING PRACTICES OF
ETHIOPIAN HUMAN RIGHTS COMMISSION: A
COMPARATIVE ANALYSIS**

BY: WUBSHET GIRMA TOLA

June, 2018
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Declaration

I, **Wubshet Girma**, hereby declare that this thesis is original and the result of my own work and has never been submitted to any other institutions. I also declare that any secondary sources or materials used in this thesis have been duly acknowledged.

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List of Acronyms

ACHPR	African Charter on Human and Peoples Rights
AU	African Union
CSOs	Civil Society Organizations
CERD	Convention on the Elimination of All forms of Racial Discrimination
CRPD	Convention on the Rights of Persons with Disability
EHRC	Ethiopian Human Rights Commission
EU	European Union
EDPA	Ethiopian Democratic Party
EPRDF	Ethiopian People's Revolutionary Democratic Front
EWERP	Early Warning and Early Response Project
ETA	Ethiopian Teachers Association
EWLA	Ethiopian Women's Lawyer Association
FDRE	Federal Democratic Republic of Ethiopia
HPR	House of Peoples Representative
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEBC	Independent Electoral and Boundaries Commission
KNHRC	Kenya National Human Rights Commission
NGO	Non-Governmental Organization
NEBE	National Electoral Board of Ethiopia
NHRIs	National Human Rights Institutions
OHCHR	Office of the High Commissioner of Human Rights
UHRC	Uganda Human Rights Commission
UN	United Nation
UDHR	Universal Declaration of Human Rights

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Abstract

This thesis assessed the role of the Ethiopian Human Rights Commission in election monitoring. The study thus tried to draw a comparative analysis with key lessons of Kenyan and Ugandan Human Rights Commissions. By using qualitative methodology, this thesis analyzed both primary and secondary sources of data. The primary sources include in-depth interview with the Commissioner and experts of the Commission, National Electoral Board of Ethiopia, House of Peoples Representative, representatives of Ethiopian People's Revolutionary Democratic Front and some selected opposition political parties, both broadcast and print media, and representatives of some selected civil society organizations. Secondary sources include analysis of election monitoring reports of the Commission. In addition, to have a balanced view of those selected respondents; a focus group discussion has also been carried out with some selected experts from the Commission and stakeholders who are believed to represent and reflect on the activities of election monitoring. Finally, the overall findings of the study show that EHRC's efforts in monitoring general election is a good beginning in exercising its monitoring mandate. However, despite its engagement in the 2010 and 2015 general election monitoring, compared to the minimum expectation and experiences of Kenya and Ugandan Human Rights Commissions, its activities of monitoring the entire electoral processes are inadequate in terms of addressing specific activities under each election phases. It was found that, the EHRC has failed to assess the compatibility of electoral laws and other enacted legislations with the Constitution and minimum international expectations of election monitoring. Furthermore, it has a flaw towards providing extensive awareness and training on civic and voter education to the public at large, political parties, the media, security officials and to vulnerable sections of the society is also the other gap. In addition to this, the engagements to work in collaboration with CSOs and other democratic institutions are insignificant. Moreover, its failure to devise follow up mechanism for the implementation of its election monitoring report is also the other major gap. Therefore, the paper concluded that the EHRC needs to improve and strengthen its election monitoring activities.

Key Words: Election Monitoring, EHRC, KNHRC, UHRC, Pre-Election, Election, Post-Election

Chapter One

1. Background of the Study

Genuine free and fair elections are crucial in a democratic society to enable eligible voters to enjoy their democratic rights in determining their heads of State and representatives in parliament and local government to pass laws and make policies that impact on the quality of life of all citizens and residents of a State.¹ Taking part in the conduct of public affairs is fundamental human right increasingly valued by people throughout the world. Humankind, at different times in its history and with varying degrees of success, has sought ways of involving individuals in community decisions. Today, taking part in government affair is recognized as a basic fundamental human right in every corner of the world.² In spite of the recent achievements in democratization, elections in some African States remain a frequent source of human rights violations, causing deep social instability, leading to several post-election crises.³ For instance, the electoral crisis which unfolded in Kenya in the weeks and months during the aftermath of December 2007 elections resulted in the death of 1,133 and the displacement of more than 350,000 Kenyans, a total of 3,561 people suffered injuries inflicted, 117,216 private properties 491 government owned properties were destroyed.⁴

Periodic and genuine elections are a necessary and fundamental component of sustained efforts to protect and promote human rights and to this effect it is manifested when citizens have the right to participate in government and public affairs through the casting of votes or by being elected through free and fair elections held periodically for the effective enjoyment of a wider human rights and fundamental freedoms.⁵ The processes of elections are particularly crucial moments in political and civil life and concern the respect of human rights most directly. The right to vote and to be elected is at the core of democratic governance based on the consent of the people. The right to participate in free and fair elections is intrinsically linked to a number of

¹United Nations Human Rights, *Elections in west Africa: best practices and lessons learned*, 2015, pp.7

²Human Rights and Elections: *A handbook on the legal, technical and Human Rights Aspects of Election*, professional Series No.2 (United Nations Publication), 1994. Pp.1

³ Supra note 1 pp.8

⁴Numbers differ, but the released Waki report cites these figures: *Report of the Findings of the Commission of Inquiry in the Post-Election Violence in Kenya 2009* pp.53. The report observes that while violence has been a feature of Kenyan electionssince the 1990s, ‘the violence that shook Kenya after the 2007 general elections was unprecedented.

⁵ Supra note 2

fundamental human rights, the enjoyment of which is crucial to a meaningful electoral process.⁶ These rights include the right to freedom from discrimination and intimidation, the right to freedom of expression, the right to freedom of opinion, the right to freedom of peaceful assembly and the right to freedom of association. Moreover, free and fair elections are valuable tools for the full exercise and realization of the rights of political participation.⁷ Hence, today the right to take part in government affairs remains a universal agenda. These rights are proclaimed and guaranteed by major international human rights instruments such as; under article 21 of UDHR, article 25 of ICCPR and in many other treaties and declarations. On the same manner Article 13 of the African charter on Human and People's Rights incorporated the right to elect and to be elected similar to Article 25 of ICCPR and Article 21 of the UDHR.

The recently intensified worldwide struggle of people for free and fair election often at great personal risk demonstrates how important this right has become to individuals everywhere. Countries and peoples across the globe have recognized that free and fair elections are a crucial point on the continuum of democratization and an imperative means of giving voice to the will of the people, which is the basis of governmental authority itself.”⁸

Consequently, both the international and regional human rights protection forums with regard to free and fair election have influenced individual states to incorporate the right of free and fair election in their municipal legal systems during their democratization processes.

Setting institutional framework is crucial for the protection and promotion of human rights recognized under different international human rights instruments as well as the domestic legal system. So that Promotion and protection of human rights can be done at national level through adoption and incorporation of various treaties and international conventions pertaining to fundamental human rights and freedoms. For this aim establishing competent NHRIs is a means to give practical life for legally guaranteed human rights documents. To this result the World Conference on human rights encourages the establishment and strengthening of NHRIs, having regard to the ‘Principles relating to the status of national institutions’ and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.⁹

⁶OHCHR, *Monitoring Human Rights in the Context of Elections*, <http://www.ohchr.org/Documents/Publications>. pp.5

⁷Supra note 1 pp.11

⁸ Supra note 2

⁹Vienna Declaration and Programme of Action; Part 1; para. 36

NHRIs are conceived as independent institutions established by the 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 set at the national level and to advise the government and general society on human rights issues.¹⁰ They play a crucial role in promoting and monitoring the effective implementation of international standards of human rights at the national level and are important in the promotion of people's rights to participate in public life. With regard to NHRIs protective roles, they are expected to undertake effective human rights monitoring interventions amongst other protective activities.¹¹ Human Rights Monitoring includes gathering information about incidents, observing proceedings like elections, trials, demonstrations, visiting sites such as places of detention and refugee camps, discussions with national authorities to obtain information and to pursue remedies and other immediate follow-up.¹² It basically concerned with early warning and prevention of human rights violations.

Monitoring refers to the activity of observing, collecting, cataloguing and analyzing data and reporting on a situation or event and considered important because it provides concrete evidence of what is occurring. Moreover, depending on the circumstances, its aim can be to document human rights abuses so as to recommend corrective action or to be preventive and educational, or it may serve the purpose of advocacy.¹³ Election monitoring, among others is one of human rights monitoring which is conducted by NHRIs and Election monitoring is defined as the observation of an election by one or more independent parties, typically from country or a NGO, primarily to assess the conduct of an election on the basis of national legislation and international standards.¹⁴

Monitoring human rights during elections is essentially concerned with protection of rights that are relevant to the electoral process, for instance, freedom of association, freedom of assembly, prohibition of discrimination. In the electoral processes on the period before, during and after

¹⁰ Rachel Murray; *The role of National Human Rights Institutions at the International and regional levels, The Experience of Africa*, Oxford and Portland, Oregon, 2007, pp.1

¹¹ Paris Principles (1993), Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993

¹² Kristine yigen, International human rights protection: *The role of national human rights institutions- a case study*. 28 April 2016, pp.9

¹³ Office of the United Nations High Commissioner, Center for Human Rights, *National Human Rights Institutions: History Principles, Roles and Responsibilities*, (2009), pp.113

¹⁴ Martins T.Enebong, *The politics of International election monitoring/observation mission: the African perspective*, vol.11.1. January-march, 2017 pp.112

elections, some rights may be more restricted or threatened, particularly freedom of association, freedom of expression, assembly and association. At times, this may lead to a number of serious human rights violations such as arbitrary arrests and detention, ill-treatment, torture, extrajudicial killings, and enforced disappearances.¹⁵ Election monitoring serves a number of purposes among others the involvement of the field presence serve as a deterrence for violation before, during and after the elections and play a role in responding to human rights violations and intervene for corrective action to ensure non-discrimination.¹⁶ Given the strong nexus between elections and human rights, NHRIs among others focus on monitoring elections in a bid to enhance the observance of a broad range of human rights including the right to vote; and the wider ramifications of the electoral processes on human rights since the establishment of NHRIs is one of the mechanisms to enhancing good governance and improve domestic human rights protection particularly in the countries where their democratic culture is very young.¹⁷

To come to the study at hand, the Constitution of the FDRE has given recognition for fundamental human rights and freedoms.¹⁸ Ethiopia as a party to piles of international instruments pertaining to human rights and as a nation has recognized and enforced the right to elect and to be elected in its legal system. The FDRE Constitution has given recognition for the rights of citizens to participate in the political life of the country either directly or through their elected representatives.¹⁹ Realizing that the existing courts cannot alone shoulder the protection of human rights, the framers of the Constitution agreed on the need for democratic institutions that can significantly contribute building democratic governance and accountable system. Consequently, the EHRC was created as one of the rights-protective mechanisms as a response to a history of authoritarian rule in general.²⁰ The Commission has a very broad mandate to promote and protect human rights as provided under Article 6 of Proclamation Number 210/2000. It is mandated to educate the public about human rights with a view to raising awareness and fostering the tradition of respect for human rights, to provide consultancy service

¹⁵Supra note 1 pp.15

¹⁶Supra note 6 pp.6

¹⁷Mohammed Abdo Mohammed, *Ethiopian and wider African perspectives on Human Rights and Good Governance* (2014), pp.40

¹⁸The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1, *Federal Neg.Gaz.* Year 1, No.1,(1995), Chapter Three of the constitution provides adequate recognitions to fundamental human and democratic rights and freedoms.

¹⁹Article 38(1) of the FDRE Constitution of 1995

²⁰Supra note 6, pp.20

on human rights, and to provide opinion on government reports submitted to international human rights bodies. It is also authorized to investigate, upon complaint or in its own initiation, human rights violations and to propose revision, enactment of laws and formulation of policies relating to human rights. In addition, it is empowered to ensure that laws, decisions and practices of the government are in harmony with human rights enshrined under the Constitution and also to make sure that human rights are respected by government as well as other entities.²¹ Accordingly, EHRC has undertaken a number of monitoring tasks towards its protective wing of which election monitoring took a significant part. Election monitoring is one of the core activities done by the commission. The commission has been engaged in this activity during the last two general Elections that took place in 2010 and 2015. It is, therefore, worthwhile to investigate performance, achievement and challenges it experienced in the context of international minimum standards and guidelines and by examining the practice in its reports and recommendations to the authorities and interventions made by it if any.

Hence, this paper tries to scrutinize and assess experience and performance in monitoring Election in light of its international minimum monitoring expectations and best practices of some African national human rights institutions.

2. Statements of the Problem

The right to elect and to be elected is enshrined as one of the fundamental human rights under Art 38 of the Constitution.²² Moreover by virtue of Article 9(4) of the Constitution those International Human Rights Instruments ratified by Ethiopian are part and parcel of the law of the land. Establishing democratic institutions for the better realization of these rights are indispensable. To this effect the EHRC has been established and empowered to promote and protect human rights in Ethiopia by virtue of article 55(14) of the FDRE Constitution and the establishment proclamation number 210/2000. With regard to its protective roles the commission has a broader mandate to undertake a number of monitoring tasks pursuant to article 6(1) of the Proclamation. Since the commencement of its operation to promote and protect human rights, EHRC has done a number of monitoring activities as its core function in its protective role. It has

²¹Article 6 of the establishment proclamation of Ethiopian human rights Commission, 210/2000

²²The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1, *Federal Neg.Gaz.* Year 1, No.1,(1995), one third of the article under Chapter Three, provides adequate recognitions to fundamental human rights and freedoms.

conducted a series of visits to detention centers, prisons, few orphanages centers and monitored the situation of human rights during general electoral processes, focusing on the period before, during and after elections. However, election monitoring activities seem not worth mentioning in its systematic follow-up of implementation of recommendations. The Report on final monitoring and observation of the fourth general elections of EHRC shows that the Commission does not undertake actions in the electoral processes like human rights education, public dialogue on election related rights and high level strategic meetings like national security forces in its pre-election period. Moreover, in enabling conducive environment for electoral processes, in pre-election period, assessing newly enacted legislations like the charities and societies organizations proclamation which undermines those CSOs which are actively engaged in human rights, were not addressed by the Commission since the report states that the participation of CSOs particularly in civic and voters education was very minimal compared to the 2005 elections.²³ Furthermore, the recommendations forwarded by the Commission were too general except recommendations forwarded for NEBE and there were no specific recommendations forwarded to several stakeholders on how to address the concerns that emerged in the electoral periods.²⁴ It also failed to specifically list out which electoral related human rights are going to be monitored.²⁵ In identifying lessons and challenges faced by the Commission while conducting election monitoring and issues which particularly calls for urgent, adequate and appropriate action without waiting for the end-tail of the next cycle of elections was also the other problem. Such elections, in general, play a role in creating favorable conditions for the respect of all the other human rights and freedom. Election monitoring activities before, during and after election of EHRC looks in vain to solve electoral problems due to lack of systematic follow up mechanisms to examine the outcome of its activities and recommendations.

In spite of the fact that there have been a number of researches conducted on the effectiveness of the EHRC towards its basic roles, they have remained only focus on its general promotion and protective mandates. Assessment towards electoral processes before, during and after elections and the practical implementation and enforcement of its monitoring recommendations have not been addressed. This study differs from other research conducted on the subject; because

²³The General Elections Monitoring and Observation Final Report of Ethiopian Human Rights Commission, november.2011, pp.16

²⁴ Ibid

²⁵ Ibid

it focuses on the legal and practical gaps that hamper the Commission to effectively dispose its election monitoring mandate. Moreover, critics alleged that EHRC's monitoring activities particularly in election monitoring and its practical significance to bring practical solutions remain inadequate. This study therefore, aims to analyze the institutional, normative and practical aspects as well as lessons and challenges of the Commission in election monitoring.

3. Objective of the Study

3.1.1 General Objective of the Study

The overall objective of this study is to assess Election monitoring practices of the EHRC based on minimum guiding principles and standards regarding responsibilities and its role towards ensuring human rights related with electoral processes. Moreover, it also tries to look the election monitoring experiences of African National Human Rights Institutions namely, Kenya and Ugandan human rights Commissions.

3.1.2 Specific Objective of the Study

The specific objectives of the study are the following:

- To describes the international, regional and national standards pertaining to the right to elect and to be elected.
- To examine monitoring activities of the EHRC during electoral processes on the period before, during and after election.
- To identify factors affect the election monitoring mandate of the EHRC.
- To explore the operational gaps in the outcome of election monitoring and to make possible recommendations towards achieving its election monitoring mandate.

4. Research Questions

The following questions are fundamental that the study tries to answer:

- 1) What are the international and national legal bases for the right to elect and to be elected and election monitoring activities?
- 2) What activities have been done by EHRC to dispose its monitoring role in electoral processes before, during and after elections? How adequate were they?

- 3) What possible tools of electoral processes before, during and after elections are available to the EHRC?
- 4) What are the legal, practical and operational challenges that hamper the effectiveness of election monitoring activities of the commission?

5. Significance of the Study

The research tries to contribute in identifying and making suggestions for the EHRC's role of protecting human rights by evaluating its election monitoring performance in building democratic governance and accountable system. It also aims to contribute in pronouncing the factor that affect election monitoring and see the legal and operational gaps in its election monitoring activities that will be used as an input to the Commission's human rights protective role. Moreover, the study will give a prologue to readers as to whether the existing general election monitoring by EHRC is effective in terms of ensuring human rights and government accountability and understand the silent issues of election monitoring. It will be an important input for policy makers and the government to create conducive environment needed for the Commission to perform and make a progress in its election monitoring activities. The finding of this study also serves as a source of information for further research on this particular issue and areas which is not researched so far.

