THE ROLE OF THE ETHIOPIAN HUMAN RIGHTS COMMISSION AND OFFICE OF OMBUDSMAN IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS: THE LAW AND PRACTICE

ADVISOR:- BARRISTER SHIPI M. GOWOK

(LL.B, LL.M,B.L)

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF BACHELOR OF LAWS (LL.B) AT THE FACULTY OF LAW,

JIMMA UNIVERSITY

Acc 36404

0036404/001

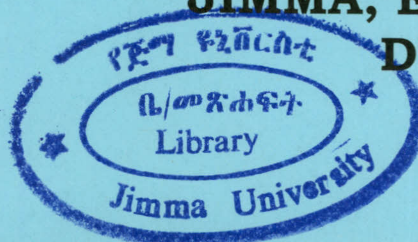
BY:- WONDWOSSEN TESFA

JIMMA, ETHIOPIA

DEC. 2006

JU - LIBRARY SYSTEM
Phone: 0471119197/2119/9199
Postcode: 378, Jimma, Ethiopia

JU 0057356



KRP
2460
.W66
2006
Dec

Ethiopian Human rights

KRP 2460 .W66 2006 DDU

Acknowledgment

The writer of this paper owes a lot of individual more than he can say, of all the assistants that deserve mention, the following have indebted the writer so much that he cannot pay it back.

First and foremost, I would like to profusely tank my advisor, Barrister Shipi M. Gowrk, Dean of the faculty, whose follow up, insightful and scholarly advice contributed a lot of the out come of this paper.

I have no words to express my gratitude to My Mother, Tewabch Yemata and brother, Gashaw Tesfa, for their materials and moral backing through out my academic career.

My profound appreciation also goes to Ato Belaynesh Alemu, Meseret, Andebet, Muulworeke Fenta, Tilahun, Maaza, Assefa, Betelehem, and all my relatives,
I am grateful to the staff of the Ethiopia office of ombudsman who provides me with relevant information which is of help to the out come of the paper.

I am indebted to W/rt Selamawit Keskis for her boundlessly selfless effort exerted in typing the final draft accurately and diligently.

Finally and above all, albeit it is ineffable, የረዳኝን እግዚብሔርን አመሰግናለሁ/ መዝ 12፤6/

LIST OF ABBREVATIONS

ACHPR.	African Commission on Human and Peoples Rights
AHSC	Assembly of Head of States and Government
ECOSCO	Economic and Social Council
EHRC	European Human Rights Commission
FDRE	Federal Democratic Republic of Ethiopia
HR	Human Rights (s)
IAHRC	Inter- America Human Rights Commission
IC (CPR)	International covenant on Civil and Political Rights
IC (ESCR)	International Convention) of Economic, Social and Cultural Rights
HPR	House of Peoples Representative
OAS	Organization of American States
OAU	Organization of Africa Unity

TABLE OF CONTENTES

PAGR

ACKNWOLEDGMENT..I

LIST OF ABREVATIONS.. II

INTERODUCTION... VI

CHAPTER – ONE

THE CONCEPT OF HUMAN RIGHTS AND A HUMAN RIGHTS COMMISSION

1.1 Human rights: Definition and nature....................................1

1.1.1.Defintion of Human Rights...1

1 1.1.2Nature of Human Rights 4

1.2 Nature of A Human Rights Commission 8

1.2.1 Global Human Rights Commission 9

1.2.1.1 The United national commission on Human Rights 12

1.2.2 Regional Human Rights commission 17

1.2.2.3 African commission on Human and peoples Rights......17

1.2.3 National Human Rights commission 22

❖ END NOTES ON CHAPTER ONE 25

CHAPTER – TWO

THE NEED FOR AND ROLE OF THE ETHIOPIAN HUMAN RIGHTS COMMISSION

2.1 Preliminary Remarks 29

2.2 The commission discharges or assist to discharge international human rights obligation 32

2.3 The commission promotion and protect Human Rights 36

2.3.1 Promotional role of the commission 37

2.3.1.1 Enhance awareness of Human Rights among the People of Ethiopia 40

2.3.1.2 Prepares studies and report on Human rights and advices
the Government III ect of human rights...................... 40

2.3.2 Protectional role of the commission 41

2.3.2.1 Undertakes investigations in respect of Human rights in
violation and seek. Remedies 44

2.3.3 The commission Enable the poor to exercise thgeir human Rights
effectively 47

❖ END ENOTES ON CHAPTER TWO...................................... 46

CHAPTER THREE

HISTORICAL BACKGROUND OF THE INSTITUTION OF OMBUDSMAN AND THE NEED FOR ITS EXISTANCE

3.1 Sweden – source of the institution 50

3.2 Expansion of the institution within and out side Nordic countries 53

3.3 Arrival of the ombudsman institution in Ethiopia 58

3.4 The need for An ombudsman 60

3.4.1 A means to redress grievance of Administrative
dysfunction 63

3.4.2 A machinery to protect and promote Human Rights 67

❖ END NOTES ON CHAPTER THREE

CHPTER FOUR

DESCRIPTION AND ROLES OF THE ETHIOPIA OMBUDSMAN OFFICE

4.1 Preliminary Remarks.. 70

4.2 Purpose and task of the ombudsman office 71

4.2.1 Purpose (objective) 71

4.2.2 Functions (Tasks) of the office 74

4.2.2.1 Supervise executive directives, decisions
and practice, and other functions of the executive.........75

4.2.2.2 Receive and investigate complaints and seek remedies...76

4.2.2.3 Undertaking studies and research and gives

Recommendation..83
4.3 Accountability and jurisdiction of the ombudsman office.. 77
4.3.1 Accountability 83
4.3.2 Jurisdiction 85
4.4 Accessibility and resource 88
4.4.1 Adequate resource 88
4.4.2 Access to the office 90
4.5 The needs and requirements for the ombudsman office to perform Effectively 93
❖ ENDE NOTES ON CHAPTER FOUR..................................98
Conclusion 102
Recommendation 105
Bibliography 108
Annex 114

INTRODUCTION

Human rights have an important place in the ideologies of most nations today. In both developed and developing nations, governments profess respect for the rights and freedoms of the individual. Many are probably genuinely devoted to these principles and strive to transform them into reality in their countries. Other feel at least compelled to give this principle lip service.

The wretched conditions of human beings have for ages been the common lot of the oppressed. And yet governments around the world currently violated human rights at a relentless pace. Human kind appears to be cursed with limitless ingenuity in devising more potent methods to inflict pain. However, while such event remains a source of serious concern to us all, some other interesting developments have become a cradle of hope. A notable progress in the history of the second half of the twentieth centaury is an intensifying interest found expression on the global level in the human right agencies and programmes within the UN system, on the regional level with in the council of Europe, OAS and OAU. That interest has also found its expression in the domestic level through the establishment of national human rights commission.

On the other way round, the growing need of society in a fast developing world and the complexity of modern government often give rise to injustice to citizens because of bureaucratic maladministration. Some victims are tempted to let go, in the belief that they can not fights the might of the state. Still others feel they have a good cause to argue but are discouraged from seeking redress in court in view of the high cost and /or the time factors. These persons have good recourse in the institution of the ombudsman.

The ombudsman first appeared in Sweden in 1809 and flourished there for almost one century before it spread to other Nordic and non Nordic countries. This institution is an important new device for making the government accountable to the parliament for its action. It has spread to small and large developed and developing countries, to central, state and local governments, for general and specific area of administration.

The gloomy history of human rights that passed thought the oppressive and ruthless, ruler of Ethiopia and the immense scarifies paid by the people of Ethiopia, in the protracted struggle they wage to bring about a democratic order and to enhancing their socio- economic development, calls for paving the way for the unfettered protection of human right. And the fact the Federal Democratic Republic of Ethiopians Constitution guarantee respect for human rights ,and freedoms and impose a duty on the part of the Federal and regional organs, at all levels, and their respective officials to respect and enforce said rights and freedoms.

On top of that, the interlinkage of the activities and the decision making power of the executive organs of government with the daily lives and the rights of citizens becomes an ever increasing and widening circumstance.

Therefore, it is found necessary to establish a human right commission and institution of ombudsman as organs designed to play a major role in the arsenal of promoting and protecting human rights and freedoms. And this has been done in 2000 upon the establishment of the Ethiopian human Rights Commission and office of Ombudsman. Regrettable enough these institutions start functioning very recently.

So far the writer, by way of introduction, has attempted to give a cursory view concerning the dismal history of human right and the increased concern to their promotion and protection through the establishment of

institution both at international, regional and national level . For much more detail of these and the institutions established to that effect, it requires one two make further reading into the four chapter which this senior research this comprises, and the subject- matter treated under each chapter is given in general fashion as follows.

In this paper the writer attempts to assess the role of the two national institutions i.e. the Ethiopian human right commission and office of ombudsman, in the field of protection and promotion of human rights. Accordingly, the first two chapters are devoted for the human rights commission and the last two for the office of ombudsman.

Therefore, the first chapter concerns it self with the concept of human rights and national, global, and regional institutions designed to protect and promote human right with particular emphasis on a human rights commission. It deals also with the problem of definition, question of priority. etc of human rights.

The second chapter, to which the highest emphasis is given as far as the human rights commission is concerned, makes exploration on the role and the specific mission of the Ethiopian Human Rights Commission, the functions it is expected to undertake. This chapter focuses at critically describing the main features of the commission and heavily relays on the provisions of the establishment proclamation. Proclamation No 210/2000.

The third- chapter deals with the evolution and rational for the existence of the ombudsman that is where the institution originated, its spread into a number of countries and the reasons which necessitated the emergence of the office. Also reasons that triggered and facilitated the spread of the office has explored.

The last chapter which is given utmost emphasis deals with the purpose of the Ethiopia ombudsman office the function it is expected to carry out, the ambit with in which it is operational based largely on the provisions of the establishment proclamation. Proclamation No 211/2000,

N.B Unless otherwise specified, the term" the establishment proclamation" and "the commission or the office", refer to the proclamation to provide for the establishment of the Human Rights commission and office of ombudsman, and "the commission and the office there under.

CHAPTER ONE

THE CONCEPT OF HUMAN RIGHTS AND A HUMA RIGHTS COMMISSION

1.1 HUMAN RIGHTS: Definition and Nature

1.1.1 Definition of Human Rights

It is common knowledge that human being every where demands the realization of diverse value to ensure their well- being. It is also a common knowledge that this demand is often painfully frustrated by social and natural forces. Deeply rooted in these twin observations are the beginning of what today are called human rights and associated with them the legal process at national and international level.