6. Research Methodology

The research approach of this study is qualitative research design. This approach is opted due to the fact that the research has been conducted through in depth interview of institutional role in monitoring election activities. Qualitative research approach is significant, among other things, to study about issues involving public responsibility, the role of institution, and episodes that take place in specific time and geographical areas.²⁶

6.1 Method of data collection

In-depth interview was the most important way for collecting the necessary data in conducting this study. Interview is very helpful to understand past events and experiences of those participated in monitoring electoral processes of the Commission as well as key informants whose tasks are highly related to the matter. Both primary and secondary sources of data were utilized in conducting this study. In so doing, the study has set up the proper conceptual, legal

²⁶A. Peräkylä, & Ruusuvuori, J; *Analyzing Talk and Text*, in: N. Denzin & Yvonna Lincoln (eds), *The Sage Handbook of Qualitative Research*, (Fourth Edition), London: Sage Publications, (2011), p.873

and theoretical frameworks. Interviews with the concerned government organs in particular with the HPR, NEBE, and EHRC three from each organizations and selected three CSOs and political parties have been conducted. Moreover, published and unpublished reports on election monitoring of the EHRC were also consulted. The primary data were also supplemented by secondary sources such as books, articles and literatures on other countries' experience, journals on the subject matter and unpublished as well as official reports. Furthermore, online/internet sources were also employed to gather recent information.

The study also employed one focus group discussion with experts consists of 6 members who were engaged in election monitoring activities of the Commission. It was found that, focus group discussion is helpful to gather new information that might be overlooked or understated by individual interviews. Second, it was employed to information from individual informants.

6.2 Sampling Techniques

Purposive sampling method was employed in order to identify concerned governmental, non-governmental stakeholders. They were selected on the basis of their functional and operational dependency and complementary as stakeholders to EHRC. Participants of the focus group discussions were identified taking into account their engagement in the election monitoring activities.

6.3 Ethical Considerations

In research designs that use qualitative methods of data collection ethical issues are the core part. Because of the closer relationships between the researchers and researched which gives rise to a range of ethical issues such as privacy, informed consent, anonymity, secrecy and so on.²⁷ Moreover, researchers need to protect their research participants: develop a trust with them; promote the integrity of research; guard against misconduct and impropriety that might reflect on their organizations or institutions; and cope with new, challenging problems.²⁸ The researcher owes a duty to the subjects to respect and protect research participants to exercise responsibility in the processes of data collection, analysis and dissemination. For such end, the researcher in advance has informed the purpose of the research is academic with a need to culminate suspicion as well as the possibility of understatement about the facts of their testimonies.

²⁷ Blaxter Loraine, et al, (2010) *How to Research*, (ed.4th) Open University Press, pp.160.

²⁸ John W. Creswell, *Research Design: Qualitative, Quantitative and Mixed methods approach* (3rd edition), sage publication, 2009, pp.87

7. Scope and Limitation of the Study

This study is basically concerned with the role of EHRC monitoring mandate with particular emphasis to election monitoring. It has also a temporal limitation of the practice of thereof during the 2010 and 2015 election and inclusive to the three phases of electoral processes before, during and after election. Therefore the broad monitoring tasks of EHRC remain out of the scope of the study due to time and resource constraints to address the entire mandate and performance of the commission.

8. Organization of the Study

The research is organized into four chapters. The first chapter of the study will introduce the background of the study, statement of the problem, objective of the study, research methodology, and the scope and limitation, significance of the study, and organization of the study.

The second chapter deals with literature review on normative and institutional frameworks of human rights in terms of election monitoring. Moreover, the role of NHRIs with particular emphasis to the conceptual frameworks which illustrate human rights monitoring mandate and tools of NHRIs at international, regional and national level. Chapter three has tried to examine the election monitoring activities and challenges of the EHRC since the commencement of its operation and a comparative analysis with Kenya and Ugandan human rights Commission with key lessons and challenges that will strengthen the role of EHRC in its election monitoring practices. The last chapter draws the conclusion and possible recommendations.

Chapter Two

Election Monitoring: Overview of Conceptual and Normative Underpinnings

Conceptual Framework

2.1) Human Rights Monitoring

Human rights monitoring is one of the fundamental mechanisms for the promotion and protection of human rights. It is a valuable tool for scrutinizing government compliance to its human rights commitments and to encourage it to take measures for the realization of human rights. According to the UNHCR and UNDP, monitoring refers to the activity of observing, collecting, cataloguing, analyzing data and reporting on a situation or event.²⁹ The notion of human rights monitoring is defined as ‘the active collection, verification and immediate use of information to address human rights issues’. It includes gathering of information about incidents, observing (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with national authorities to obtain information and to pursue remedies and other immediate follow-up.³⁰ Monitoring spur to document human rights abuses so as to recommend corrective action or to be preventive and educational or it may serve the purpose of human rights advocacy.

Monitoring is a means of improving the protection of human rights and the principal objective of human rights monitoring should be to reinforce State responsibility to protect human rights. To this effect monitors can also perform a preventive role through their presence when a government official or other responsible actor is monitored; who are needed to be more careful about their conduct.³¹ Moreover, monitors should not only observe developments, collect information, and perceive patterns of conduct, but should, as far as their mandate allows and their competence permits, identify problems, analyze their causes, consider potential solutions, and assist in problem solving.³²

²⁹Office of the United Nations High Commissioner, Center for Human Rights, National Human Rights Institutions: *History Principles, Roles and Responsibilities*, (2010), PP.113

³⁰Ibid

³¹OHCHR, ‘Training manual on human rights monitoring, professional training series No.7 New York and Geneva, 2001, pp.87

³²Ibid pp.88

2.2) Election Monitoring

Election monitoring is one mechanism of monitoring human rights which aims to monitor electoral related human rights in electoral processes during pre- election, election and post-election phases. Elections are an expression of sovereignty, which belongs to the people of a country, the free expression of whose will provides the basis for the authority and legitimacy of government. The rights of citizens to vote and to be elected at periodic, genuine democratic elections are internationally recognized human rights .Hence, a free and fair democratic elections serve to create the environment of peaceful competition for political power within a country and thus are central to the maintenance of peace and stability and where governments are legitimized through genuine democratic elections, the scope for non-democratic challenges to power is accordingly reduced.³³

Principles of inclusiveness, transparency, accountability and public confidence are central to electoral integrity. The principle of inclusiveness ensures the right and opportunity to vote and the right and opportunity to be elected. It is not possible to know whether the right to be elected and the right to vote are being ensured by governments unless electoral processes are ‘transparent’. It should also consist: information concerning electoral contestants, the exercise of electoral rights and information about electoral processes. State practice almost universally demonstrates acceptance that electoral contestants have a right to be present in polling stations on election day to witness and verify the integrity of voting counting and results tabulation procedures.³⁴

Elections are a principal mechanism through which citizens hold accountable those who occupy elected office. The requirement that elections be periodic is at the heart of creating governmental accountability to the citizenry since International Human Rights Instruments like (UDHR, ICCPR, and ICESCR), regionally the ACHPR that address electoral matters require that elections be periodic. There should be effective redress for violation of electoral rights. This includes mechanisms that provide appropriate remedies in an administrative context and through judicial processes. Furthermore, accountability in elections requires the application of criminal law and full rights protections, to those who commit electoral fraud or other criminal acts that

³³The declaration of principles for International Election observation and Code of conduct for international Election Observers, October 27, 2005 United Nation, New York, pp.1

³⁴Patrick Merloe, *International Principles for democratic Elections*, (2008), pp.7

violate electoral rights.³⁵ Public confidence is the other essential element for democratic elections. Secrecy of the ballot is fundamental to public confidence since it ensures protection against retribution to encourage free expression of the electors will.³⁶

When we come to the meaning and content of election monitoring and election observation, there exist some overlap between the tasks of election monitoring and election observation, it is very much important to draw distinction in between based on the activities of the actors.

Election monitoring is the observation of an election by one or more independent parties, typically from country or a NGO, primarily to assess the conduct of an election on the basis of national legislation and international standards.³⁷ On the other hand, according to the Declaration of Principles for International Election Observation: *Election Observation* “the systematic, comprehensive and accurate gathering of information concerning the laws, processes and institutions related to the conduct of elections and other factors concerning the overall electoral environment; the impartial and professional analysis of such information; and the drawing of conclusions about the character of electoral processes based on the highest standards for accuracy of information and impartiality of analysis.”

Monitors are those who have witnessed and scrutinized the entire electoral process and increase the effectiveness of electoral monitoring because they become fully aware of the political and social climate and are better able to assess the validity and legitimacy of the election. Observers are those who are invited to review an election, and observe the host nation’s democratic practices and institutions. Whereas, election monitor is to evaluate the electoral process and assess its validity in terms of national and international standards.³⁸ Observers are usually sent on short or long term missions because of their brief stays in the nation, they are only available to report blatant examples of electoral fraud such as ballot box stuffing, intimidation at the polls, and the accessibility of polling stations while Monitors are dispatched for a long-term mission and have a broader mandate that encompasses a range of activities that go beyond scrutinizing the mechanism of an election.³⁹ Moreover, monitoring missions are able to identify electoral manipulations that require investigation, time, and diligence to discover. Monitors typically meet

³⁵ Ibid pp.9

³⁶ Ibid pp.14

³⁷ Martins T.Enebong, *The politics of International election monitoring/observation mission: the African perspective*, vol.11.1.january-march,2017 pp.112

³⁸ Lucilia Pereira, A Thesis on: ‘Free and Fair: The politicization of Election Monitoring Reports’, oct.2006, pp.28

³⁹ Ibid

with all parties involved in the election including the organ who administer the election and also watch if laws have been passed or actions have been taken that would prevent opposition parties from campaigning freely.⁴⁰

Election monitors engage in tasks that must be undertaken prior to election day while observers are able to report electoral fraud, their work lacks the thoroughness that only time prior to the election can afford. Despite their difference in terms of advocacy and intervention, both monitors and observers aim to contribute to democratic development and to increase trust in the electoral process and both provide an analysis of eventual shortcomings and recommendations for improvement, even though the length of their missions and their mandates can lead them to draw different conclusions about the election.⁴¹

2.3) Purposes of Election Monitoring

Election monitoring has a number of purposes. The primary purpose is to ensure that an independent, impartial, and objective evaluation of the electoral process is conducted. In view of the fact that regular engagement and presence in election may strengthen the integrity of the electoral process and promote public confidence.⁴² The involvement of the field presence can equally serve as a deterrent for violations like detection of violence, intimidation, and fraud before, during and after the elections.⁴³ Moreover, field presences through their advocacy efforts may play an important role in responding to human rights violations and intervene for corrective action to ensure greater participation and non-discrimination. It can also facilitate dispute resolution particularly as to issues related to the election process. Furthermore, Human rights reporting can also contribute, providing an accurate account of the compliance of the electoral process with political rights and other related rights, and thus to the assessment of whether the elections were free and fair. Finally, it serves as a tool for systematic and long-term social or legal change.⁴⁴

⁴⁰ Ibid

⁴¹ Democracy Reporting International, *'Domestic Election Observation key concepts and International standards'*, January 2015, pp.2

⁴² OHCHR, *Monitoring Human Rights in the Context of Elections*, supra note, 6 pp.6

⁴³ Ibid

⁴⁴ Ibid

2.4) Principles of Election Monitoring

The following principles are common to all human rights monitoring in general and particularly to election monitoring so that in order to contribute effective and credible election process election monitoring has to be guided by the following basic principles.⁴⁵

a) Do no Harm

It is critical to remember that the foremost duty of the monitor is to the victims and potential victims of human rights violations in electoral processes so that it should keep in mind the safety of the people who provide information. At a minimum, the action or inaction of monitors should not jeopardize the safety of victims, witnesses or other individuals with whom they come into contact, or the sound functioning of election monitoring operation.

b) Respect the Mandate

In undertaking election monitoring, monitors should make an effort to understand the mandate, bear it in mind at all times, and learn how to apply and interpret it in the particular situations he or she will encounter. In evaluating the situation, monitors should consider such questions as: What are the relevant terms of the mandate? What are the relevant international and national standards underlying and explicating the mandate?

c) Know the Standards

Monitors must have a thorough understanding of the international or national human rights norms towards election monitoring against which they are measuring performance. Furthermore, each individual involved in the election monitoring exercise must also have the same interpretation of those standards, especially if data are being collected separately. The monitors and the institutions must also agree on the nature and meaning of these standards and the findings presented after monitoring must be accurate and precise.

d) Confidentiality

Respect for the confidentiality of information is also one of the cardinal principles thereof. Any breach of this principle could have very serious consequences: for the person interviewed and for the victim; for the monitors' credibility and safety; for the level of confidence enjoyed by the operation in the minds of the local population; and eventually which may entirely affect the

⁴⁵Compiled from: Office of the High Commissioner for Human Rights (OHCHR), *Basic Principles of Monitoring*, Chapter 5 in *Training Manual on Human Rights Monitoring*, (New York: United Nations Publication, 2001). Also available online at <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>

effectiveness of the whole operation. Monitors should assure the witness that the information he or she is communicating will be treated as strictly confidential. Moreover, they need to secure the consents of individuals who are subject to monitoring whether to use the information obtained from their interview for reporting or other purposes in advance. Furthermore, special measures should also be taken to safeguard the confidentiality of recorded information, including identities of victims, witnesses, etc. The use of coded language and passwords, as well as keeping documents which identify persons in separate records from facts about those persons, may be useful means to protect the confidentiality of information collected.

e) Need consistency and Patience

Consistency and patience is the other principle for election monitoring. The collection of sound and precise information to document human rights situations can be a long and difficult process. In general, a variety of sources will have to be approached and the information received from them will have to be examined carefully, compared and verified. Monitors should continue his/her efforts until a comprehensive and thorough inquiry has been completed, all possible sources of information have been explored, and a clear understanding of the situation has been obtained.

f) Accuracy and Precision

The provision of sound and precise information requires careful and well-documented reports. Monitors should always be sure to ask precise questions. Furthermore, written communication is always essential to avoid lack of precision, rumors and misunderstandings. Reports prepared by monitoring mission should reflect systematic inquiries, should be promptly submitted, and should contain specific facts, careful analysis and useful recommendations. Reports should avoid vague allusions and general descriptions. All conclusions should be based on detailed information included in the report.

g) Impartiality

Election monitoring mission should keep in mind each task or interview should be approached with an attitude of impartiality with regard to the application of the mandate and the underlying international and national standards. Violations or abuses by all parties should be investigated with equal attention to detail and monitors should not be seen as siding with one party over another.

The next section will discuss in detail what is going to be monitored during the three stages of electoral processes; pre- election, election and post-election period.

2.5) Phases of Election Monitoring

Elections are not one-off events every four or five years rather they are part of a cyclical process that is usually divided into pre-election period about 18 to 3 months before elections, the election period, which comprises three months before elections up until election day and the post-elections period, the period comprised between election day to the start of the new cycle.⁴⁶

2.5.1 Pre-Election Period

Pre-election phase starts with the actual preparations for holding elections and lasts until the end of the electoral campaign. Activities during this phase are in preparation of the elections and may include amending laws, training election officials, educating voters, registering voters, printing ballot papers, compiling voter registers, registering candidates and electoral campaigning. In this phase, domestic monitoring groups usually engage in legal framework reforms, advocating for an inclusive reform process to make sure that all relevant actors agree on the proposed amendments. The key stakeholders that observer groups frequently address in this stage are: the election administration, the parliament, political parties, the media and the electorate.⁴⁷

2.5.1.1 Monitoring the Legal Framework

It should begin assessment of election system by studying relevant laws and regulations in the country. It consists of the constitution, the election laws and the administrative rules or regulations that govern the conduct of elections.⁴⁸ Election monitors should check for internal consistency as well that the law is compatible to the constitution. So that analyzing the legal framework enables monitors to identify possible shortcomings and areas of improvement and to focus their advocacy on specific recommendations.⁴⁹ Moreover, election legislation must have broad support among the political factions in a given country and the legal framework should therefore be drafted in an open and inclusive manner in order to secure broad confidence among the competing political parties, candidates, and voters. Key changes in the legislative framework should not be introduced shortly before an election, except under exceptional circumstances and

⁴⁶ Domestic Election Observation key concepts and International standards, Supra note 41, pp.3

⁴⁷ Ibid

⁴⁸ National Democratic Institute for International Affairs; *How Domestic Organizations monitor Elections: An A to Z Guide*, 1995, pp.49

⁴⁹ Supra note 46, pp.3

when the needed amendments have broad support, as this can create confusion and lead to an unstable and unpredictable environment.⁵⁰

2.5.1.2 Monitoring the Electoral Administration

National election administration is usually responsible for administering an election. Whichever body is constituted to administer a particular election, its work should be collegial, nonpartisan, transparent, and independent from the authorities and other political influences.⁵¹ It should also be expected to implement the election legislation and regulations without interference, intimidation, or impediments to its duty. On the other hand, the administering body could be made up of a balance of representatives nominated by political parties. The balance of party representatives can serve as a check on potential misadministration or abuse of office, particularly if parties are represented at all levels of the election administration. So that any bodies involved in electoral preparations should conduct their tasks transparently and accountably. Election monitors should become acquainted with the roles of authorities in organizing the election process and the extent to which these contribute to an effective administration of the elections.⁵² All electoral activities, including the decision-making process, the legal process, and the organization of events, should be conducted in a wholly transparent manner.⁵³

2.5.1.3 Monitoring the Registration of voters, Candidates and Political Parties

Election administration is usually in charge for registering candidates for an election and the same general principles underlying the right to vote apply to the right to be a candidate. All political forces and movements should be able to nominate and field candidates freely and on equal terms. Any arbitrary or discriminatory practices for the purpose of disqualifying or undermining certain candidates or political forces contravene international and national commitments. There should be no restrictions on candidates for reasons such as race, sex, religion, political affiliation, ethnic origin, or economic status. However, there are certain reasonable restrictions that may be applied to individuals wishing to run for office. For instance, it may be reasonable to exclude any person currently serving a prison sentence for having

⁵⁰Manual on human rights monitoring: *An introduction for Human Rights field officers, Election observation Handbook*, pp.17

⁵¹ Ibid, pp.18

⁵² Ibid pp.19

⁵³ Ibid

committed a serious crime or a reasonable age requirement.⁵⁴ The registration requirements for candidates and parties should be clear and predictable and should not involve potentially discriminatory demands such as excessive deposits, mandatory regional support or party representation, or an unreasonable number of names on registration petitions. Regarding voter registration, it is intended to ensure that all citizens can exercise this right within a system that also facilitates the administration of elections and guards against multiple voting. To this effect there should be clear legal provisions governing the method of registration, the registration timetable, qualification and disqualification with respect to citizenship, age, and residence, temporary absence, means of identification for instance: evidence of eligibility, the registration form, the format of the register, publication of a draft register, the procedure for claims and appeals.⁵⁵ Election monitors should carefully assess the effectiveness and inclusiveness of the voter registration process. In particular, they should ensure that no unreasonable restrictions are placed on voter registration. Unreasonable restrictions are those based on race, sex, religion, ethnic origin, past political affiliations, language, literacy, property, or ability to pay a registration fee. Reasonable restrictions may include factors such as age, residence, citizenship, current incarceration for having been convicted of a serious crime, and mental incapacitation as determined by the court of law.⁵⁶

2.5.1.4 Monitoring Civic Education

One measure of an election legitimacy is the degree to which the electorate is adequately informed about the voters right and obligation, dates and procedures of the election as well the range of options so that to this effect Adequate voter and civic information and education is needed to ensure that participants in the electoral process are fully informed of their rights and responsibilities as voters.⁵⁷ Election Monitors should assess the extent and effectiveness of voter and civic information and education. Voter education should inform voters of when, how, and where to register to vote or to check that they are already properly registered.⁵⁸ It should also explain when, how, and where to vote on election day. It is fundamental that this information be

⁵⁴OSCE office for democratic institutions and human rights (ODIHR): *Election Observation Handbook*, sixth edition, 2010 pp.56

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ How Domestic Organizations monitor Elections, supra note 48, pp.52

⁵⁸ Manual on human rights monitoring: *An introduction for Human Rights field officers, Election observation Handbook*, pp.26

provided in a timely manner, allowing voters sufficient opportunity to make use of the information.