The expression human right is relatively new having come in to every day parlance only since World War II and the founding of the UN in 1945.[1] It is a name for what were formerly called the rights of man. It was Eleanor Roosevelt, the presiding officer of the UN commission on human right in the 1940's, who promoted the use of the expression " human right " when she discovered that the right of men were not understood in same parts of the world to include the rights of women. The right of men at an earlier date had itself replaced the original term 'natural right'[2].

Albeit the novelty of the expression, nowadays almost all the comity of nations recognized the general principle of Human rights.

Much lip- service is paid nowadays to the notion of human rights [3]. At the same time, these rights are being violated all over the world.[4] human rights are a matter of law but they have increasingly become a matter of politics. Lawyers, politicians and governments, NGO, men and women,

the elderly as well as children, violators as well as victims- all of the mare involved in human rights.[5] What, then, are human rights?

Despite the recognition of the general principles of human rights by the comity of nations, there is no complete consensus as to the definition of them. Due to the ideological, economic, legal etc. difference existing among different states there is no universally formulated and accepted definition of human rights.[6]

Exploring possible definition of human rights arouses great scholarly controversy. Every serious human rights theorist seems to pen a few words in definition. Those who do not are marked, perhaps, as dilettantes in the filed. For all the effort expanded however, many of the definitions are routinely ignored. [7]

Three distinguished theorists' Cranston, Bull and Henkia have advanced just such more wertily but ambiguous definition.

"A Human right by definition is a universal moral right..." [8]as maintained by M. Cranston.

Hadley Bull defined the term some how differently: "human rights are right attaching to human being as such ..." [9]

And finally Louis Henkin observed the terms as:

Human right are.. Claims which every individual has or should have up on the society......" [10]

For all the gracefulness and vigor of these eminent theorists proceed, each definition of human rights remains highly problematic and each immediately suggests further question: what is a universal moral rights (for Cranston's definition)? What rights do attach to human binge (from

Bull's definition) and from Henkin's definition: what claims should an individual has upon the society?

Despite lack of consensus and whatever the case might be, we should at the outset, have a workable definition which will of help to complete if not to assist our discussion through out the paper and to this end, we may take the following postulate as most important:

> If a right is determined to be a human right it is general and Universal in character.... equally possessed by all human beings every where. [11]

However, since it is difficult to say what exactly should be a human right and what should not and since there is no fixed list for human rights as we always add new ones and allow old ones to fade away as economic, political and social conditions change. [12] The definition given is not exhaustive and all rounded.

Views about the content of human rights may change over time. [13] In ancient Athens the confession or testimony of a slave was only accepted if he had been subjected to torture. After all, what reason would a slave have to confess, if he had not been tortured? In the middle ages, torture was considered as the probation probatissima, the " proof of all proofs" [14] Nowadays views have entirely changed and torture is seen as a degrading and unacceptable violation of human dignity confession obtained by torture or in any illegal manner are explicitly not accepts as proof. [15] Since a person who tortured, may 'confess' to all kinds of things, if only to be released from pain.

Any how, the discussion on definition of human rights would be incomplete if we pass without considering their nature. Knowing the

nature of human right complete one's knowledge of human rights. Saying a few words concerning the nature of human rights will, through some lights on the dark and vague aspect of them their definitions.

1.2.2. NATURE OF HUMAN RIGHTS

The term human right indicates both their nature and source: they are the rights that one has simply because one is a human.[16] They are held by all human beings equally, universally and forever, [17] irrespective of any rights or duties one may or may not have as citizen. If all human beings have them simply because they are human; human rights are held equally by all, and because being human cannot be lost or forfeited, human rights are inalienable. Even the cruelest torture (a human right violator) and the most debased victim of human right violation are still human beings. In practice, however, not all people enjoy all their rights let alone enjoy them equally and inalienably. [18]

Human rights are, by their nature, universal; it is not a coincidental that we have a Universal Declaration of Human Rights, for human rights are the rights of all men and women. [19] In order to understand the universality of human rights we need to observe the sprite of Art 1 of the UDHR:

> *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act to wards one another in a sprit of bother hood.*

Albeit human rights are by their essential nature universal in form and are by definition, the rights held by each and every person simply as a human being, any universal list of human right is subjected to a varity of justifiable implementation.[20]

Thus, how can we reconcile that concept of universality with the reality of national or regional variations and culture specifics? It is pointed out that the international human right standards as set out in the 1948 UDHR are universally applicable. [21] However as to their implantation, there are variation state z, for instance, may declare the right to life as fundamental and non derogable save in a state of public emergency, and state y may subject this right to different limitation even in the in the absence of emergency. In the same token variation may also exist regional wise. While the westerners pay more attention to civil and political rights, the easterners (the socialist group) to the economic, social and cultural rights. Still other third world countries mainly emphasized on group or solidarity rights.[22] The USA may be the least hypocritical in that it has openly rejected recognition of economic social and cultural rights as human rights. [23] However how dare one to reject such notation as the right to food shelter, clothing, and health yet continuing to accept the right to life as a human right?

Consequently, for reasons which will become apparent latter, we shall see the distinction between civil and political rights (CPR) on the one hand and economic, social, and cultural right (ESCR) on the other. The former group of right is, according to Karl Vosk, a French human right scholar, called first generation rights. [24] These rights appear in the western legal system as the first generation right because they were the first to be enjoyed by the citizens. [25] They are important in protecting the individual from the power of the state and they may be invoked against the state. i.e. they are justiciable rights. To enjoy these rights there needs state abstention.[26] A government is not allowed to torture and should not allow its servants to do so. It may not interfere in the right of people to associate and to assemble freely; it may not interfere in the freedom of the press and freedom of expression. But that is not the whole story. Sometimes, government must do something in order to guarantee that

0036404/001

the rights and freedoms can actually be exercised. For example, the right to participate in the government of one's country, directly or through freely chosen representative' (UDHR Art 21) requires the organization of free and secret election by the government. [27] Art 2-21 of the UDHR deals with these rights.

While the latter groups of right second generation rights is that which is to be achieved must be demanded of the state, the state is required to intervene. [28] Here the need for government interventation is even greater. These rights however, can not be invoked against the state i.e. they are non justiciable rights. The realization of such rights as the right to work, the right to education, the right to medical care, and the right to social security is now a days unthinkable with out some measures of government involvement. [29] Art 22 -27 of the UDHR deals with these rights.

Because of this disparity between these groups of rights, the question of priority becomes one of the problems in determining which one deserves more emphasis, more attention.

Undoubtedly human rights are inter dependant as a result the exercise of one right is often associated in practice with the exercise of another, it would be difficult to reach an agreement on the relative importance and creates the question which right should be given greater attention.

Some individuals argue that ESCR have received a limited constitutional recognition in the majority of countries of the world, [30] for they are not rights which are to be categorized as human right. These groups also contend that rights are something that can and should be respected immediately. The ESCR, however, are mere standards that states strive to meet to the best of their capacity. [31] Furthermore, they argue that

since the realization of ESCR especially in developing countries is hardly possible, thus it would be absurd to classify them as human rights [32].

Nevertheless, the writer doesn't concur with the above line of arguments for various reasons. Firstly, as I aforementioned human rights are inter dependant in that the exercise of one is often associated in practice with the exercise of another. Our charter i.e. The African charter on Human and Peoples' Rights in its preamble provides that civil and political rights cannot be dissociated from economic, social, and cultural rights in their conception as well as universality and that the satisfaction of the economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

Besides no distinction should be made among them in terms of their importance for all rights are of equal footing. All human right, according to the Final Declaration of the World Conference on Human Rights in Vienna (1993), must be treated by the international community globally in a fair and equal manner, on the same footing, and with the same emphasis [33]. Here the word "all" refers to the whole CPR and ESCR, as well as collective rights.

Moreover, these two generations of are rights given simultaneous recognition in the International Bill of Human Rights (both of them are incorporated in a covenant in 1966). Thus the writer of this paper is of the opinion that giving priority to one of those generations of rights and giving more attention/ emphasis to the same is often simply an attempt to clock the abuse of rights.

Be it as it may, in our context, does the Ethiopian human rights commission protect all the rights i.e. without distinction as soon as human rights violation of any kind is alleged to be perpetrated? To put it

otherwise does the commission, in the process of discharging its duties, made distinction among these generations of rights?

Indeed, the Ethiopian Human Rights commission (here in after referred to as "HRC") founding legislation proclamation No 210/2000/ provide clearly and smartly with out distinction based on their importance under Art 2(5) as;

> *Human rights includes fundamental rights and freedom recognized under the constitution of the FDRE and those enshrined in the International agreement ratified by the country* [34]

Consequently, the commission will receive complaints of human right violation without distinction based on whether one is a civil and political or an economics, social and cultural rights.

1.2 NATURE OF A HUMAN RIGHTS COMMISSION

Nowadays human rights considerations are relevant to almost every sphere of governmental activities and in area of public and private life. The number and range of institutions concerned with human rights issues reflect this fact.

It has become increasingly visible that the effective enjoyment of human right calls for the establishment of human right institutions designated for the protection and promotion of human rights of which a human rights commission one. The question as to the establishment of human rights commission at the international, regional, and national level has been considered in various UN bodies since the inception of the organization. In its resolution 9(11) of 21 June 1946, the ECOSCO invited member state of the UN to consider the desirability of establishing information groups or national human rights commission with in their

respective countries to collaborate with them in furthering the work of the UN commission on human rights. [35]

Consequently, the trend of most countries of the world is towards the creation of human rights commission that have the function of promoting and protecting human rights and it can be said that the establishment of this institution is appositive development in the filed of human rights despite the fact that the effective realization of those rights still remains as a far fetched task in the majority of the countries of the world.[36]

A human rights commission has ideological root that grow only in democratic soil, where the social climate favors humanitarian considerations, representative government, and genuine concern for human rights. This institution is established in a convention or charter at the national level in the constitutional or by law, to perform particular function in the field of human rights with a view to promote and protect the same. Most of them, whether they are established at the national, global or regional level, are collegial bodies comprised of member who, in most cases are expert in the field of human rights. In most cases they enjoy statutory independence, and are responsible for reporting on a regular basis to a higher organ that oversees them. [37]

1.2.1 GLOBAL HUMAN RIGHTS COMMISSION

The UDHR was adopted in an era that was reeling under impact of brutality and horrors that had taken place during WWII. The public conscience was shocked. Everybody observed that ferocious and barbaric acts of mankind against fellow mankind have imprinted images of the sadistic and inhuman picture in the mind of the people of the world arising from such world war. The international community determined

that there should be no repeat of the horrors again.[38] But have we made any real progress since then?