2.5.1.5 Monitoring Election Campaign

Monitoring election campaign require that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence, nor intimidation bars parties and candidates from freely presenting their views and qualifications. Fundamental freedoms such as the rights to freedom of expression, assembly, and association must be respected at all times.⁵⁹ To this effect there should be no unreasonable restrictions on campaign activities, meetings, or rallies. There should be no harassment of political activists, for instance, administrative detentions.

The primary focus of Election monitors is on the election process; this necessitates a basic knowledge of the political context and issues surrounding a particular election. Monitors should therefore meet with candidates and parties, observe rallies, and review campaign material in order to gain an understanding of the political processes and issues dominating the campaign and should assess the extent to which the population including minority groups and women are active in the political process and seek to understand any reasons for a lack of active involvement.⁶⁰

In a related note it is important that election campaign financing is transparent, and there should be clear legislation or rules to that effect. Election monitors should evaluate the degree to which competitors are afforded equitable access to resource in terms of finances and material resources, media access and new coverage. Moreover, Time is also another important resource for a meaningful election campaign and all contestants should have an equal period of time in which to campaign. The duration of the campaign must be long enough to enable the contestants to effectively organize and convey their policies to the electorate.⁶¹

2.5.1.6 Monitoring the Media

Free and independent media are essential elements of genuine and democratic election process and contribute to free and fair election. Election monitoring groups can play important role in pressing for the elimination of censorship, more equitable distribution of media access for political contestants, fair news coverage of contestants and election issues, and adequate voter

⁵⁹Ibid

⁶⁰Ibid pp.27

⁶¹Supra note 48, pp.56

education through the media.⁶² Equally important, once the legal framework has been set, they should scrutinize the implementation of the sanctioned rules, for this purpose they should assign a special team to assess media fairness.⁶³ The authorities should ensure that the media have the right to gather and report information freely, without intimidation or obstruction, and that there is no censorship of either the media or candidates. State-owned media, or public media, have a special responsibility to provide balanced and neutral information on the election.⁶⁴ Election monitors should see both private and public media to assess their impact on the campaign and whether, through all sources, the electorate receives sufficient, balanced information to make an informed decision.⁶⁵

2.5.2 Election Period

Election period is the actual day dedicated to the casting of votes by eligible voters and ends with the closure of polling stations. During this phase, Election Monitors should focus on the further preparation and finally the conduct of elections. They usually intensify their outreach to the election administration and the media, and they also keep close contact with political parties and candidates. Election day monitoring can be a very individual experience, depending on the area of deployment and the set of circumstances confronted by each monitoring team in the polling stations they visit.⁶⁶ Monitors should exhibit the highest levels of personal discretion and professional behavior at all times during the conduct of their monitoring duties and they should refrain from giving advice or instructions to election officials.⁶⁷

2.5.2.1 Monitoring Polling Station Activities

The primary aim of monitoring elections at the polling station level is to assess whether voting and counting is implemented in a correct and orderly manner and in accordance with electoral regulations, international commitments, and other universal principles.⁶⁸ Willful and systematic irregularities do have the potential to distort the process, and the sum total of monitoring report will readily reveal such systematic irregularities. In the event of irregularities, monitors should

⁶²Sandra Coliver and Patrick Merloe, *Guidelines for Election broadcasting in transitional Democracies*, London;1994, pp.16

⁶³National Democratic Institute for International Affairs; *How Domestic Organizations monitor Elections: An A to Z Guide*, 1995, pp.63

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Supra note 58, pp.34

⁶⁷ Ibid

⁶⁸ OSCE office for democratic institutions and human rights (ODIHR), supra note 54 pp.71

bring them to the attention of election officials and observe how and whether election officials address any reported irregularities and include this information in their reporting.

The significant points to monitor at the opening are whether polling stations open on schedule, whether the polling station commission is familiar with procedures, and whether voting in the respective polling station commences efficiently and according to regulations. It is important to note whether ballot boxes are empty at the start of the process, whether they are properly sealed, and whether the polling station has received, and can account for, blank ballots and all other necessary materials.⁶⁹

Monitoring the general conditions outside and around the polling stations is the other activity which is undertaken by monitoring mission. For instance, monitoring like whether there is any sign of campaign materials or campaign activity in, on, or around the polling station, whether there is any evidence of intimidation or disturbance, whether voters being offered any inducements to vote in a particular manner and accessing whether the polling stations are difficult and monitoring whether disabled persons enter the station unassisted.⁷⁰

2.5.2.2 Procedures for monitoring polling Station

Issues and procedures to monitor includes; whether there is any sign of partisan campaign materials or campaign activity in the polling station, any attempt to solicit people to vote in a particular manner, or is any pressure being applied to voters and any sign of intimidation, whether there are other persons in the polling station with no apparent official function or anyone other than a polling station official administering the polling process or giving directions to polling station officials, how are voters identified, and do they produce the correct document?, how are voters processed, for instance, by crossing names off the voter list, by signing the list, or by stamping identity cards? Moreover, Could the layout of a polling station potentially breach the secrecy of a person's vote?, Are voters being allowed to enter the voting booth together?, Are any voters voting outside the booth?, Are the facilities suitable for disabled persons to use independently?, Are voters who need assistance provided with appropriate help?, Are ballot boxes located in full view of election officials and observers?, Are the boxes properly sealed?⁷¹

⁶⁹Ibid

⁷⁰Ibid

⁷¹ Ibid pp.72

2.5.2.3 Monitoring Special Voting Procedures

There are provisions for special voting procedures that are intended to facilitate voting or to make voting available to citizens who are not able to visit the polls. It includes the use of mobile ballot boxes intended for the sick and elderly, voting in hospitals and prisons, early voting, voting by post, voting in embassies, and special provisions for military voting. Ensuring the secrecy of the ballot can also be more problematic. Therefore, an assessment of the advantages of special voting provisions must be weighed against the ability to regulate them properly, securely, and transparently, as well as the degree of confidence in the overall election process.⁷²

2.5.2.4 Monitoring the Vote Count

The vote count is clearly an extremely important stage in the election process, and it should be closely followed and systematically monitored. Election monitoring team should accompany any transportation of ballot boxes to the counting center and assess the procedures for ballot security and prevention of fraud during the period when ballots are being moved.⁷³

Monitoring the count provides an opportunity to assess whether ballots are counted accurately, reflecting the choices expressed by the voters. Election monitors should therefore be particularly cautious during the vote count and tabulation of results and the results of voting should be made publicly available at the polling station level. Monitors should be able to receive a copy of the results in polling stations.⁷⁴ The tabulation of results should be verifiable and transparent at all levels of the election administration. In the interest of transparency and promoting confidence in the electoral process, results for each level of the tabulation should be made publicly available immediately, at each stage of the tabulation process.

2.5.3 Monitoring Post-Election Period

This phase is the period between the closing of polling stations and the announcement of the final results. It includes, for instance, the sealing and safe transport of ballot boxes, the counting of ballot papers, independent oversight over the counting process, the declaration of provisional results, the resolution of electoral disputes and challenges of results, and the declaration of the final results.

⁷²Ibid pp.76

⁷³ibid

⁷⁴Ibid

2.5.3.1 Monitoring the Announcement of Results

Election monitors are mandated to assess the degree to which an election process is conducted in line with international commitments and national legislations. However, it does not have the power to validate, invalidate, or certify the results of an election. The announcement of final results is obviously an important part of any election process and to the extent possible it should be observed by the election monitoring mission.⁷⁵

2.5.3.2 Monitoring post-Election Complaints and Appeal Process

Complaints and appeals are very much important component of an election process. Complaints may relate to any aspect of an election process, from the election campaign begins for instance, complaints about voter registration or candidate registration, to complaints about the election results, which may continue until well after election day. Monitoring mission should make a judgment on the importance of the cases under appeal, on whether the appeals process to date has proved to be effective and reliable, and whether the presence of observers might have a beneficial effect on the implementation of the process.⁷⁶

The next section of this chapter will try to discuss the role of national human rights institutions towards their mandate and experience on election monitoring. Furthermore, we will try to look at the major intervention made Kenya and Uganda human rights commissions which can be taken as a lesson in undertaking election monitoring.

2.6 The role of NHRIs in Monitoring Human Rights

NHRIs are founded on the vision set forth in the Universal Declaration of Human Rights and further developed in the international human rights conventions promoting respect for and observance of human rights and fundamental freedoms and in recognition of the universality, indivisibility and interdependence of all human rights.⁷⁷

Principally, Human Rights Commissions are mandated for the promotion and protection of human rights and fundamental freedoms. When we say human rights commission promote human rights to mean that the inculcation of a greater respect for human rights among the general public, governmental and non-state actors, NGOs and business organizations. On the other hand, the protective function involves the examining and the taking of actions on

⁷⁵Ibid

⁷⁶ Ibid

⁷⁷Principles relating to the Status of National Institutions, Adopted by General Assembly resolution 48/134 of 20 December 1993, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

complaints alleged violations of human rights, monitoring, advisory roles, researches and other strategies.⁷⁸

The Paris Principles list a number of responsibilities for national institutions. Among others, the institution shall monitor any situation of violation of human rights, which it decides to take up. In order to carry out this function the institution needs sufficient staff to follow developments in any part of the country, and it must furthermore not be limited in its access to any NGO, group or individual, which may be threatened or possess knowledge about violations.⁷⁹ Monitoring of human rights is regarded as one of the core areas of work for NHRIs. All international human rights instruments include sections on national monitoring, primarily targeted at organs of the state, to ensure that an analysis of how the state is complying with ratified international and national human rights obligations.⁸⁰

2.7 Kenyan and Ugandan NHRIs: Towards Election Monitoring

One of the methods devised for enforcing human rights at national level is through the establishment of NHRIs.⁸¹ There are more than 31 African countries which have established human rights institutions and these institutions follow their own peculiar features with regard to mandate, mode of establishment as well as in terms of political willingness of the state concerned to conform to human rights standards.⁸²

For the purpose of this paper the researcher selected African NHRIs deliberately and based purely on availability of information on the institutions chosen, their accreditation status is (A) and they are relatively strong National Human Rights Commissions. They are KNCHR and UHRC.

2.8 The Kenya National Commission on Human Rights

General Overview

The KNCHR is an independent NHRI established by an Act of Parliament (KNCHR Act, 2002). It became operational in July 2003, having succeeded the Standing Committee on Human Rights which was established in 1996 through a Presidential Decree. Later on due to the adoption of the new Constitution, it becomes a Constitutional Commission established under the Article 59 of

⁷⁸ Ibid

⁷⁹ Morten Kjaerum, *National Human Rights Institutions Implementing Human Rights*, 2003, pp.6

⁸⁰ Kristine yigen, *International human rights protection: The role of national human rights institutions- a case study*. 28 April 2016, pp.7

⁸¹ C. Mania peter, *Human Rights Commissions in Africa: Lessons and challenges*, (2004), Pp.352

⁸² Ibid

the Constitution of Kenya 2010, and operationalized by the KNCHR Act No. 14 of 2011 with the core mandate of protecting and promoting the observance of human rights in Kenya. The Commission bases its core values on the internationally recognized human rights principles of universality, indivisibility, interdependence and interrelatedness of human rights and seeks to foster and uphold values of independence, integrity, inclusiveness, tolerance and accessibility. The KNCHR, being constitutionally mandated to monitor the adherence of human rights standards in Kenya, continues to advocate for electoral processes that safeguard the Citizens' right to vote.⁸³

2.8.1 Election Related activities of the KNCHR

In the Kenyan electoral context, party primaries play a critical phase in the elections. This is because of the ethnic and locational dimensions in the management of party affairs. It was thus crucial for KNCHR to monitor political party primaries and the campaign process as documented in a report titled the Fallacious Vote: A Human Rights Account of the 2017 Political Party Primaries. In this stage of Election period the KNCHR has conducted monitoring party nomination and Campaign process and they called The Fallacious Vote.⁸⁴ To this effect the KNCHR recruited 84 monitors who were taken through intensive training and sensitization on key human rights election-related issues and thereafter deployed to monitor the electoral cycle including the political party nominations process. The KNCHR primarily concerned to conduct this stage of Election is due to lack of preparedness demonstrated by political parties in the party primaries despite having ample time, based on the timelines that had been gazzetted in advance by the IEBC. The gaps brought about by this unpreparedness greatly affected the credibility and integrity of the entire exercise.⁸⁵

KNCHR noted incidences that threatened to compromise the right to vote and the outcome of the nominations that were caused by aspirants, their supporters and party officials. These include bribery, use of violence, intimidation and harassment; destruction of voting material, lack of co-ordination at the tallying centers and targeted attacks meted against minority and marginalized groups such as women aspirants.⁸⁶ During the 2017 political campaign period, which began in

⁸³Kenya National Commission on Human Rights, *A human rights account of the 2017 General Elections*, Preliminary Report, 2017.pp.6

⁸⁴Kenya National Commission on Human Rights, *the Fallacious Vote: A human rights account of the 2017 Political parties primaries*, May 2017.pp.5

⁸⁵Ibid pp.6

⁸⁶Ibid pp.10

June and ended on August 5th, the Kenya National Commission on Human Rights set out to monitor the impact of security in the achievement of a free, fair and credible electoral process.

2.8.2 Key Findings of the KNCHR

They had selected parameters upon which the monitoring of the primaries was based on. These are, bribery, violence, missing names, voting materials, opening and closing time, provision of security, harassment and duress of both voters and candidates, intimidation and violence against the marginalized and the vulnerable, manipulation of the voter register and any other unique issues that would arise including challenges and dispute resolution.⁸⁷ As the report shows, in some constituencies, many voters were turned back and failed to vote since their names were either missing on the available registers or due to the merger of the polling centers. This happened without a prior notice to the voters. This is clearly against the right to exercise voting.