Since the creation of the UN, a number of covenants and conventions, both at the global and regional level were formulated. Thus covenants and conventions set international agreed standards with regard to human rights, regulating conduct of states towards their own citizens and non citizens[39]. Despite the existence of elaborate and enlightened international standards of human rights for several decades, and despite the rhetoric of strong commitment to these standards by government, which are often supported in or pressured in to such commitment by an increasing number of NGO and groups, we continue to witness gross violations of human rights in all parts of the world.[40] Un Secretary General Kofi Annan recently spoke of the continued practice of slavery, which is one of the gross and systematic violation of human rights all over the world. [41] Concepts like “genocide” and “crime against humanity” are inseparably linked to this period in world history. [42] Consequently, one may be tempted to ask questions like why do we establish along list of rights which are continuously being violated? Why has the implementation and enforcement process lagged behind the standard setting achievements?

The truth is that legislation alone cannot of themselves constitute a sound basis for protecting and safeguarding human right. There can be no doubt that without effective structure for monitoring compliance, human rights law will amount to nothing more than a grand rhetoric.

Hence, because human rights are not without a proper legal binding force and the problem of enforcing them through legal machinery is vital for their effective functioning; if they in turn are to mould the future of

manking.[43] We should have a machinery to check human right violations. The UN has to be congratulated for setting its own organ the UN Commission on Human Rights to promote and protect human rights throughout the world. Moreover, regional human rights commission like the African Human Rights Commission on Human and Peoples' Right the European Human Rights Commission and the Inter American commission on the Rights have spring up in different part of the globe.[44]

Before commencing in to the core of the next sub- section let me pose an importance query: What then is the need for or relevance of global or regional human right commissions in the presence of national human rights commission. To exemplify the query, what is the relevance of the UN commission on human rights and the African commission on human and people's rights in the presence of its Ethiopia human rights commission for Ethiopians?

Because human rights takes their origin with in the national areas, look for survival to the national forum and rely on national machinery for enforcement. [45] But human rights can not be compartmentalized to be restricted to national boundaries. The human race is one and the same through out the world, and their rights must necessarily spil-over the national limit of the sovereign state to the international arena. Therefore human rights needs or look for international and regional machineries for enforcement.[46]

Moreover, when domestic human rights bodies such as national human rights commission becomes target of oppressive governmental action, there should be higher organs that give a response for the call of their plight, and because a national state has a complete control as to the machinery to be adopted for enforcement, the observance of human rights at the national plane can be totally neglected if the state has no

interest in the matter. [47] These being the case, there should be international and regional human rights institutions human Rights Commission on top of those national institutions on human right. Now let us delve into and discuss the relevance of such commissions to the international community and to their own respective regions.

1.2.1.1. THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

Unlike the League of Nations covenant, the UN charter contains specific articles an human rights. [48] One of the principal purposes of the organization reflected in Art 1 paragraph 3 of the charter is international co- operation to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language national. In this regard the General Assembly was given the power to initiate studies and makes recommendation for governments.

By virtue of Art 55 of the charter, the UN has the duty to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex.... And under Art 56 it is provided that all members of the UN pledge themselves to take joint and separate action in co- operation with the UN for the achievement of the purpose set forth in Art 55.

In order to discharge this obligation, the UN is engaged, nowadays in a wide range of activities aimed at fulfilling its primary objective the protection and promotion of human rights, of great importance is the machinery set up. It was agreed by the UN that a commission be appointed by the ECOSCO to be charged with the protection and promotion of human rights. Art 68 of the UN charter provides that the ECOSCO shall set up commission... for the promotion of human rights, and other commissions as may be required for the performance of its

duties. The ECOSCO then established the commission on human rights in 1946.[49]

The commission has broad mandate touching on any matter relating to human rights. The commission carries out studies, usually drafted by reporter or by high commissioner for human rights. It drafts international instruments relating to human rights for ratification by governments. Also the commission investigates allegations of violations of human rights and receives and process communication (complaint) related to such violations. [50]

Further more, the commission is empowered by ECOSOC resolution 1503 (1970) to investigate communication from individuals and groups that appear to reveal a consistent pattern of gross and reliably attested violation of HR. Here private complaints are discussed first in the sub-commission. If this body concluded that there seems to be a consist pattern of gross and reliable attested violations of human rights, it refers the complaint to the commission, which then may investigate further. Latter the commission was authorized to assist the economic and social council in the co- ordination of activates concerning human rights in the UN system. The commission with the authorization of the council, has set- up a number of working groups, special reporters, and thematic papporteur. [51] Working groups dealing with the problem of involuntary disappearance and with ordinary detention; in 1998, it decides to create a working group on the right to development. Moreover, the commission has appointed special/country reporters on such countries as A Afghanistan, Brundi, Cambodia, Haiti, Iran, the former Yugoslavia, the occupied, territories of Palestine, Sudan and Congo/Zaire. For instance, the special, reporters on the situation of human rights in Iran and to report there on to the commission.[52]

The latest step taken by the commission has been in the direction of monitoring of torture cases which open- up a new channel of approach to treatment of human rights. The commission moves to expand the world community's action against torture in an effort to stamp out the practice. In addition to its action aimed at eliminating torture, the commission called for assistance to victims of torture and appealed for contribution to the UN voluntary fund for victims of torture, which was set-up for that purpose. [53]

In view of the controversial, not to say revolutionary aims of human rights activities of the UN human rights commission it is not easy to makes a simple assessment of what has been done.[54] In terms of the goal set out in the UN charter and elaborated over the years, the human rights programmes have seen both success and failure.