2.8.3 Major Interventions made by the KNCHR

The KNCHR strategically participated in the preparations for the 2017 General Election through a number of interventions. These included issuing of advisories on the Independent Electoral and Boundaries Commission stalemate in 2016. The advisories focused on guaranteeing respect for human rights in the electioneering process and specifically addressed; the voter registration, the credibility and transparency of the voter register, participation of special interest groups and protecting the integrity of the electoral process. Those strategic interventions include:

a) Memorandum on Proposed Electoral Reforms

KNCHR make a Draft Memorandum of Understanding between the KNCHR and the National Police Service and Draft guidelines on the Use of Force and Firearms by the Police. Taking note of critical role of the national service in protecting human rights and freedoms especially during the electioneering period, KNCHR initiated discussions to strategically partner with the national police service.⁸⁸ KNCHR is deeply concerned that despite new electoral reforms, political parties showed no improvement in the 2017 primaries. The report made by the KNCHR reflect the relentless push for electoral reforms which have a direct effect on the promotion, protection and enjoyment of fundamental human rights in Kenya.⁸⁹

⁸⁷ Ibid pp.18

⁸⁸ Supra note 83, pp.219

⁸⁹ Ibid, pp.7

b) Evidence based Advisories with Recommendations to key Actors

Media Advisory on the use of excessive force by the National Police Service in the ongoing anti IEBC protests also known as ‘Teargas Mondays’. KNCHR rapid response teams monitored these demonstrations and investigated human rights violations against demonstrators in several parts of the Country.⁹⁰ A checklist on peaceful assemblies and educational video on peaceful assemblies were made by KNCHR. The advisory was issued to the Cabinet Secretary in the Ministry of Education and the chair. It brought to their attention the rising misuse of children in political campaigns where in some instances children were being caught up in violent disruption of political rallies, disruption of education through children’s direct participation in campaigns during school days and the use of school grounds.⁹¹

c) High level Dialogues with Strategic Stakeholders

As part of its advisory role, KNCHR held 10 regional training workshops, where 450 senior security actors were empowered on how to uphold human rights and specifically the right to assembly and crowd management. KNCHR further developed and disseminated an educational video and IEC materials for sensitization of both the public and the security actors on the role and obligations when exercising the right to assembly and undertaking public order management. The Commission further synergized and worked closely with representatives, key partners from various agencies, human rights defenders (HRDs) and the media to augment its interventions in the post-poll period.⁹²

d) Public Outreach and Rapid Response Missions

Throughout the election period the KNCHR put in place measures to ensure that members of the public can easily access to the Commission 24/7 to report complaints or concerns, timely investigations including rapid responses were undertaken with the aim of seeking accountability for human rights violations and remedial action. As a result of this enhanced public outreach, the KNCHR toll free number and sms platform were busy 24/7 and over 9,500 people were able to reach out to the Commission on specific complaints and concerns.⁹³

⁹⁰ Ibid pp.218

⁹¹ Ibid pp.225

⁹² Ibid pp.163

⁹³ Ibid pp.232

2.8.4 Jurisprudence on Elections

The Judiciary has played an important role in promoting human rights principles in the electoral processes within the electoral cycle after the promulgation of the Constitution of Kenya 2010. Instances are:

a) Diaspora Vote

The Courts have pronounced on the political rights of non-residents as a trend towards extending to and facilitating the exercise of the franchise by external citizens on the issue of Diaspora vote. The high court declared that failure by the IEBC to provide the Diaspora with the opportunity to register and vote was a violation to their fundamental right to vote and a contravention of article 82(1) of the Constitution which provided for the progressive registration of citizens residing outside Kenya and the progressive realization of their right to vote.⁹⁴

b) Prisoners Right to Vote

the petition made to the high court claiming prisoners right to vote is marked the first step in establishing that person's deprivation of liberty did not derogate also their right and responsibilities to engage in other democratic processes that impacted them in one way or the other. In this petition, the prisoners were allowed to participate by the courts in referenda vote. The court interpreted the right to vote to include prisoners are entitled to be registered as voters and have the right to vote under Article 38(3) (a) and (b) of the Kenya Constitution of 2010.⁹⁵ The KNCHR mapped out and monitored twenty-nine (29)prisons in respect to how IEBC with the support of the Kenya Prison Services (KPS) undertook the registration process. This was particularly important for the Commission as it was the first-time prisoners being a special and vulnerable category, were being registered to participate in the General Election.⁹⁶

c) Special Interest Groups

The KNCHRs in undertaking the election monitoring 2017 gave due attention to Special Interest Groups with a view of determining whether or not, their constitutional right to participate in the election process was actualized. The monitoring focused on how several stakeholders or actors in the election process especially IEBC, Political parties involved and ensured Special Interest Groups actively take part in the campaigns in the lead up to the General Election 2017. The

⁹⁴ Civil Appeal 350 of 2012, R N Nambuye, D K Musinga, K M 'inoti,JJA,2014

⁹⁵ Constitutional petition 1 of 2010, Priscilla Nyokabi Kanyua V Attorney General and another,2010

⁹⁶Supra note 83, pp.229

Commission collated and collected data and information that directly concerned persons with disabilities, children and women.⁹⁷

d) Civil Society Repression

The Kenya National Commission on Human Rights worked and strategically consulted with many civil society actors during the 2017 General Election monitoring project. During the party primaries and throughout the campaigns, KNCHR did not receive complaints from the civil society groups on interference or harassment. However, after the polling process, KNCHR recorded several cases whereby two (2) main civil society groups, the Kenya Human Rights Commission (KHRC) and the African Center for Open Governance (AfriCOG) had their operations almost grinding to a halt through directives from the NGO Coordination Board.⁹⁸ Moreover, KNCHR reiterates that any action against the CSOs should be in line with Article 47 of the Constitution which calls for fair administrative justice. Equally, KNCHR calls upon the state to fast track the implementation of the Public Benefits Organizations (PBO) Act of 2013 to usher in better coordination of non-state institutions in Kenya.⁹⁹

2.8.5 Challenges

The biggest challenge of the KNHRC remains putting in place strengthened measures that would ensure full implementation of electoral laws. Thus, vices such as corruption, incitement, violence and harassment that allow for varied degrees of voter manipulation continue to thrive and slow down therealization of free and fair elections. For purposes of investigations and prosecutions, the KNCHR is taking the immediate step to forward to the relevant actors a list of alleged human rights violators for action as guided by their institutional mandates.

2.6 The Uganda Human Rights Commission

General Overview

Uganda Human Rights Commission (UHRC) is an independent constitutional body set up under Article 51 of the 1995 Constitution to promote and protect human rights.¹⁰⁰ It was established in November 1996 under the constitutional provisions which were operationalized by the Uganda Human Rights Commission Act 1997. In this respect, UHRC has since its establishment in 1997

⁹⁷ Ibid pp.83

⁹⁸ Ibid pp.214

⁹⁹ <http://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/623-the-kenya-human-rights-commission-denounces-attempt-of-illegal-de-registration-by-the-ngo-coordination-board.html>,2017.

¹⁰⁰ Uganda Constitution, 1995

monitored the situation of human rights during electoral processes, focusing on the period before, during and after elections. UHRC has been an observer in all the election cycles in Uganda since 2001, including the elections of 2006, 2011 and 2016 under the multi-party political dispensation.¹⁰¹ UHRC with the main objective of assessing the extent to which human rights were respected or violated, the level of compliance of the electoral processes with international and regional standards for democratic elections, challenges and concerns observed, and made recommendations to all stakeholders for adequate and appropriate action to improve the processes in the next electoral cycle.¹⁰²

2.9.1 Election related Activities of Uganda Human Rights Commission

In pre-election period, UHRC carried out civic education under its Early Warning and Early Response (EW&ER) Project by focusing all its routine civic education efforts on contributing to a successful electoral process. Moreover, UHRC carried out civic education through road shows, the election song, radio messages, radio talk shows and community meetings, sensitizing partner institutions, the youth and the general public, on human rights and elections.¹⁰³

2.9.2 The UHRC Early Warning and Early Response Project

The UHRC established an early warning mechanism implemented through the Early Warning Early and Response Project (EWERP) aimed at preventing violence during the 2016 general elections. The specific activities that UHRC implemented under the EWERP included: Development of a web based monitoring system, Identification of data collection methods and data collection, capacity building of monitors, Establishment and Operationalisation of the Situation Room, Public dialogue with stakeholders in electoral process at National Level, Radio Talk shows, spot messages and supplements in newspapers, Road Shows using the Civic Education Vans and Review of electoral reform bills tabled before parliament are among the activities done by EWERP.¹⁰⁴

Some of the good practices the UHRC learnt from early warning system in the 2012 general elections by the KNCHR included monitoring of party primaries, developing a web-based monitoring system, mapping hotspots where there could be likely occurrences of electoral

¹⁰¹ Ugandan Human Rights Commission, report on protection and promotion of human rights in the electoral processes for the 2016 General Elections, June 2016, pp.12

¹⁰² *ibid*

¹⁰³ *Ibid* pp.29

¹⁰⁴ *Ibid* pp.38

violence. Key among the experiences was the early engaging of stakeholders, information sharing and strong coordination at the national level.¹⁰⁵

2.9.3 Participation of Civil Society Organizations

CSOs made preparations to actively participate in the electoral process for the February 2016 General Elections. The CSOs carried out a number of trainings in the course of the electoral process. The trainings involved a number of aspects including pre-election Training of Trainers, refresher trainings on election observation, reporting and data entry.¹⁰⁶

2.9.4 Biometric Voter Verification System

The technology-based system (Biometric Voter Verification System) was one of the new measures aimed at improving the management and conduct of elections in Uganda through authentication of voter identity. The system basically uses fingerprints to match voter details to help the election officer confirm that the voter is on the register of a particular polling station.¹⁰⁷

Most of the display centers monitored by UHRC, access of vulnerable persons to the voter register was facilitated by local council leaders and relatives of vulnerable persons who helped to crosscheck and verify their details on the register upon presentation of enrolment forms or other forms of identification including National Identity Cards.¹⁰⁸

2.9.5 Major Interventions made by UHRC

UHRC made interventions regarding the respect of human rights and compliance with human rights standards before, during and after elections. The interventions include:

Human rights education for security agencies, high level strategic meetings with key stakeholders, Media programmes, review of bills, and special inspection of detention facilities, special investigations and management of election-related complaints received.

A) Human Rights Education for Security Agencies

Security agencies were among the groups targeted in the human rights programme and a total of 2532 members were trained by the UHRC. The intervention was a proactive component under UHRC Early Warning and Early Response mechanism to the 2016 general elections principally focused at building their capacities to uphold human rights standards during the electoral

¹⁰⁵ Ibid

¹⁰⁶ Ibid pp.36

¹⁰⁷ Ibid pp.66

¹⁰⁸ Ibid pp.78

processes and increase their knowledge on the critical role they played in ensuring peaceful and violence-free electoral processes.¹⁰⁹

B) Special Community Meeting and Civic Education

The UHRC conducted community meeting in 72 districts countrywide in areas that were considered hot spots with regard to conflict and violence. The people were sensitized on issues relevant to the electoral process, including the role of the security agencies, rights and obligations of voters and political candidates, electoral offences, significance of observing the rule of law during the electoral process.¹¹⁰ Moreover, the UHRC conducted civic education through screening of videos, drama shows and conducting quizzes. It also launched an election song which it had earlier commissioned to be able to convey the message of peaceful elections.¹¹¹ Furthermore, it raised awareness on various human rights and electoral issues through the use of media and the media programmes included radio talk-shows, radio spot messages, media briefs and newspaper supplements. However, UHRC has noted that lack of adequate voter and civic education resulted in a number of concerns including the high number of invalid votes during the voting process especially during the local government elections.¹¹²

C) Election-related Complaints

The UHRC received 19 election-related complaints in the electoral period up until 12th April 2016. Those were largely about violations of the freedom from torture, cruel, inhuman and degrading treatment, freedom from enforced disappearance, the right to personal liberty, the right to privacy, the right to fair hearing, right to property and freedom of conscience, expression, movement, assembly and association.¹¹³

D) Special Inspection of Places of Detention

The UHRC visited selected detention facilities and other related facilities as a result of the public outcry on arbitrary arrests and detention of opposition supporters that were in violation of their freedom of movement and personal liberty. The inspections were conducted to ascertain the alleged detainees, assess their human rights situation and release as part of UHRC early warning and early response mechanism.¹¹⁴

¹⁰⁹ Ibid pp.180

¹¹⁰ ibid

¹¹¹ Ibid pp.182

¹¹² Ibid pp.102

¹¹³ Ibid, pp.124

¹¹⁴ Ibid pp.186

UHRC noted from the lockup register with concern that detention beyond 48 hours was still a common practice. This and other human rights concerns were brought to the attention of the authorities which led to the release of the eight suspects. The Eight suspects arrested on allegations of assault and causing violence after elections were released on police bond following UHRC visit on 6th January 2016.¹¹⁵

E) Review of the Constitution Amendment Bill

On the Constitutional Amendment Bill, 2015, UHRC made proposals particularly on the independence of the Electoral Commission; procedure for the appointment and removal of the members of the Electoral Commission and non-discrimination of independent candidates during nominations for the provision required them to obtain 1000 signatures of registered voters in the constituency to be able to stand for elections. UHRC recommendation to delete the requirement for independent candidates to get 1000 signatures was adopted and the clause was excluded in the Constitution Amendment Act 2015.¹¹⁶

2.9.6 Challenges in the Electoral Processes

The UHRC team monitored the process of voting in selected polling centers under its various regional offices. Even though the process was generally free, fair and transparent, there were some challenges involving cases of voter disenfranchisement, attempts of multiple voting, logistical supports, security at polling centers, the principle of secret ballot, voting by vulnerable persons, polling materials and polling officials' availability and facilitation. Furthermore, the UHRC was unable to acquire an official map showing all the constituencies for more specific hotspot mapping, The limited internet connectivity sometimes affected the internet-based early warning system of the UHRC, particularly data input and analysis, it also experienced constraints caused by inadequate funds and personnel to undertake prompt investigations and verification of information in all the regions at all times when a critical issue emerged, The planned UHRC civic education programmes were not effectively implemented because they remained grossly underfunded since no funds were received by the government to implement them.¹¹⁷

¹¹⁵ Ibid

¹¹⁶ Ibid pp.190

¹¹⁷ ibid

2.10 Normative Frameworks for Election Monitoring

The standards employed by international observers and domestic election monitoring groups and observers to assess an electoral process are usually found in international, regional as well as national normative documents.. The most important international references are the UDHR, ICCPR, ICESCR, CEDAW, CRPD and CERD. Regionally, the ACHPR provided for the right to elect and to be elected. At National forum the legal regimes pertaining to election monitoring are available in the constitution, the electoral law, administrative regulations and directives. A genuine election is, therefore, a basic human right and a fundamental element of democracy. Election monitoring mission assess election processes in line with both international and national commitments and universal principles for democratic elections.¹¹⁸

2.10. International, Regional and National Instruments

2.10.1 International Instruments

The adoption of the Universal Declaration marked the foundation of the development of participation as a human right. Participation directly or through freely chosen representatives is the norm to which a number of other substantive human rights are connected.¹¹⁹

UDHR of Art.21 states that “*everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*” The same article also establishes that free elections are the basis of a government’s authority: “*The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*”¹²⁰

According to Article 21, Participation in the government of a country should be either direct or through freely chosen representatives. It is easy to make a *prima facie* conclusion that such participation is determined either through a referendum or an election. The first requirement of Article 21(3) is that elections must indeed be held; otherwise the government does not ground its

¹¹⁸Norwegian Center for Human Rights: *Manual on Human Rights Monitoring An introduction for Human Rights Field Officers*, University of Oslo, pp.4

¹¹⁹Compendium of International standards for Elections, 4th Edition, Brussels, 2016, pp.18

¹²⁰Universal Declaration of Human Rights, article 21.

authority in the will of the people. The other elements are periodic elections, genuine elections, universal suffrage, equal suffrage, and secrecy of the vote.

Similarly, Article 25 of the ICCPR grants every citizen, without discrimination, the right to vote and to compete for public office. The ICCPR also codifies and expands upon many other civil and political rights enshrined in the Universal Declaration.¹²¹ It refers to ‘every citizen’ and it is clearly a specification and delimitation of the contents of Article 21 in the Universal Declaration, where the terms ‘everyone’ and ‘government of his country’ are used. The ICCPR equally provides for universal and equal suffrage, secret ballot that guarantees free expression of the will of the electors, and equal access to public service. The ICCPR are silent on how monitoring should take place, but describe the submission procedure for state reports under the conventions. The reporting guidelines laid down in the convention provide detailed guidance as to how the various articles are to be interpreted and which questions need to be addressed when reporting under each article. by and large, the focus is to a large extent on legal and administrative provisions in national legislation.

As it is provided under Article 5 of the ICERD, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee to everyone, without distinction, the enjoyment of political rights, in particular the right to participate in elections through voting and through the opportunity to stand for election on the basis of universal and equal suffrage.¹²²

Moreover, CEDAW guarantees, in Article 7, women’s right to participate in political life and elections on the same basis as men.¹²³ The CEDAW has the important function of ensuring the States in order to address existing entrenched inequalities and discrimination, temporary special measures may be necessary, with the aim to achieve *de facto* equality between men and women. Article 7(a) of the convention promotes inclusiveness for women by prescribing eligibility for election to all publicly elected bodies in a manner relevant for the right to stand for candidacy. Moreover it extends inclusiveness in paragraphs (b) and (c) to the practical functioning in elective office and to participation in non-governmental organizations and associations

¹²¹International Covenant on Civil and Political Rights, (1966)

¹²²The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted and opened for signature on 21 December 1965 and entered into force on 4 January 1969.

¹²³The Convention on the Elimination of All Forms of Discrimination against Women was adopted in December 1979, opened for signature on 1st March 1980 and entered into force on 3rd September 1981,

concerned with the public and political life of the country.¹²⁴ Furthermore, a more recent addition to the norms concerning special groups is the CRPD which contains in Article 29 strong language on participation of persons with disabilities in political and public life.¹²⁵ Moreover, the Convention provided that, the state is obliged to set up an independent monitoring mechanism to promote, protect and monitor the implementation of the Convention.

2.10.2 African Regional Instruments

The ACHPR under Article 13 provided a participation clause that opens up in a manner similar to Article 21 of the UDHR and Article 25 of the ICCPR. However, Article 13(1) of the African Charter makes the implementation of the right to participation almost entirely dependent on national law.¹²⁶ Moreover, The African Charter says nothing concrete about how participation should take place. More importantly, the principles governing elections are not explicitly prescribed, although Article 13(1) mentions that participation can be direct or through freely chosen representatives. The AU issued its Declaration on the Principles Governing Democratic Elections in Africa, a response to a report that recommended “strengthening the role of the AU in election observation and monitoring and the advancement of the democratization process. The declaration highlighted the importance of free and fair democratic elections to the legitimacy of representative government and the avoidance of conflicts. Through it, the member states of the AU undertook to enact the necessary measures to ensure democratic elections, including adequate election monitoring, women’s suffrage, national electoral bodies to oversee the domestic electoral process, the guarantee of those basic rights necessary to exercise democratic processes, *i.e.*, assembly, speech, and press, and transparency in the electoral process.¹²⁷ The Declaration is more explicit with regard to the rights and obligations relating to elections, and is also useful for consideration of the commitment to democratic elections in the African context.