The most positive result of the human rights programe is undoubtedly the creation of international standards for the treatment of human rights all over the world. At international level there are comprehensive, authoritive human rights norms that are widely accepted as binding on all states. All government accept human rights norm in principle, if not in practice. Moreover NGO's rely on these norms to take governments to task and remind them of whatever moral or legal obligations thy have assumed .[55]

The commission's public discussion of human rights situation in various countries can help to mobilize international public opinion which is not always utterly useless in helping to reform national practice. For example in the 1970s the commission played a vital role in publicizing the human rights conditions in Chile, Israel, and South Africa [56].

A further out- come of the commission can be demonstrated in the remarkable increase in information this organ collects and distributed on the performance of human rights obligation by the state. [57] This is due to the vast reporting net work crated by the commission.

Generally, the greatest success of the UN, being assisted by the UN commission on human rights, consists in the spreading of the essential human values (standard of treatment) that underline these international human rights instruments, making peoples, governments and individuals realize that certain values exist which should be achieve. Though not empowered to take any serious action concerning human rights violations, the UN commission on human rights has the ability to pin- point to incidents, draw public attention to it, and give it publicity least to embarrass the wrong doer.

Nevertheless, its action in the filed of promotion and enforcement of human rights is bounded by various constraints which considerably diminish its effect on the international state of affairs to name but a few:-

(i) Its activities are restricted to publicity and exposing of facts which is disliked by states and creates friction rather than leads to solution.

(ii) Individuals and groups that suffer and are the subject of human rights violation have no locus standi.

(iii) It is said that the standards of human rights are as important as when they were first proclaimed, but their practical implementation remain a matter of public concern. Both at regional and international levels, far too little personal and finance are made available for the international suppression of these norms. This was even one of the reasons given by the widely respected NU High commissioner for human rights.

0036404/001

Marry Robinson, in the spring of 2001 for not seeking a second term office.[58]

(iv) The commission has no court that is empowered to pass. binding decisions concerning complaints arising out of human rights violation.

Generally all efforts of the commission in the sphere of human rights is in such a way that, it only tries to deal human rights problems in the concrete terms without taking an effective measures against the violators to change injustice against whom the violations are made. The UN cannot summon government to account for their actions and policies at home and abide by their responsibilities under international human rights instruments Nor can the UN reward governments for their degree of compliance with human rights standards. [59] The UN has the right to act only when it is convinced that a violation of human rights threatens international peace and security.*

In such a clime can the individual have any hope, if one depends on the community of nations i.e. the UN for his final protection of human rights? Therefore, if the global aspect is really disappointing in many instances, the regional aspect is indeed praise worthily. But why regional human rights commission? What is their relevance? And other questions will be addressed in light with the African Commission on Human and peoples Right (ACHPR) in the next sub section.

---

* *For instance, in 1991, by resolution 688, the Security Council acts to repress the Kurdish population in Iraq. Because the UN believed that the consequence threatens international peace and security (peter. R. Baehr.p.70)*

1.2.2. REGIONAL HUMAN RIGHTS COMMISSION IN GENERAL.

Regional human rights systems have reinforced international standards and machineries by providing means Human Rights Commissions by which human rights issues can be addressed with in the particular social, historical, and political context of the region subject to their own custom, their own local system, their own understanding, to better understand and solve their own problem. At the same time regional commissions could work hand in hand with one another to learn from one another.[60]

Besides, the effort to enforce human rights through regional commission is in some extent attributable to the more general belief in regional institutions as an important and possibly necessary intermediate stage between nationalism and internationalism.[61] Moreover regional commissions decentralize the main work of promoting and protecting human rights, perhaps governments which are now retectant in reporting on the implementation of the various measures in the filed of human rights to the UN might be less reluctant to do so at the regional level. [62] Because of these advantage the European. Inter- American and even the African community has made a great advance in the protection and promotion of human right by setting up regional human rights commission and they do merit worth mentioning here.

1.2.2.1 AFRICAN COMMISSION ON HUMAN ABND PEOPLE RIGHTS.

In traditional African societies of time immemorial the issue of human rights is both the collective and individual concern of all. [63] However, African state did not have their own basic rights guaranteed in any form of legislation or convention. There were no enforcement organs to protect their rights too. What they had was the traditionally accepted rules of

humanism which have the effect of paving the way for the promotion and development of human rights. Nevertheless, perhaps, no where else is a continental organization for the protection and promotion of human rights more desirable than in Africa which has experienced some of the worst abuse of human rights. [64]

No continent in the world had experienced gross violation of human rights and fundamental freedom as Africa did. The slave trade, which lasted from the 17th -19th c is in all its form is a gross violation of human rights. It is the denial of the equal dignity and equal rights of all human being. Even after the abolition of slavery and a new form of gross violation of the people's right called colonization happened. During this hazardous time emergent African leader used human rights claims to legitimatize their demand for an end of to European rule. Once independence was granted or won, however, it soon become apparent that although human rights claim had been used by individuals and grouped to achieve power, the granting of these rights to the people did not necessarily follow.[65] As such post independent Africa did not usher in the uhuru as some new African leader become depositic and tyrannical by unleashing un imaginable and mayhem of atrocities on their fellow country men especially opponents. [66] At the end of the day propelled by this past ugly experience good spirited African leaders and people of conscience started a campaign to have a common Africa human right system.[67]