The African Charter on Democracy, Elections and Governance, which entered into force in 2012, is an important addition to the regional regulation of elections, specifying in its Article 17 the

¹²⁴ General Recommendation No. 23 of the UN Committee on the Elimination of Discrimination against Women (16th session, 1997), Article 7,

¹²⁵ The Convention on the Rights of Persons with Disabilities was adopted on 13 December 2006 and entered into force on 3 May 2008. Article 19

¹²⁶ The African Charter on Human and Peoples Rights (1981), Article 13.

¹²⁷ AU Declaration on the Principles Governing Democratic Elections in Africa, 8 July 2002, Durban, South Africa, AU Doc. AHG/Decl. 1 at 1 (XXXVIII) (2002).

contents of democratic elections and reinforcing the normative nature of the above Declaration by re-affirming the commitment of the State Parties to holding regular, transparent, free and fair elections in accordance with the Declaration.¹²⁸

To put in a nutshell, the realization of the Charter will be highly determined by the political will of Member States to participate in a more effective African human rights system. Furthermore, when we see on a close examination of the Charter, it is obvious that the Charter is an initiative by African leaders to provide African solutions to African challenges at the same time as ensuring that they do not unwittingly and simultaneously portray themselves as part of the African problem.

2.10.3 National Legal Framework on Election

The Federal Democratic Republic of Ethiopian Constitution and election-related legislation ensure the protection of political rights and guarantee fundamental freedoms such, association, assembly, movement and expression. The right to vote and to be elected in periodic elections, through universal and equal suffrage by secret vote is also recognized under the Constitution, as well as the right to access justice and legal remedies together with the right to a fair trial.¹²⁹

General Election in Ethiopia governed by the 1995 Constitution of the Federal Democratic Republic of Ethiopia(FDRE) and a number of proclamations: the Amended Electoral Law (532/2007), the Political Parties Registration Proclamation (573/2008), the Electoral Code of Conduct for Political Parties (662/2009), the Proclamation to Establish the Procedure for Peaceful Demonstration and Public Political Meeting (3/1991), the Registration and Regulation of Charities and Societies Proclamation (621/2009). Moreover, there are also several directives and regulations issued by NEBE, such as: the Directive on the Registration of Candidates (1/2009), the Directive on the Registration of Electors (2/2009), the Directive on Voting, Counting and Announcement of Results (5/2010), the Regulation concerning the Procedure for Determining the Apportionment of Government Financial Support to Political Parties (5/2009), the Regulation on the Organization and Procedure of Grievance Hearing Committees Established by the Board at every Level During Elections (1/2009) and the Regulation on the Code of Conduct for the Mass Media and Journalists for Reporting on Elections (6/2010).¹³⁰

¹²⁸ The African Charter on Democracy, Elections and Governance, entered into force in Feb 15, 2012

¹²⁹ The federal democratic republic of Ethiopian Constitution,1995 Art 38

¹³⁰ National Electoral Board of Ethiopia, Compendium of Electoral Legislation, August, 2011

2.11 Pre- Requisite Rights

International, regional and national human rights instruments protect a number of basic rights which is intrinsically linked to the right to participate in free and fair election, the enjoyment of which is crucial to a meaningful electoral process. These prerequisite rights include:

2.11.1 Freedom of Expression

The electoral process is a mechanism whose very purpose is the expression of the political will of the people. The right to express partisan ideas must, therefore, be firmly guarded during electoral periods.¹³¹ The exercise of this right carries with it special duties and responsibilities, and it can be subject to restrictions based on specific grounds. For instance, respect of the rights or reputations of others, or the protection of national security, public order, public health or morals.¹³² Expression that constitutes propaganda for war or incites violence or hatred must also be restricted.¹³³ However, these restrictions must be clearly provided by law and must comply with the strict test of necessity and proportionality.

2.11.2 Freedom of Opinion

The unconditional freedom to hold a political opinion is imperative in the context of elections, since the true assertion of popular will is impossible in an environment where such freedom is absent or restricted in any way.¹³⁴ The right to freedom of opinion is absolute and cannot be derogated from, restricted or interfered with in any manner.¹³⁵

2.11.3 Freedom of Peaceful Assembly

Public demonstrations and political rallies are an integral part of the electoral process and provide an effective mechanism for the public dissemination of political information. In order to be protected by law, an assembly must be peaceful. Any restriction on this right must be in conformity with the law, necessary in a democratic society and based on specific grounds. For instance, national security or public safety, public order, the protection of public health or morals or of the rights and freedoms of others and the least restrictive means must be employed.¹³⁶

¹³¹Human Rights and Elections: *A handbook on the legal, technical and Human Rights Aspects of Election*, professional Series No.2 (United Nations Publication), 1994. Pp.7

¹³²International Covenant on Civil and Political Rights, arts. 19(3)

¹³³Ibid art, 20.

¹³⁴Supra note 131, pp.31

¹³⁵Supra note 132, art, 19 (1).

¹³⁶ Supra note 131, pp.8

2.11.4 Freedom of Association

The right to freedom of association has a broad scope and it includes the right to form and participate in political organizations and the respect for this right is fundamental during the electoral process as the ability to form and join political parties is one of the most important means by which people can participate in a democratic process.¹³⁷ This right is very closely related to the right to freedom of peaceful assembly and permits limitations on the same grounds (for instance, in the interest of national security or public safety, public order, the protection of public health or morals or of the rights and freedoms of others).¹³⁸

2.11.5 Freedom from Discrimination

The right to political participation must be enjoyed equally by all and without distinction or discrimination of any kind (e.g., based on race, color, sex, sexual orientation and gender identity, language, religion, political or other opinion, national or social origin, birth or other status).¹³⁹ The situation in which discrimination is tolerated facilitates intimidation and manipulation of the electorate, which cannot be permitted if elections are to be free and fair. The authorities have both a positive obligation to prevent discrimination and a negative one to refrain from discriminating and certain types of positive measures are, however, permissible if they are of a remedial nature in view of correcting past discrimination for instance, setting a quota for women candidates and do not amount to discrimination.¹⁴⁰

2.11.6 Freedom of Movement

It is vital that all those participating in the electoral process are able to move without restriction and fear, and have access to all electoral events and related venues (e.g., voter registration, political rallies, and polling stations). This applies not only to members of political organizations and their supporters, but also to voters and the general population and restrictions are permitted only if provided by law and insofar as these are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the enjoyment of other civil and political rights.¹⁴¹

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ International Covenant on Civil and Political Rights, arts. 2 (1)(3).

¹⁴⁰ OHCHR, *Monitoring Human Rights in the Context of Elections*, <http://www.ohchr.org/Documents/Publications.pp.9>

¹⁴¹ Ibid.pp.10

2.11.7 Freedom from Fear and Intimidation

Participation in the electoral process must be conducted in an atmosphere characterized by an absence of intimidation and by respect for human rights and fundamental freedoms. All persons taking part in the elections, including candidates, electoral staff and voters, must have the confidence that they will not be targeted, threatened or intimidated in any way as a result of their participation. This principle is linked to the enjoyment of the right to life, the right to personal integrity as well as the right to liberty and security of person.¹⁴²

3. Conclusion

So far we have discussed that, Periodic and genuine elections are a necessary and fundamental component of efforts to protect and promote human rights. To this effect election monitoring is one of human rights monitoring which aims to monitor implementation of the right to elect and to be elected so as to ensure free and fair election and it is a valuable tool for improving electoral processes and helps to build public confidence and protects the civil and political rights of participant in election.

Election monitoring is one of the core mandates of NHRIs under the general mandate of human rights monitoring. The roles of these institutions are very much important in scrutinizing the entire electoral process and increase the effectiveness of electoral monitoring. Because they become fully aware of the political and social climate and are better able to assess the validity and legitimacy of the election. Moreover, field presences through their advocacy efforts may play an important role in responding to human rights violations and intervene for corrective action to ensure greater participation and non-discrimination.

The activities which are going to be monitored during the period before election includes monitoring the legal framework, monitoring the election administration, registration of voters, civic education, election campaign, and the media. Whereas during election day election monitors are supposed to undertake the following activities; monitoring polling stations and procedures, monitoring special voting procedures and the vote count. The final stage of election monitoring includes; monitoring the announcement of results, post-election complaints and appeal processes.

The EHRC as one of NHRIs mandated to monitor human rights in general and election monitoring in particular. The KNCHR and UHRC are among African national human rights

¹⁴² Ibid

institutions which are relatively strong in terms of election monitoring and they can be taken as a lesson for the promotion and protection of human rights in terms of election monitoring activities.

The next chapter will try to scrutinize the practice of EHRC in its monitoring Election processes focusing on the pre-election, during election and post-election stages with the minimum standards of election monitoring. It also tries to look at major activities and interventions made by the EHRC in line with exemplary experiences of Uganda and Kenya Human rights Commission with particular emphasis to lessons and challenges they encountered.

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Chapter Three

Assessing Election Monitoring Practices of Ethiopian Human Rights Commission

Introduction

As it has been explained in the preceding section, the EHRC has been established pursuant to Article 55(14) through establishment proclamation No.210/2000 to promote and protect human rights. Emanating from this normative framework, EHRC is mandated with the power to investigating human rights violations, creating human rights awareness, conducting research on human rights issue and monitoring human rights. Human rights monitoring is one of the fundamental pillar activity of the Commission's mandate for the promotion and protection of human rights in the country since human rights monitoring is a valuable tool for governments to take positive measures like advising the government to reform laws which undermine the realization of human rights. Moreover, it plays as a preventive role to promote and protect in advance.

This section primarily concerned in election monitoring practices of the EHRC based on the minimum standards of election monitoring, focusing on election monitoring made so far through document review and in depth interview with concerned stakeholders. Moreover to draw comparative analysis with best practices of Kenya and Ugandan Human Rights Commissions.

3.1 Mandate of the EHRC in Election Monitoring

The EHRC as provided under article 6 of Proclamation No 210/2000 has broad mandate to protect and promote human rights. Though the Commission is not explicitly granted the mandate to conduct election monitoring this is implicitly included in the mandate of the Commission expressed as 'ensuring all human rights and freedoms provided under the constitution and international human rights instruments are respected by all citizens, organizations of state, political organizations and other associations as well as by the respective officials.'¹⁴³

¹⁴³ Article 6 of the establishment proclamation of EHRC, 2000

3.2 Experience of EHRC in Election Monitoring: 2010 General Election

Election monitoring was conducted by establishing a coordinating team and engaging in and deploying to all parts of the country. All the staff of the Commission and 216 newly-recruited temporary staff were involved. The monitoring was carried out using checklist in three major phases: pre-elections, during elections and post-elections.¹⁴⁴

3.2.1 Pre-Election Activities of EHRC

This phase of election was conducted by deploying 13 teams with 33 professionals all over the country that covered a total of 78 constituencies (14.25%).¹⁴⁵ The EHRC had interviewed and collected the opinions of a large number of the population including students, elders, religious leaders, public observers and representatives of women's, students', teachers', workers' unions and associations, people with disabilities on issues related to the elections, particularly those pertaining to registrations of voters and candidates, campaigning and overall participation of citizens in the elections. Moreover, the Commission had approached and held discussions on election-related issues with the representatives of major political parties contesting the elections, officials and heads of NEBE and its regional offices, the law-enforcement agents, organs of the judiciary, the mass media, the broadcasting authority as well as election representatives of opposition political parties, and election observers of CSOs.¹⁴⁶ In addition to this, training had been organized to the staff of the Commission assigned to monitor the elections, which included techniques of observation and filling questionnaires on elections as well as on ethical standards and the code of conduct of election observers.

a) Monitoring the Legal Framework

The 2010 General Election witnessed amendments made on election laws and regulations;¹⁴⁷ the making of new ones and the establishment of a Joint Forum of Political Parties; the

¹⁴⁴ The General Elections Monitoring and Observation Final Report of Ethiopian Human Rights Commission, november.2011, pp.6

¹⁴⁵ Ibid pp.7

¹⁴⁶ Ibid

¹⁴⁷ The amended electoral law of Ethiopia Proclamation No 532/1999; proclamation for the registration of political parties No 573/2000; code of conduct for political parties No 662/2002; directive No 3/2001 establishing and working procedure of complaint hearing bodies of the NEBE; local election observers licensing and code of conduct regulation No 3/2001; regulation No 5/2001 on the method of distribution of financial support for political parties..

promulgation of Political Parties Election Code of Conduct, which was originally initiated by opposition political parties themselves; the nomination and appointment of new nine members to the NEBE in the course of which opposition political parties have unprecedentedly taken part; and the provision for the first time of financial support by the government to political parties contesting the elections.¹⁴⁸

However, in enabling conducive environment for the electoral processes, the EHRC had been expected to monitor and assess electoral laws and newly enacted legislations like Anti-terrorism proclamation and the charities and societies proclamation which were proclaimed a year before the 2010 general Election, which might have adversely affected CSOs from actively engaging in human rights. The Participation of CSOs and NGOs on civic education had been minimal as a result of being prohibited by NEBE from taking part in civic and voter education in the 2010 elections.¹⁴⁹

As it has been discussed under chapter two, key changes in the legislative framework should not be introduced shortly before an election, except under exceptional circumstances and when the needed amendments have broad support, as this can create confusion and lead to an unstable and unpredictable environment. In this regard the EHRC did not assess whether the above proclamations have a negative repercussion on the promotion and protection of human rights in general and election related rights in particular. Furthermore, the EHRC did not oversee the compatibility of the amended Electoral law with constitutionally guaranteed human rights, particularly with the right to form an association and provision which prohibited the Participation of CSOs and NGOs on civic and voter education. For instance, The KNCHR worked and strategically consulted with many civil society actors during the 2017 General Election monitoring project. In the same fashion, the experience of the UHRC shows, where the CSOs carried out a number of trainings in the course of the electoral process. The trainings involved a number of aspects including pre-election like, Training of Trainers, refresher trainings on election observation, reporting and data entry.

¹⁴⁸ Interview with Mr. Tesfalem Abay, National Electoral Board of Ethiopia, Communication director, 26 April 2018

¹⁴⁹ The Amended Electoral Proclamation, article 89 (1) (2) (3), provides that the NEBE shall give awareness-raising voter and civic education itself and/ or may license other appropriate bodies as it deemed necessary.

b) Monitoring Voters and Candidates Registrations

The EHRC has observed that the setting up of over 44,000 polling stations, the polling stations have been convenient for voters since they were organized and situated in relatively central places where they could be identified with ease by voters. It had also observed that the Board had been introducing and announcing the registration schedule including the extended days, the duration and the closure of voter registration period to the public at large through various media. As a result, a total of 31,926,520 voters, 16,674,280 or (52.2%) men and 15,252,240 or (47.8%) women, had been registered to elect candidates both to the House of Peoples' Representatives and State Councils.¹⁵⁰ The Commission has also observed that there were a few attempts by some kebele administrations to force residents to register for the elections against their will and there had been very few polling stations had been running short of voter registration cards.¹⁵¹

In particular, monitors should ensure that no unreasonable restrictions are placed on voter registration. Reasonable restrictions may include factors such as age, residence, citizenship, current incarceration for having been convicted of a serious crime, and mental incapacitation as determined by the court of law. In the same fashion, the Amended Election Law of Ethiopia No. 532/1999 and Voter Registration Directive No. 2/2009, the criteria for a citizen to register as voter in his/her constituency are to attain 18 years of age on the day of the registration; and to have lived in his/her constituency for a minimum of six months. Furthermore, Reasonable restrictions are those who are non-Ethiopians and those serving criminal sentences or those who have been interdicted by courts of law.

For instance, as it has been discussed that the Kenyan experience can be taken as a lesson for; they made electoral reform where prisoners allowed to participate by the courts in referenda vote. The court interpreted the right to vote to include prisoners are entitled to be registered as voters and have the right to vote under Article 38(3) (a) and the KNCHR mapped out and monitored twenty-nine (29) prisons in respect to how IIEBC with the support of the Kenya Prison Services undertook the registration process. This was particularly important for the KNCHR as it was the

¹⁵⁰ The 2010 performance report of the NEBE, June 2010, Addis Ababa, pp.21

¹⁵¹ Supra note 144, pp.21

first-time prisoners being a special and vulnerable category, were being registered to participate in the general election.

The Amended Election Law stipulates that in cases of doubt of the age of a voter during voter registration, or in the absence of evidence for the age of a given voter, the words of a senior family member or close relative, or in the absence of both, those of other witnesses could be taken as proof for the age of that voter. However, there were a number of complaints from several opposition political parties regarding this issue, alleging that their supporters were unduly prevented from registering on the pretext of under-age and other criteria and to this effect, the Commission has in the process noted that this mechanism for verifying voters' eligibility for voting is open to abuse and would like to underscore the need for institutional birth registration mechanism.¹⁵² In addition to this, election officials should consider the principle of transparency since voters and candidates should be aware of the requirement or criteria to be legible for election. Some irregularities had been encountered during voters and candidates registration due to lack of awareness of the criteria. Moreover there were instances when voters lack where to lodge complaints when they are restricted from registration. In this regard the commission did not oversee or monitored whether quick response were given to the complaints.¹⁵³ In addition to this,

the Commission has observed that some students, who had not registered with their home constituencies and arrived too late at their institution of higher learning, were refused to register, whereas some others in similar situations were accepted for registration on presentation of written statements from their home constituencies. This lack of uniformity in the registration process was more evident in some technical and vocational institutions.¹⁵⁴

The other major activities that monitoring the registration requirements for candidates and parties should be clear and predictable and should not involve potentially discriminatory demands such as excessive deposits, mandatory regional support or party representation, or an unreasonable number of names on registration petitions. In this regard the registration of candidates for the 2010 General Elections was scheduled from December 25, 2009 to February 2, 2010. However, upon request from the contending parties, the schedule was extended until February 22,

¹⁵² Ibid

¹⁵³ Interview with Dr. Addisu G/Egziabher, Ethiopian Human rights Commission, Chief Commissioner, 30 May 2018.

¹⁵⁴ Supra note 144, pp.23

2010 in order to allow the parties sufficient time to have their candidates registered. Furthermore, upon learning of the resignations of several candidates representing opposition parties, the NEBE had once again extended the registration schedule from April 3-8, 2010 in order to provide the latter with the opportunity to replace their resigned candidates. As a result, 91 candidates of the political parties were replaced with new ones. Sixty-three political parties had participated in the 2010 General Elections, raising their number over that of the 2005 elections.¹⁵⁵ With this respect, the Commission has observed with regard to the legal rights of and criteria for candidacy, the public's awareness was less than that of the awareness it had on the rights of and criteria for voters. Though addressed on time through dialogue with election officials and regional elections coordinating bureaus, one of the problems observed during the pre-election monitoring was the attempt by some candidates to register without meeting the requirements for candidacy.¹⁵⁶

Some opposition political parties had resigned from running for the elections for what they called intimidation and pressure exerted on them. They alleged that some constituencies had been putting some preconditions for the registration of their candidates, which were not provided for under the law and which included requirements such as educational background and the production of evidence that they belong to and had been assigned to run for candidacy by their respective political parties. The Commission was, however, unable to confirm the said allegations factually.¹⁵⁷ In addition to this, a few days into the vote casting process, 94 candidates had already excluded themselves from the elections after the publication and public display of their ballot papers.¹⁵⁸ And as a result, some voters, since they were not notified ahead of time, had been seen confused when they learned on the voting day that some candidates had excluded themselves from the elections.¹⁵⁹ We can draw a conclusion to this effect, among other factors, it is the failure to conduct concerted civic and voter education in cooperation with NEBE, CSOs and other democratic institutions to provide trainings on election laws to the executive organs at the lower levels.

¹⁵⁵ Supra note 150, report of the NEBE, June 2010 pp.28

¹⁵⁶ Supra note 144, report of EHRC

¹⁵⁷ Supra note 144, pp.28

¹⁵⁸ Supra note 150

¹⁵⁹ Supra note 144

Moreover, voters at special polling stations located in institutions of higher learning and military camps were not adequately informed about the candidates in their constituencies.¹⁶⁰ Furthermore, the amended Electoral law provided that, a candidate has parliamentary immunity against any arrest until the elections are over unless he/she is apprehended *in flagrante delicto*.¹⁶¹ However, some members of political parties, whom the Commission talked to, were constantly alleging that their candidates, in contravention of the said privileges, had been arrested in several constituencies across the country. There were a few such cases which were resolved immediately after the Commission brought the case to the attention of the concerned body. However, the Commission had not formally conducted an investigation and intervened according to its mandate.¹⁶²

c) Monitoring Voter and Civic Education

Election monitors should assess the extent and effectiveness of voter and civic information and education. According to NEBE, other than those civic associations that had been given license to deploy some 41,000 observers, there were no other civic organizations that applied to conduct civic education and trainings during the 2010 general election. The NEBE has single-handedly carried out civic and voter education for the elections and the same is true during the 2015 general election.¹⁶³ Even though the Commission has a broad mandate to give voter and civic education through its constituted proclamation, the commission did not engage in this basic activity which can promote the right to elect and to be elected. According to the discussion made with the staff of the Commission, the reasons for its failure were there was no strategic plan to this activity in advance in particular and even for activities during pre-election. Moreover, it is only when election day left a week that the commission starts its activities only to observe election activity and there was no self-initiation to undertake voter and civic education. Moreover, there was confrontation with the NEBE whether the Commission has the status of observer or monitor especially in the 2015 General election. This is clearly a failure to use its mandate.¹⁶⁴ In addition to this, even though the Commission forwarded its recommendations to

¹⁶⁰Ibid pp.30

¹⁶¹Article 57 of the Amended Electoral Law and Article 28 of the Directive on the Execution of Candidates' Registration

¹⁶²Supra note 159, interview with Dr. Addisu G/egziabher

¹⁶³Supra note 144

¹⁶⁴Interview with Mr. Tadesse Tesema, Ethiopian Human rights Commission, Human Rights Awareness Team Leader, 25 April 2018.

NEBE in the 2010 General Election, that the conduct of civic and voter education could have been much more effective if other stakeholders too had joined the undertaking and hopes that the Board will consider the role of other interested parties in future elections. The same failure happened in the 2015 general election without any improvement since the researcher had been involved in monitoring team and the overall activities of election monitoring was started a week before the actual election day.

In addition to this, interviews with local NGOs were conducted like HRC, EWLA and ETA to learn about their role in the promotion of human rights in general and in providing voter and civic education which promote the right to elect and to be elected. An expert at the Human Rights Council stated HRC's participation in election monitoring as follows:

*“HRC had engaged in general election monitoring in terms of monitoring elections, providing awareness and education to the public and reporting its finding to the concerned organs by indicating the strong and weak parts of election since 2000 until 2005 general elections. However, in this regard, EHRC is not willing cooperate and working in Collaboration with HRC and this is because there is a perception that CSOs like HRC are considered as anti-government whereas, NHRIs as pro-government. In terms of election, HRC had engaged in all stages of election monitoring and finally report to concerned organs, but after 2005 following the enactment of CSOs proclamation number 621/2009, HRC had been intimidated verbally to refrain from providing awareness on the right to elect and to be elected, observation and reporting and if not, registration license is not going to be renewed. From that duration onwards HRC had refrained from the above activities of election observation and monitoring. To this effect the mandate to this specific activity were omitted from the establishment regulation of HRC. Moreover, the CSOs proclamation number 621/2009 clearly undermine the role of CSOs and those working in human rights were lost or minimized due to the said proclamation provisions”.*¹⁶⁵

¹⁶⁵ Interview with Case#3, Human Rights Council, Human Rights Monitoring and Legal Service Experts, 2 May 2018

In addition to this, the participation of EWLA and ETA in election monitoring and working in collaboration with EHRC was very minimal.¹⁶⁶

Compared with experiences of the UGHRC and KNHRC it is clear that, the EHRC is far from the role expected from it in contributing to free and fair election. For instance; in pre-election period, UHRC carried out civic education under its Early Warning and Early Response (EW&ER) Project by focusing all its routine civic education efforts on contributing to a successful electoral process and conducted civic education through screening of videos, drama shows and conducting quizzes. It also launched an election song which had earlier commissioned to be able to convey the message of peaceful elections. Moreover, it raised awareness on various human rights and electoral issues through the use of media and the media programmes included radio talk-shows, radio spot messages, media briefs and newspaper supplements. Security agencies were among the groups targeted in the human rights programme and a total of 2532 members were trained by the UHRC. On the other hand, KNCHR held 10 regional training workshops, where 450 senior security actors were empowered on how to uphold human rights and specifically the right to assembly and crowd management. KNCHR further developed and disseminated an educational video and IEC materials for sensitization of both the public and the security actors on the role and obligations when exercising the right to assembly and undertaking public order management. The above two experiences show that how much EHRC lacks in providing voter and civic education which has a positive repercussion for the promotion and protection of electoral related rights.

d) Monitoring Election Campaign

The FDRE Constitution guarantees the right of assembly and demonstration, and freedom of thought, expression, opinion and movement.¹⁶⁷ In compliance with this constitutional guarantee, Article 58 (1) of the Amended Electoral Law provides that any candidate, after the date of issuance of candidature I.D. card and up until two days before the voting day, has the right, by respecting his legal duties, to call rallies and hold peaceful demonstrations on his own or through his supporters by notifying in writing the administration or municipality and without requesting permission. Election monitors should evaluate the degree to which competitors are afforded

¹⁶⁶ Interview with Ms. Meron Aragaw, Ethiopian Women's Lawyers Association, Executive Director and Mr. Semeles Abebe, Ethiopian Teachers Association, Vice President, 30 April 2018

¹⁶⁷ Article 29, 30 and 32 of the FDRE Constitution

equitable access to resource in terms of finances and material resources, media access and news coverage. Moreover, the duration of the campaign must be long enough to enable the contestants to effectively organize and convey their policies to the electorate.

In contrary to this Some political parties like ‘Medrek’ and Ethiopian Democratic party had also complained that during the election campaign, when they call fora public meeting, the ruling party, and some kebele and woreda administration officials would simultaneously call a similar public meeting and put various pressures to rule out their meetings as a result of which they were unable to meet their sympathizers and the public.¹⁶⁸

Regarding places restricted for campaigning, the Amended Electoral Law under Article 61 lists down places where campaigning is prohibited. These places were: churches, mosques, military camps, police stations, places within 500 meter radius of educational institutions where educational activities are undertaken, within a 500-meter radius of officially designated as marketplaces where marketing takes place daily or on fixed days, governmental and public institutions and areas where public meetings had been held. The Commission has observed that, in contravention of the law, the ruling party’s election posters and banners, logos, election tags, candidates’ identification marks and the like had been displayed on walls of some governmental and public institutions. It had also observed that some public employees appearing in their workplaces by wearing various T-shirts and showing various symbols of the ruling party. The Commission recommended, as these contravene the electoral laws, which need to be addressed in the future.¹⁶⁹

In addition to this, financial and other supports given to political parties is also provided under Article 42(2) of the Revised Proclamation on the Registration of Political Parties provides that political parties running for the House of Peoples’ Representatives and state councils shall receive support from the government based on criteria to be issued by the NEBE under Proclamation 573/2000. According to regulation number 5/2001 of the NEBE, the support whose object is to help political parties play their due role in building democracy, can be given to contending political parties in kind or in the form of money or service. As a result to this, for the 4th General Elections, 7,233,000 birr was initially slated to be distributed to political parties, which was later increased by 5,753,761.57 birr upon request made by political parties

¹⁶⁸The General Elections Monitoring and Observation Final Report of Ethiopian Human Rights Commission, November.2011, pp.34

¹⁶⁹Ibid, pp.36

and amounted to 12,976,761.57 birr. In addition, halls and mass media services had been provided to political parties in accordance with the principles stated in Regulation 5/2001.¹⁷⁰ However, The Commission had observed that some political parties were running short of finance, office equipment and other necessary materials during their election campaigns and in some instances, the ruling party has made use of government vehicles and offices for election campaigns.¹⁷¹

e) Monitoring the Media

Election monitoring groups can play an important role in pressing for the elimination of censorship, more equitable distribution of media access for political contestants, fair news coverage of contestants and election issues, and adequate voter education through the media.¹⁷² Equally important, once the legal framework has been set, they should scrutinize the implementation of the sanctioned rules, for this purpose they should assign a special team to assess media fairness. Consequently, the Ethiopian government has allowed contending political parties to make use of the various state-run and private media. In particular, the Broadcast Authority has issued a directive on how contending political parties should use the electronic and print media, especially those with countrywide coverage, in their electoral campaigns. Accordingly, political parties were made to use 495 hours of radio airtime, 90 hours of TV airtime and 849 newspaper columns for campaigning, which, according to the NEBE report, were worth 38,000,000 birr.¹⁷³

The allocation of airtime in the said media was made in the following manner: 25% to all contending political parties on an equal basis, 55% on the basis of the number of seats political parties have in the federal parliament and in the state councils. The remaining 20% were allocated on the basis of the number of candidates the political party brought in for the elections.¹⁷⁴

The political parties with whom the Commission interviewed have said that the allocation of media time and newspaper columns, especially prime time, had helped them to have an equal opportunity in reaching the public at large, as the allocation of air time especially the prime time and newspaper columns for transmitting their programs were determined by drawing lots by the

¹⁷⁰ The 2010 performance report of the NEBE, June 2010, Addis Ababa, pp.17

¹⁷¹ Supra note 144, Final Report of Ethiopian Human Rights Commission, pp.38

¹⁷² Sandra Coliver and Patrick Merloe, Guidelines for Election broadcasting in transitional Democracies, London;1994, pp.16

¹⁷³ Supra note 150, report of the NEBE, pp.19

¹⁷⁴ The directive of the FDRE Broadcast Authority on the use of airtime for the 4th National Elections, February 2002, pp.7-8

political parties themselves. Regarding the role of the Commission towards monitoring broadcasting media, *most media experts of Ethiopian Broadcasting Corporation had not been aware of the power and mandate of the EHRC in general and its monitoring mandate in particular and there had no interface or collaboration with the Commission on the election monitoring activities. There was no self-initiation by the EHRC in organizing special team for monitoring the fairness of media air time. In this regard the relationships were solely limited with Ethiopian Broadcasting Authority's allocation of air time for political parties for election campaign.*¹⁷⁵ In the same fashion, an interview conducted with Fana Broadcasting Corporate, also revealed that, the collaboration of Ethiopian Human Rights Commission with state and private media is weak in terms of using the media and working together in its monitoring mandate particularly in election monitoring.¹⁷⁶ Regarding the printing Media:

*As Ethiopian Press Agency, it has awareness about power and mandate of the Commission in general. However, it does not have enough knowledge and awareness about the specific mandate of election monitoring activities of EHRC. Ethiopian Press Agency has a program identified by the Ethiopian Electoral Board to all political parties on the use of free page to express their program. In this regard the agency has no relationship or collaboration with the commission regarding monitoring printing media so far.*¹⁷⁷

Several contending opposition parties still hold that particularly the airtime allocation for the 9 TV campaign debates was unfair. The ruling party had indirectly made use of the airtime through various regular programs and news airtime for campaigning. In response to such complaints, the ruling party had told the Commission that it was natural for the government media to give as much coverage on government day-to-day activities during elections campaigns as in other times.¹⁷⁸ This shows how much the media unfairly used by the ruling party and in effect it undermines the electorates to have an informed decision whom they are going to elect.

¹⁷⁵ Interview with Mr. Solomon Tesfaye, Ethiopian Broadcasting Corporation, Media Monitoring team leader, 19 April 2018

¹⁷⁶ Interview with Mr. Beruk Kebede, Fana Broadcasting Corporate, Media Monitoring Director, 10 April 2018

¹⁷⁷ Interview with Mr. Fekadu Molla, Ethiopian Press Agency, Addis Zemen Magazine chief Producer, 15 April 2018

¹⁷⁸ Supra note 144, pp.40

3.2.2 Election Day activities of EHRC

The EHRC has observed the opening of the polling stations, the voting process, the atmosphere around the polling stations, the closing of the polling stations, the tallying of votes and the disclosure of temporary election results in some selected polling stations across the country by organizing and deploying 20 teams comprising 250 permanent and temporary staff and conducted observations in 2936 polling stations and 250 constituencies throughout the country. The observation was carried out with a check list based on the provisions of the FDRE Constitution and electoral laws as well as best international practices.¹⁷⁹

a) **Monitoring Polling Station Activities**

The crucial aim of monitoring elections at the polling station level is to assess whether voting and counting is implemented in a correct and orderly manner and in accordance with electoral regulations, international commitments, and other universal principles.

On vote casting day, the observers of the Commission arrived at the polling stations as early as 5:00 a.m. and witnessed the counting of ballot papers by election officers in the presence of public observers and representatives of political parties and civil associations. They had also observed the signing ceremony, confirming that everything was as counted, that polling stations were equipped with the necessary election logistics and were ready for the conduct of vote-casting. The Commission had also observed that in most of the polling stations, the vote-casting process started at 6:00 in the morning. Moreover, the Commission had also observed that preparations being made in all the 44,000 polling stations to start the voting process simultaneously and noticed that ballot papers, secret ballots, the national flags to be hoisted at the polling stations and other logistics had arrived at each polling station without any significant delay. It had noticed that there were no shortages of election logistics on the vote-casting day except that some polling stations were a little late to start the process due to the delayed arrival of public observers and representatives of political parties in some areas.¹⁸⁰

Before casting their votes, voters in various polling stations had been given orientation by election officials on how to identify their favorite candidates, to fill the ballots and to cast their votes. There had been also polling stations where orientation was suspended for a while, given only when there were a good number of voters or given on and off, and, in others, where

¹⁷⁹Ibid pp.43

¹⁸⁰Ibid pp.45

orientations were not clear enough for the voters. Some polling stations had also been observed giving orientation only in Amharic to voters to whom the language was a little hard to understand while, in most polling stations, orientation was given in local tongues.¹⁸¹

The Commission had observed that many of the polling stations had been able to designate a place or a room for casting votes in privacy and to take precautionary measures to preclude the use of a single secret ballot by more than one person. However, in a few polling stations, it was noticed that there were, for lack of precautionary measures, the practice of using, at the same time, one secret ballot by more than one person.¹⁸² Moreover, the Commission has also observed in many polling stations the presence of representatives from contending political parties, observers from the Coalition of Ethiopian Civil Societies for Election Observation, the EU and AU. In comparison, representatives from the ruling party were present in almost all polling stations whereas representative from opposition political parties were, for various reasons, confined themselves only to a few polling stations. According to some opposition parties, the reasons were attributable to lack of finance for assigning representatives to all the 44,000 polling stations. Overall, there were, by and large, two representatives of political parties on average in each polling station.

b) Monitoring the Vote

Monitoring the count provides an opportunity to assess whether ballots are counted accurately, reflecting the choices expressed by the voters. Election monitors should therefore be particularly cautious during the vote count and tabulation of results and the results of voting should be made publicly available at the polling station level. Monitors should be able to receive a copy of the results in polling stations.