The African charter on human and people's right (the charter of Banjul) was adopted by the OAU in 1981 and entered in to force in 1986. [68] The human rights listed there are largely derived from earlier international human rights instruments such as the UDHR and the two international covenants. The African charter however, has broken new grounds in much respect in human rights jurisdiction in the world. It is the only

charter that add a third generation rights (peoples right) which is lacking in other convention. This may not be un connected with the past experience and /or history of Africa and to break away from the western style of liberalism favoring only the individuals right.[69] Its new and 'African' charter consists of the list of 'peoples' right in the character. Among these are the right of self determination (Art 20(1)), the right of peoples to freely disposed of their wealth and natural resource (Art 21 (1)), the right to economic, social and cultural development (Art 22(1)), the right to national and international peace and security (Art 23 (1)) and the right to a general satisfactory environment. The term "people" is not defined in the charter, but it coincides in practice with the population living on the territories of the state parties to the charter. [70] Another peculiar feature of the charter is that it mentioned duties that apply to both state parties and individuals (Art 27-29).

Any law is useful to the community only if it is enforced. It doesn't serve any good purpose to have a beautiful constructed and phrased legal instrument which can not be put in to effect.[71] Nothing this bare fact, African states (of course, not all of them) determined to create a regional human rights organ to promote human and people's rights and ensure their protection in the continent recently. It was in 1987 that the African Commission on Human and Peoples' Rights established, with in the framework of the OAO a watch dog- on- African charter on human and people's right (AFR)- to over see respect for human rights, and to safeguard the application and interpretation of its provision (Art 30 of the charter).

The commission is composed of eleven members chosen to serve in their personal capacity from amongst African persons of the highest reputation, integrity, impartiality and competence in the field of human (Art 31). It is basically mandated with the promotion and protection of

human and people's right. Its organization, however doesn't furnish very original features by comparison with its counter parts, the ECHR and IACHR.[72]

The African Commission on Human and Peoples' right is mandated under the charter to promote human and peoples' rights in the continent, develops a wariness of human right among the African peoples, formulate and lays down rules and principles aimed at solving legal problems relating to human rights upon which African government may base their legislations. It also collects documents, undertake studies and researches on Africa problems in the field of human rights, organized seminars, disseminates information, and should the case arise, gives its views and recommendations to the assembly of the OAU (Art 45).

Differently from the ECHR and the IACHR, in the African case final decision are left to the AHSG as a result the African system has, so far been dominated more by political than by judicial consideration.[73] Nevertheless, realizing that ACHPR could not give legally binding decisions but only recommendation, the AHSG, by resolution AHG/Res 230 in June 1994 in Tunis, Tunisia requested the Secretary General of AU to convene a government legal expert to establish a court as a complement to the ACHPR. However, the process of establishment of the court has been slow-down till January 2006, on which judges of the court were appointed at the Khartoum submit. [74]

Although it may be premature to rise certain weakness concerning the commission. It is necessary to mention some of the draw backs:

(i) One of the missing element in the character is that individual are not authorized to bring their complains to the attention of

the commission if their right and freedom are affected by arbitrary power of state.

(ii) The character has got no adequate procedural mechanism for the enforcement of the rights and freedom enunciated in the charter.

(iii) The enforcement mechanisms provided is very slow and not legalistic. Communication will be received only on meeting some stringent requirements like local remedies must be exhausted or are not feasible, the languages of the petition must not be disparaging, non state parties can not bring petition or be petitioned before the commission etc. since human rights are universal and potent at all times there should not be placed any limitations on one case of his human rights.

(iv) The African commission has been confronted with a chronic lack of finances. Its secretariats are under staffed and the commission lacks even the most elementary infrastructure such as office equipment, interpretation facilities, and other administrative support. The UN Bureau High Commissioner for Human Rights and a number of NGO's as well as private foundation supply financial and organizational support [75] While such support is of course welcome in order to prevent the commission from receiving too much of a "non African impinge" African states should supply the financial means of support themselves.

The commission is on the whole, in a very early stage of it work as compared its ECHR and IACHR counter part and despite its weakness under African conditions it is not doing badly.

In summary, it may be concluded that intergovernmental organization, besides having developed regional standards of human rights, are increasingly doing work in the implementation of these standards. Their

capability remains dependant on the room they receive from member states to do this. That remains an important limitation of their potential.

1.2.3 National Human Rights Commission

So far, we have seen the relevance, some of the strengthens and limitations/ weakness of the human rights commission that are under operation at the global and regional levels. Next we shall see the relevance and need of a national human rights commission.

National human rights commission is taken to refer to a body which is established by government under the constitution, by law or decree the function and power which is specifically defined in terms of the promotion and protection of human rights

Now let me pose one query, which is the converse of the question raised under section 1.2.1 that should be answered at this juncture: why a national human rights commission in the presence of the human rights commission such as those discussed above i.e. global and regional human right commissions.

In 1985 Mrs. Eleanor Roosevelt asked, where do universal human rights begins? She answered:-[76]

In small places close to home- so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person... such are the places where every man, women and child seek... equal dignity without discrimination. Unless this rights has a meaning there they have little meaning, without concerned action of the citizen to uphold it close to home, we shall look in vain for progress in the larger world.