In this regard, the EHRC had observed the vote counting process. In all polling stations, the vote-counting process started at about 7:00 p.m. and shortly after its official closure at about 6 p.m., the ballot bags were locked in the presence of all civic and public observers and representatives of the candidates. It had also observed that before the vote-counting started, officials at the polling stations had given a briefing on how the vote-counting process needed to be conducted according

¹⁸¹Interview with Mr. Awuduro Tadesse, National Electoral Board of Ethiopia, Legal Service Directorate Director, 27 April 2018

¹⁸²Interview with Mr. Adham Duri, Ethiopian Human rights Commission, Human Rights Protection and Monitoring Directorate Director, 22 April 2018.

to the electoral law and then preceded to ballot-counting after making sure that all the ballots in the boxes were emptied onto a table.¹⁸³

The ballot counting was conducted in the presence of representatives from political parties, public and local as well as foreign observers and the results of the counting of ballots were recorded on a legal form prepared by the NEBE and confirmed by the signatures of the said observers and representatives present during the vote counting. However, the Commission had also noticed a number of invalid votes ranging from 90 to 545 during the vote counting.¹⁸⁴ The reasons for the invalid votes had been ascribed to failure on the part of some voters to put the correct mark on the ballot paper and for electing candidates who had excluded themselves from candidacy after the preparation of the ballot papers.¹⁸⁵

In polling stations where the Commission attended during the vote-counting process, it had observed lack of capacity by some of the election officers, who were counting the votes. Though not pervasive, it had also observed in some polling stations some observers and representatives of the public and political parties respectively were intruding into the vote counting process. In a few areas, the monitoring team of EHRC was prohibited from attending the vote counting process, which was later partly solved through discussion with the respective election officers.¹⁸⁶ Moreover, a special team to monitor special groups like, sick, elderly persons were not employed and monitored by the Commission.

3.3 Post-Election activities of EHRC

The announcement of final results is obviously an important part of any election process and to the extent possible it should be observed by the election monitoring mission.

3.3.1 Monitoring Announcement of Election Results

Under article 76 of the Amended Electoral Law and Article 60 of the Directive on Voting, Counting and Announcement of Election Results, it is provided that within one hour of the conclusion of vote counting, the results filled in the appropriate forms, shall be written down on the board of the polling stations prepared for the purpose. Accordingly, in most polling stations, election results confirmed also by the attending representatives of contending political

¹⁸³ Supra note 144, Final Report of Ethiopian Human Rights Commission, pp.47

¹⁸⁴ Ibid, 'The average invalid vote was calculated on the basis of the data the Commission collected from several polling stations it had monitored.'

¹⁸⁵ Interview with Dr. Addisu G/Egziabher, Ethiopian Human rights Commission, Chief Commissioner, 30 May 2018.

¹⁸⁶ Supra note 144, pp.48

parties had been displayed on the appropriate notice boards. The exceptions are in polling stations only candidates from the ruling party were running for the elections, such delays in announcement of results had little to do with the issue of transparency and credibility.¹⁸⁷

The NEBE had disclosed tentative election results for both the HPR and state councils over the period of May 24-27, 2010. The Commission cannot in this case fail to commend the Board for officially disclosing the election results ahead of schedule.¹⁸⁸

Accordingly, the total number of voters who cast their ballots in these elections was 29,832,190 (93.4%), of which 15,617,453 (52.4%) were male and 14,214,737 (47.6%) female. Of the total number of voters registered for the elections, 6.6 % had failed to cast their votes.¹⁸⁹ However, given the number of invalid votes witnessed during the vote-counting, the Commission could not but conclude the provision of civic and voter education inadequate.

3.3.2 Complaints-Handling Procedures

The Electoral law of Ethiopia provides for several procedures that can be, alternatively or comprehensively, used to address election-related complaints and disputes at various levels. In addition to the existing legal mechanisms such as the courts of law and to help election-related complaints and disputes resolved on time within the laws of the land, the Ethiopian Electoral Board has established three complaints handling and dispute settlement mechanisms to ensure the success of the elections. These have been the Grievance Hearing Committee, the Joint Forum of Political Parties and the Joint Council for Political Parties. According to the Amended Electoral Law, decisions on complaints and disputes shall be resolved on time and within election schedule so that the elections are conducted fairly, freely and peacefully.¹⁹⁰

In particular, the time limit set for the handling of complaints and the introduction of different procedures at different levels, including an appeal to courts, have indeed demonstrated the existence of a conflict resolution mechanism which is supportive of democratic and fair elections. However, the procedure for handling complaints on election campaigning was weaker in terms of having details than the complaint handling procedures related to voter and candidate registrations.¹⁹¹

¹⁸⁷Ibid pp.49

¹⁸⁸Ibid

¹⁸⁹The 2010 performance report of the NEBE, June 2010, Addis Ababa, pp.24

¹⁹⁰Ibid

¹⁹¹Supra note 144, Final Report of Ethiopian Human Rights Commission, pp.55

The Commission had learned that sixty-two complaints related to candidate and voter registrations had been directly lodged with the NEBE and been responded to on time. The majority of the grievances, according to the Board, were those related to candidate registration, which were not submitted in compliance with the complaint procedure set under the law.¹⁹² The Commission had also noted that the majority of the grievances lodged with the NEBE and those grievance committees formed at all levels, were not substantiated by concrete evidences. Some political parties to which the Commission talked had maintained that there had been a gap in handling complaints in compliance with the law. In an interview conducted with Forum for the Coalition of Forces for Democratic Dialogue/Medrek/Chairman Dr. Merara Gudina:

*Medrek tried everything at NEBE and as the things there were no more hopeful they lost their trust in other institutions like EHRC, ombudsman since they are not independent factually. For instance, they had given voting papers lost at toilets; but they dismiss the issue saying the evidence is not enough. Moreover, they tried to lodge complaints to the court and the court decided that the decision by the electoral board was 'right'. Taking experience from these institutions the party did not want to go to EHRC with complaints.*¹⁹³

The EHRC, on the other hand, had also observed that in the pre-election, there were limitations at the lower level in their complaints handling and providing timely decisions for lack of human resource and other logistics. Moreover, a few members of the legal institution had been unable to provide prompt decisions on election-related disputes lodged with them.

3.4 Activities related with participation of women, old peoples and persons with disabilities

3.4.1 The participation of women

International human rights instruments as well as the FDRE constitution provide that every citizen has the right to participate in the political activities of his/her country. They also stipulated protection without discrimination on the ground of sex among the human rights guaranteed to all persons.¹⁹⁴ Article 38 (1) of the FDRE Constitution also provides that every Ethiopian is entitled to exercise his/her right to vote and to be elected without any discrimination based on sex.

¹⁹² Ibid

¹⁹³ Interview with Dr. Merara Gudina, Forum for the Coalition of Forces for Democratic Dialogue/Medrek/, Chairman of the Party, 3 May 2018.

¹⁹⁴ Article 25 of the FDRE Constitution

During the 4th General Elections, 5979 (87.6%) male candidates and 1000 (12.4%) female candidates had run for the House of Peoples' Representatives, while 4,021 (84.7%) male candidates and 725 (15.3%) female candidates had done so for state councils. With regard to independent candidates, the elections had only seen one female candidate for the House of Peoples' Representatives and two female candidates for state councils. Among the registered voters, 15,252,240 (47.8%) had been women.¹⁹⁵

In this regard, compared to male candidates, women had been under-represented in the elections. The fact that women were not seen campaigning for political parties in the mass media also indicates that their participation was minimal. The ruling party, however, applying a quota system of representation, had enabled women to win as many as 151 (28%) of the 547 seats in the House of Peoples' Representatives.¹⁹⁶ Compared to the previous elections, this represents an increase of 7 %, and the Commission believes that though this is notable, more needs to be done to further increase their participation.¹⁹⁷

The Commission also believes that the inclusion, under Directive 5/2001, of the size of the participation of women candidates as one criterion for determining the amount of financial support to contending political parties will be a step in the right direction.

With this respect, a number of countries promote the participation of women in elections by employing two modes of applications: the first one is making a decision in advance on the number of seats women should occupy in parliament and, to this end, reserving some constituencies only for women candidates and the second option is determining, through a quota system, the number of seats that women should occupy in parliament, and presenting candidates. In the Commission's opinion, the first mode, which suggests that only women should compete in some constituencies, is not, however, to be recommended as it not only requires the revision of the law on the structure of constituencies but also it may harm competition on the basis of merit.¹⁹⁸

The second mode, which applies to the participation of women in political parties and elections on the basis of the quota system, could, in this regard, be appropriate and may be applied not only by the goodwill of political parties but also by law, as such assistance to women is considered

¹⁹⁵The 2010 performance report of the NEBE, June 2010, Addis Ababa, pp.28

¹⁹⁶Ibid

¹⁹⁷Supra note 144, Final Report of Ethiopian Human Rights Commission, pp.61

¹⁹⁸Ibid

under Article 35 (2) of the FDRE Constitution and Article 4(1) of CEDAW to be an affirmative action.

3.4.2 Participation of old Peoples and Persons with Disabilities

The Ethiopian electoral law provides that any person, unless and otherwise stipulated by law, is entitled to participate in elections without any discrimination. It also provides that old people and persons with disabilities interested to take part in the elections shall be assisted to do so.

As older people, due to their age, are most likely to find it difficult to move around and respond to events easily, it is all appropriate to locate polling stations within reach and to allow them and those with disabilities to have assistants during vote casting in order to help fully realize their rights to elect and be elected. Accordingly, article 36 (6) of Proclamation 532/2007 stipulates that ‘the disabled and the blind who are eligible voters shall be registered in person accompanied by their assistants.’ In line with this provision, Article 33 of Directive No. 5/2002 on Voting, Counting and Announcement of Election results also stipulates that the election officers at polling stations shall give priority to old persons, persons with disabilities, pregnant women and people in similar situations during the voting process. Any person who is unable to make a mark on the ballot paper, to put the ballot paper in the ballot box or to express himself/herself may be accompanied by an assistant of his choice.

The directive further provides that the person who helps him/her along shall be over 18 years of age, respect the decision of the voter to elect the person of his own choice and shall not be a candidate or a candidate’s representative. The Electoral Board of Ethiopia had given intensive training to disabilities as to the right to elect and to be elected and dispatched to them through brail. The major problem was accessibility of polling stations to this section of the societies and there was no special team organized to monitor these section of the societies rather training were given to election officials to consider and assist while they vote.¹⁹⁹

In the opinion of the Commission, ways need to be sought in order for people with disabilities to take part in the elections not only as voters but also as election executives, election observers, and other activities related to the elections. Persons with disability are believed to assume responsibilities as much as others. Nevertheless, be it at government or party level, there is, as yet, no policy on allowing persons with disability to take part in elections other than as voters.

¹⁹⁹ Interview with Dr. Addisu G/Egziabher, Ethiopian Human rights Commission, Chief Commissioner, 30 May 2018.

What is more, except in a few cases, there have also been no persons with disability who took part in elections as candidates other than as voters.²⁰⁰

3.5 Major Achievements and challenges of Election Monitoring

The Ethiopian Human Rights Commission, among the mandates broadly empowered, monitoring human rights in general and election monitoring in particular is one of its major activities according to its constitutive proclamation number 210/2000. Two election cycles during the period of 2010 and 2015 of General Election in the country were conducted by the Commission.

3.5.1 Achievements

The 2010 General Election monitoring was its first engagement for the Commission in this regard. Self-initiation by EHRC to undertake this activity can be taken as a positive impact in the overall perception in building a democratic society and has a positive repercussion in the promotion and protection of human rights in general and the right to elect and to be elected in particular.

The monitoring and observation of the elections was conducted by establishing a coordinating team and engaging in and deploying to all parts of the country all the staff of the Commission and some 216 newly-recruited temporary staff with the assistance of a checklist and prepared election monitoring code of conduct to be followed by monitors and all election stages had been monitored.

Preparations had been made by organizing seminars and training sessions and meeting with the public, including women and youth associations as well as with media professionals. Moreover, had approached and held discussions on election-related issues with the representatives of major political parties contesting the elections, officials and heads of NEBE and its regional offices, the law-enforcement agents, organs of the judiciary, the mass media, the broadcasting authority as well as election representatives of opposition political parties, and election observers of civil society organization.²⁰¹

The recommendations forwarded by the EHRC in every phase of election can be considered as one progress had it been a systematic follow up mechanism devised and implemented.

Reporting final election monitoring and observation is also one of the major achievements since main objective of the report was, therefore, not only to make statements on the procedural

²⁰⁰ Supra note 144, Final Report of Ethiopian Human Rights Commission, pp.59

²⁰¹ Interview with Mr. Adham Duri, Ethiopian Human rights Commission, Human Rights Protection and Monitoring Directorate Director, 22 April 2018.

process and outcomes of the 2010 General Elections but also for the Commission to forward recommendations to the people, government and political parties on measures to be taken.

3.5.2 Challenges

Despite, the EHRC's engagement in the 2010 and 2015 general election, there were considerable gaps and discrepancies in the compatibility of its election monitoring with international minimum standards and norms of election monitoring.

In its undertaking in election monitoring activities, the Commission lacks a clear strategic plan in advance, how election monitoring is going to be administered in terms of allocation of resources both human and financial resource. Moreover, in using its broad mandate the Commission has failed to monitor the entire electoral phases. For instances, in monitoring the legal framework, the Commission has only observed the existence of electoral legislations and failed to oversee or assess the compatibility of electoral laws and the newly enacted anti-terrorism and charities and societies laws that were promulgated one year before the 2010 general election. Failure to provide extensive awareness and training on civic and voter education to the public at large, political parties, the media, security officials and to vulnerable sections of the society. Cooperation with CSOs and other democratic institutions are not worth mentioning. The Commission has identified the participation of CSOs in election was very minimal in terms of election monitoring and observation. For instance, in conducting civic and voters education and reporting its finding. Moreover, the Commission's engagement with other democratic institutions like, Ombudsman, NEBE and with the media was very weak in its role towards election monitoring activities. Fetiya Yesuf noted:

“The Commission's engagement with the House of Peoples Representative in its election monitoring report and recommendations were also very minimal in terms of technical support, capacity building to the staff, in responding and taking measures based on the reports and recommendations made to it. In addition to this, to give practical life to the mandates and powers of the Commission it should be independent operationally. In this regard, the role of the HPR to strengthen the Commission's independency is minimal.. This is because the higher officials of the Commission are party affiliation with the ruling party.”²⁰²

²⁰²Interview with Miss. Fetiya Yesuf, House of People's Representative, democratic and human rights standing committee chairperson, 15 May 2018

Moreover, reporting its finding on election monitoring is one of the major activities of the Commission to the public at large and to concerned organs of the government. Since transparency of the EHRC's finding plays a vital role for its credibility. In this regard, EHRC had published its first election monitoring and observation report in November 2011. However, the Commission had conducted election monitoring in 2015 general election and spent to administer the election monitoring 2,811,254.67 birr,²⁰³ but its finding and final reports of 2015 election monitoring were not prepared and published and it is difficult to assess the 2015 general election due this reason. Its failure to accomplish the overall activities of election monitoring will not enable to show progress made in election monitoring. Finally, the failure to follow the 2010 general election monitoring recommendations was the other major weakness of the Commission. The recommendation forwarded to different organs of the government had been too general and difficult to make an assessment on those institutions which fail to implement the recommendation. Since assessment of the election monitoring activities of the Commission was not conducted, it resulted to identify the discrepancies while conducting this crucial activity.

3.5 Conclusion

The entire discussion of this chapter specifically focuses on the experiences of Ethiopian Human Rights Commission's election monitoring practices and its compatibility with international minimum standards of election monitoring. To this effect, it is substantiated by interview with stakeholders particularly with election monitoring activities conducted so far. In addition to this, best experiences of Kenya and Ugandan Human Rights Commission's which can be taken as a lesson also corroborated to draw key findings.

The EHRC had conducted election monitoring of the 2010 and 2015 General elections. The 2010 general election was its first undertaking; it had good initiation to see the overall phases of election stages. However, it lacks using its broad mandate and factual independence to give practical life to those international minimum standards of election monitoring in a full-fledged picture. Furthermore, its failure to work in collaboration with stakeholders and devising follow-up mechanism to its Recommendations has its own negative repercussion to protect and promote human rights in general and the right to elect and to be elected in particular.

²⁰³ Data collected from Ethiopian Human Rights Commission, finance department, 11 may 2018.

Chapter Four

4. Conclusion and Recommendations

4.1 Conclusion

Setting up the necessary normative and institutional framework and monitoring compliance and implementation is crucial for the protection and promotion of human rights recognized under different international human rights instruments as well as the domestic legal system. NHRIs are one means to give practical life for human rights one of which is the right to vote and to be elected in a free and fair election process.

Monitoring human rights is among the major power and mandates of NHRIs pursuant to the minimum expectation of the Paris Principles. Monitoring is a means of improving the protection of human rights and the principal objective of human rights monitoring should be to reinforce State responsibility to protect human rights. The primary purpose is to ensure that an independent, impartial, and objective evaluation of the electoral process is conducted and the involvement of the field presence can equally serve as a deterrent for violations; detection of violence, intimidation, and fraud before, during and after the elections.

Monitoring human rights during elections is essentially concerned with protection of rights that are relevant to the electoral process. (For instance, freedom of association, freedom of assembly and prohibition of discrimination are among). In the electoral processes on the period before, during and after elections, some rights may be more restricted or threatened, particularly as regards freedom of association, freedom of expression, assembly and association.

Given the strong nexus between elections and human rights, NHRIs among others focus on monitoring elections in a bid to enhance the observance of a broad range of human rights including the right to vote; and the wider ramifications of the electoral processes on human rights since the establishment of NHRIs is one of the mechanisms to enhancing good governance and improve domestic human rights protection. The role of monitors is assessing comprehensively all electoral processes; pre-election, election and post-election phases.

Pre-election phase starts with the actual preparations for holding elections and lasts until the end of the electoral campaign. Activities during this phase are in preparation of the elections and may include amending laws, training election officials, educating voters, registering voters, printing ballot papers, compiling voter registers, registering candidates and electoral campaigning. In this

phase, domestic monitoring groups usually engage in legal framework reforms, advocating for an inclusive reform process to make sure that all relevant actors agree on the proposed amendments. Election period is the actual day dedicated to the casting of votes by eligible voters and ends with the closure of polling stations. During this phase, Election Monitors should focus on the further preparation and finally the conduct of elections. They usually intensify their outreach to the election administration and the media, and they also keep close contact with political parties and candidates.

Post- election period is the last stages of monitoring. This phase is the period between the closing of polling stations and the announcement of the final results. It involves the sealing and safe transport of ballot boxes, the counting of ballot papers, independent oversight over the counting process, the declaration of provisional results, the resolution of electoral disputes and challenges of results, and the declaration of the final results.

The EHRC has a very broad mandate to promote and protect human rights as provided under Article 6 of Proclamation Number 210/2000. Accordingly, EHRC in an effort to execute these mandates has undertaken a number of monitoring tasks, of which election monitoring took a significant part. Election monitoring is one of the core activities done by the commission and engaged in this activity during the last two general elections that took place in 2010 and 2015.

The 2010 general election was its first engagement and conducted by establishing a coordinating team and engaging in and deploying staff of the Commission to all parts of the country and in 216 newly-recruited temporary staff with the assistance of a checklist, the monitoring was carried out in three major phases: pre-elections, during elections and post-elections. Preparations had been made by organizing seminars and training sessions and meeting with the public, including women and youth associations as well as with media professionals.

Reporting the final election monitoring and observation is also one of the major achievements since main objective of the report was, therefore, not only to make Statements on the procedural process and outcomes of the 2010 general elections but also for the Commission to forward recommendations to the people, government and political parties on measures to be taken for making future elections more democratic, fair, and credible. The recommendations forwarded by the Commission though general, in every phase of election can be considered as progress. That could have yielded better result if it commission devised a systematic follow up mechanism. This unfortunately was not the case. Despite, the Commission's engagement in the 2010 and 2015

general election, its election monitoring activities were not fully up to the international minimum standards and norms of election monitoring and compared to the experiences of Kenya and Ugandan human rights Commissions.

In undertaking this major activity, the Commission has failed to oversee or assess the compatibility of electoral laws and the newly enacted laws on anti-terrorism and CSOs during the period 2009, with the constitution and international human rights norms and standards. Failure to provide extensive awareness and training on civic and voter education to the public at large, political parties, the media, security officials and to vulnerable sections of the society is also the other gap.

Cooperation with CSOs and other democratic institutions were not made by Commission. The Commission has identified that the participation of CSOs in election is very minimal in terms of election monitoring and observation for instance, through civic and voters education and reporting their findings.

Furthermore, the Commission's engagement with the HPR in its election monitoring report and recommendations were also insufficient in terms of technical support, capacity building to the staff, in responding and taking measures based on the reports and recommendations made to it. In addition to this, to give practical life to the mandates and powers of the Commission it should be independent operationally. In this regard, the role of the HPR to strengthen the Commission's independency is very minimal. This is because the higher officials of the Commission are party affiliated with the ruling party.

In addition to this, the Commission had conducted election monitoring in 2015 General election but its finding and final reports of 2015 election monitoring were not prepared and published. Its failure to accomplish the overall activities of election monitoring will not enable to show progress made in election monitoring. Finally, the failure to devise follow-up mechanism to the 2010 general election monitoring recommendations is the other major weakness and to this effect no assessment was conducted to draw the effectiveness of election monitoring.

Hence, with the need to alleviate these gaps of the Commission and in order to promote and protect human rights effectively in terms of election monitoring, the next section proposes possible recommendations that the EHRC should consider.

4.2 Recommendations

- 1) In order to ensure that electoral related human rights are protected and promoted through election monitoring, EHRC should strategically plan in advance how to conduct election monitoring in terms of allocating financial and material support to improve its effectiveness towards its mandated obligation and to examine its challenge.
- 2) EHRC should devise a systematic follow- up mechanism to its forwarded recommendations, advices and suggestions to the concerned organs to be implemented.
- 3) EHRC should prepare and adopt institutional directives and manuals to provide and conduct Election monitoring in particular.
- 4) EHRC should use its mandate in providing extensive civic and voter education. In particular, human rights education for security agencies.
- 5) EHRC should conduct a research on existing laws which will have a negative effect for the promotion and protection of human rights in general and the right to elect and to be elected in particular.
- 6) EHRC should establish and organize special team to inspect places of detention and other related facilities for public outcry on arbitrary arrests.
- 7) The Commission should strengthen the participation of CSOs engagement in the promotion and protection of human rights in general and election monitoring in particular. Moreover, it should devise a mechanism to work in collaboration with CSOs and other democratic institutions.
- 8) The Commission should identify hotspot areas which are given prior attention and identify those specific human rights to be monitored.
- 9) The Commission should take the lessons of the Kenyan and Ugandan human rights Commissions mechanisms devised to conduct election monitoring. For instance, Early Warning and Early Response Project, which aimed at preventing violence during general elections; Development of a web based monitoring system, Identification of data collection methods and data collection, Capacity building of monitors, establishment and operationalisation of the situation room, Public dialogue with stakeholders in electoral process at National Level, Radio Talk shows, spot messages and supplements in newspapers, Road Shows using the Civic Education Vans and Review of electoral reform bills tabled before the parliament.

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Appendix I: Interview Guidelines

Part I: Interview Questions for Ethiopian Human Rights Commission

A) Ethiopian Human Rights Commission: (chief Commissioner, Monitoring Directorate Director, Monitoring Experts, Human Rights Awareness and Training Team Leaders)

I am Wubshet Girma, graduating student at Addis Ababa University Center for Human Rights. Currently I am working on a Master thesis entitled: **“Election Monitoring Practices of Ethiopian Human Rights Commission: A Comparative Analysis.”** I believe it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality. Thank you in advance for your attention and support.

1. Respondent Profile

1.1 Name of Respondent (optional):

1.2 Sex: Male ____ Female ____

1.3 Age: _____

1.4 Educational Background:

1.5 Represented institution:

1.7 Official capacity:

1.7 Duration of engagement with the institution represented:

Interview questions

- 1) Is election monitoring part of mandate of the commission? If yes when and how many times has the commission executed this mandate?
- 2) What were the major activities performed during the monitoring process at all stages of the election?
- 3) What were the tools used during monitoring the electoral processes? Who participated in the development of the tools and how?

- 4) What rules and principles have been used as a guide? Why?
- 5) What are the major interventions made by EHRC during Electoral processes?
- 6) Does the commission own a mechanism for follow up of its recommendations? If yes what are these mechanisms? And how are they implemented?
- 7) Did the commission assess implementation of its recommendations on previous election/s? What are the major results gained from such assessment?
- 8) Does the commission have a time frame for release of election monitoring report? Is the time frame observed as planned? If no what was the reason?
- 9) What are the main legal, practical and operational challenges of election monitoring in Ethiopia?
- 10) What do you suggest for improvement?

Part II: Interview Questions to Stakeholders such as (HPR, NEBE, CSOs, Media, Political parties)

A) National Electoral Board of Ethiopia

I am Wubshet Girma, graduating student at Addis Ababa University Center for Human Rights. Currently I am working on a Master thesis entitled: **“Election Monitoring Practices of Ethiopian Human Rights Commission: A Comparative Analysis.”** I believed it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality. Thank you in advance for your attention and support.

1. Respondent Profile

1.1 Name of Respondent (optional)

1.2 Sex: Male ____ Female ____

1.3 Age: _____

1.4 Educational Background:

1.5 Represented Institution:

1.8 Official capacity:

1.7 Duration of engagement with the institution represented:

Interview Questions

- 1) Does the NEBE have a role in election monitoring? What are the roles? Does it own clear strategy and guideline for the implementation of this function? If yes, what are the key features of these strategy and guidelines?
- 2) What were the major activities NEBE has undertaken in terms of monitoring election during 2010 and 2015 general periodic election?
- 3) Does the board collaborate with EHRC and non-government organization in the implementation of election monitoring?
- 4) Has the commission made any recommendation? If any, what were the main recommendations made to NEBE?

- 5) How did the board respond to the recommendations?
- 6) Has the board faced any challenges in terms of dealing with recommendations made to it?
- 7) Is there any proposal for reform suggested by the board following recommendations of the EHRC or any other organ? If yes what were the suggestions?
- 8) What do you think are the challenges to effective implementation of election monitoring mandate of the EHRC?
- 9) What do you suggest to improve Election monitoring that is going to be made by the EHRC?

B) House of Peoples Representative

I am Wubshet Girma, graduating student at Addis Ababa University Center for Human Rights. Currently I am working on a Master thesis entitled: **“Election Monitoring Practices of Ethiopian Human Rights Commission: A Comparative Analysis.”** I believed it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality. Thank you in advance for your attention and support.

1. Respondent Profile

1.1 Name of Respondent (optional)

1.2 Sex: Male ____ Female ____

1.3 Age: _____

1.4 Educational Background:

1.5 Represented Institution:

1.9 Official capacity:

1.7 Duration of engagement with the institution represented:

Interview Questions

- 1) What do you think of the role of NHRIs role like EHRC, for the protection and promotion of human rights in the country? What role should the EHRC play in election monitoring?
- 2) What do think of the role of EHRC on ensuring proper implementation of electoral related human rights?
- 3) To what extent do you think the EHRC exercised its election monitoring mandate? Why?
- 4) What was the role of the House in terms of giving effect to recommendations of the EHRC?
- 5) Are there specific measures taken by the House to execute recommendations made by the Commission? If yes what were these measures?
- 6) Is there any Electoral reform made by the House based on recommendations of the EHRC?
- 7) Has the HPR implemented any measure that aimed to strengthen the Commission in terms of Election monitoring?
- 8) What do you think are the main challenges to effective implementation of the EHRC's election monitoring mandate?
- 9) What do you suggest to improve Election monitoring?

C) Civil Societies organizations

I am Wubshet Girma, graduating student at Addis Ababa University Center for Human Rights. Currently I am working on a Master thesis entitled: **“Election Monitoring Practices of Ethiopian Human Rights Commission: A Comparative Analysis.”** I believed it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality. Thank you in advance for your attention and support.

1. Respondent Profile

1.1 Name of Respondent (optional)

1.2 Sex: Male ____ Female ____

1.3 Age: _____

1.4 Educational Background:

1.5 Represented Institution:

1.10 Official capacity:

1.7 Duration of engagement with the institution represented:

Interview Questions

- 1) Have you had enough awareness about the activities of EHRC and specifically the power and mandate to monitor Election?
- 2) Is there specific activities done with EHRC with regard to Election monitoring processes?
- 3) What was the role of your organization with the Commissions in terms of enhancing for the political rights during electoral processes?
- 4) What are the legal, practical and operational challenges of the House in strengthening and working with CSOs?
- 5) What do you suggest to improve the role of the Commission with regard to Election monitoring?

D) Political Parties: such as (EPRDF, Medrek and EDPA)

I am Wubshet Girma, graduating student at Addis Ababa University Center for Human Rights. Currently I am working on a Master thesis entitled: **“Election Monitoring Practices of Ethiopian Human Rights Commission: A Comparative Analysis.”** I believed it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality. Thank you in advance for your attention and support.

1. Respondent Profile

1.1 Name of Respondent (optional)

1.2 Sex: Male ____ Female ____

1.3 Age: _____

1.4 Educational Background:

1.5 Represented Institution:

1.6 Official capacity:

1.7 Duration of engagement with the institution represented:

Interview Questions

- 1) Have you had enough awareness about the activities of EHRC in general and specifically the power and mandate to monitor Election?
- 2) Is there any specific activities done with regard to Election monitoring processes?
- 3) Is there any complaint that is lodged to the Commission? If any, what were the remedies forwarded by the Commission? What was the role of your organization with the Commissions mandate to monitor electoral processes?
- 4) What do you think of the legal, practical and operational challenges of the Commission to conduct Effective Election monitoring?
- 5) What do you suggest to improve the role of the Commission with regard to Election monitoring?

E) Broadcasting and Printing Media

I am Wubshet Girma, graduating student at Addis Ababa University Center for Human Rights. Currently I am working on a Master thesis entitled: **“Election Monitoring Practices of Ethiopian Human Rights Commission: A Comparative Analysis.”** I believed it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality. Thank you in advance for your attention and support.

1. Respondent Profile

1.1 Name of Respondent (optional)

1.2 Sex: Male ____ Female ____

1.3 Age: _____

1.4 Educational Background:

1.6 Represented Institution:

1.6 Official capacity:

1.7 Duration of engagement with the institution represented:

Interview Questions

- 1) Have you had enough awareness about the activities of EHRC in general and specifically the power and mandate to monitor Election?
- 2) What were your roles for a free and fair election to be made in the country?
- 3) Is there any specific activities done with regard to Election monitoring processes?
- 4) Is there any activities done with EHRC with regard to Election monitoring?
- 5) What do you think of the legal, practical and operational challenges to conduct Effective Election monitoring specially with the role of EHRCs mandate of election monitoring?
- 6) What do you suggest to improve the role of the Commission with regard to Election monitoring?

Part III: Focus Group Discussion

I am Wubshet Girma, graduating student at Addis Ababa University Center for Human Rights. Currently I am working on a Master thesis entitled: **“Election Monitoring Practices of Ethiopian Human Rights Commission: A Comparative Analysis.”** I believed it would be quite useful to directly discuss with you and hear your thoughts on the subject of my inquiry. I assure that information provided and views expressed will solely be used for academic purposes and treated with utmost confidentiality. Thank you in advance for your attention and support.

1. Respondent Profile

1.1 Name of Respondent (optional)

1.2 Sex: Male ____ Female ____

1.3 Age: _____

1.4 Educational Background:

1.7 Represented Institution:

1.6 Official capacity:

1.7 Duration of engagement with the institution represented:

Discussion points

- 1) What were the major activities performed during the monitoring process at all stages of the election?
- 2) What were the tools used during monitoring the electoral processes? Who participated in the development of the tools and how?
- 3) What were the roles of stakeholders towards election monitoring activities?
- 4) Have election monitoring recommendations brought an effect for the promotion and protection of human rights in general and the right to elect and to be elected in particular?
If yes in terms of what?
- 5) What do you think are the major challenges the EHRC faced in its mandate of election monitoring?
- 6) What do you suggest to improve the role of the Commission with regard to Election monitoring?

Appendix II: Profile of Informants

Governmental, Non Governmental Institutions and ‘independent’ institutions

NO.	Name/ case no.	Sex	Age	Office	Occupation	Date
1	Mr.Tesfalem Abay	M	35	National Electoral Board of Ethiopia	Communication Director	26 April, 2018
2	Mr.Awuduro Tadesse	M	45	National Electoral Board of Ethiopia	Legal Service Directorate Director	27 April, 2018
3	Case #3	M	62	Human Rights Council	Humanrights monitoring and legal service expert	2May, 2018
4	Case #4	M	37	Human Rights Council	Humanrights monitoring and legal service expert	2May, 2018
5	Ms.Meron Aragaw	F	33	Ethiopian Women’s Lawyers Association	Executive Director	30 April, 2018
4	Mr.shemeles Abebe	M	46	Ethiopian Teachers Association	Vice president of the Association	30 April, 2018
5	Mr. Fekadu Molla	M	39	Ethiopian Press Agency	Addis Zemen Magazine chief Producer	15May, 2018
6	Mr. Solomon Tesfaye	M	41	Ethiopian Broadcasting Corporation	Media Monitoring team Leader	19 April, 2018
7	Mr. Biruk kebede	M	38	Fana Broadcasting Corporate	Media Monitoring	10 April,

					Director	2018
8	Ms. Fetiya Yesuf	F	45	House of Peoples Representative	Democratic and human rights standing committee chairperson	15 May, 2018

Appendix III: Profile of Informants

Political Parties

NO.	Name	Sex	Age	Office	Occupation	Date
1	Dr. Merara Gudina	M	62	Forum for the Coalition of Forces for Democratic Dialogue /Medrek/	Chairman of the party	3May, 2018
2	Mr. Kebede Kassa	M	36	Ethiopian people's Revolutionary Democratic Front/EPRDF/	Department Head of the Party	14May, 2018
3	Dr.Chane Kebede	M	58	Ethiopian Democratic Party	Chairman of the Party	2May, 2018

Appendix VI: Profile of Informants

Ethiopian Human Rights Commission Officials and Expertise

NO.	Name	Sex	Age	Office	Occupation	Date
1	Dr.Addisu G/egziabher	M	46	Ethiopian Human Rights Commission	Chief Commissioner	30 May, 2018
2	Mr.Adham Duri	M	45	Ethiopian Human Rights Commission	Human Rights Protection and Monitoring Directorate Director	22 April, 2018
3	Mr.Tadesse Tesema	M	53	Ethiopian Human Rights Commission	Human rights awareness team Leader	25 April, 2018
4	Mr.Girmay Negash	M	30	Ethiopian Human Rights Commission	Human rights monitoring Expert	24 May, 2018
5	Mr.Yosef Girma	M	32	Ethiopian Human Rights Commission	Human Rights Investigation Expert	24 April, 2018
6	Ms.Esete Berile	F	32	Ethiopian Human Rights Commission	Human Rights Research and Resource Directorate Director	28 April, 2018

Appendix VII: Profile of Informants

Focus Group Participants

NO.	Name	Sex	Age	Office	Occupation	Date
1	Mr. Daniel yerga	M	33	Human Rights Council	Human rights monitoring and legal service expert	29 April, 2018
2	Mr. Adham Duri	M	45	Ethiopian Human Rights Commission	Human Rights Protection and Monitoring Directorate Director	29 April, 2018
3	Mr. Bedilu Tadesse	M	34	Ethiopian Human Rights Commission	Human rights Training Expert	29 April, 2018
4	Mr. Yohanes Zeleke	M	32	National Electoral Board of Ethiopia	Legal Expert	29 April, 2018
5	Mr. Yosef Girma	M	32	Ethiopian Human Rights Commission	Human Rights Investigation Expert	29 April, 2018
6	Ms. Esete Berile	F	32	Ethiopian Human Rights Commission	Human Rights Research and Resource Directorate Acting Director	29 April, 2018