The international order is still a community and states. Human rights are primarily realized through states. Individual can effectively enjoy human rights only when the state provides its citizens with appropriate remedies. [77]

International human rights law establishes international standards. The enforcement of these standards primarily depends on national laws of states for the benefit of the national of which they are developed. [78] To put it otherwise, the observance of human rights eventually comes to rest upon a national basis for human beings reside in the territories of states and rely basically on the institutions of the governments for enforcement of their rights and besides this, the national arena is the most important in that where the human rights battles are won and lost, that is the front line for the struggle, that is where human rights are protected or violated.

Moreover, we have seen preciously that there are abundant constraints that handicapped the international and regional human rights commission not to effectively discharge their responsibilities. As such, the national enforcement machinery is obviously much more effective than, for instance the global which suffers from the well-known limitation of lack of sanction and the restrictions on individual who remain beyond the reach of the international law (lack of locus stand)

On top of that, domestic human rights institutions are significant for the work of the regional systems. In some instances such national human rights commission may produce information that is useful to regional human rights personnel as they deal with specific situation.

Bearing in mind these rationales, it would be logical to establish national human rights bodies, which are designed to promote and protect the human rights, which are enshrined in the constitution of a given state and in the international human rights instruments to which that state is a party. Consequently, the subsequent chapter shall explore the role of the Ethiopian human rights commission. It also answers the query why do we need a human rights commission, what is the role? etc

ENDNOTES ON CHAPTER ONE

1. Getachew Assefa, problem of implementing international Human Rights laws by Ethiopian courts, proceeding of the symposium on the role of courts in the enforcement of the constitution, 2000, p. 90
2. Journal of the American Academy of Arts and Science, 1983, Vol. 112, No 4, p. 173
3. Peter R. Baehr, Human rights; Universality in Practice, 2000, p. 1
4. Abdullahi Ahmed An –Na"im, Problem of universal cultural legitimacy for Human rights, in Human rights in Africa; Cross cultural perspective, Abdulahi Ahmed An- Na' im and Francis M. Deng (ed), 1991 p. 331
5. Peter R. Baehr, Supra at note 2, p.1
6. Charles Freeman, Human rights : Today's world 1988, p. 11
7. Rose M. Flower, Thinking about Human Rights: Contending Approaches to Human Rights in US Foreign policy, 1987, Vol.6, p.69
8. id p 70
9. Hadley Bull, Human Rights and World Politics, in Moral claims in World affairs, 1979, p.79
10. Colombia Law Review, Vol 81, p. 1582
11. Claud and Weston, Human Rights in the World Community Issues and Actions, 1992, (2nd ed), P.17
12. Charles Freeman, supra at note 5, p.12
13. Peter R. Baehr, supra at note 2, p.2
14. Ibid
15. International Convention Against Torture and other Cruel, in human or Degrading Treatment or Punishment; Art 4.
16. Rhada E. Howard and Jack Donelly, International Hand

Book of Human Rights, 1990. p.5

17. Barrister Ship M.Gowok, Human Rights : An African Perspective, a paper presented on phase II of the Training for judges of the Oromia regional state (Unpublished) 2006, p.1
18. Jack Donelly, International Human rights; Dilemmas in World politics, 1993. p.19
19. Rhada E. Howard and Jack Donelly, supra at note 15. p.5
20. Abdulahi Ahmed An- Na'im, supra at note 3 p. 331
21. Peter R. Rhada E. Howard ad jack Donelly, supra at not 15. p.5
22. Peter R. Baehr, supra at note 2
23. Ibid
24. Ibrahim Idris, the structure of the human rights regime of the 1994 FDRE constitution: Fundamental Rights and Freedoms; Proceeding of the symposium on the role of course in the enforcement of the constitution, 2000. p.65
25. Shipi M. Gowok, supra at note 16, p.7
26. Peter R. Baehr, supra at note 2. p.5
27. Ibid
28. id p.6
29. Ibid
30. Negendra Sings, Enforcement of Human Rights in Peace and War, and the Future of Humanity, 1986. p. 82
31. ibid

32. Mauric Cranston, <u>What are Human Rights</u>. 1973. p. 68

33. Peter. R. Bachr, supra at note 2. p. 32

34. Ethiopia Human Rights commission Establishment Proclamation No 210/2000, Art 2(5)

35. UN action in the field of Human Rights- World campaign For Human Right, 1994, p. 367

36. Edward Lawson, <u>Encyclopedia of Human Rights</u>, 1991- p. 771

37. Ibid

38. John Carey, <u>International protection of Human Rights</u>, 1968, p. 43

39. Peter R. Baehr, supra at note 2. p.7

40. Abdullahi Ahmed An Na'im, supra at note 3. p. 331

41. Peter R. Baehr, supra at note 2. p. 20

42. id. P. 3

43. Negendra Sings , supra at note 30, p. 36

44. Peter R. Baehr p. 58

45. Negendra Sings, supra at note 30, p. 35

46. ibid

47. id. P. 17

48. Peter R. Baehr, supra at note 2, p. 57

49. id. P. 58

50. id p. 57

51. id p. 58

52. id pp. 58-59

53. BG Ramcharan<u>, Human Rights:Thirty years after the Universal Declaration,</u>1979, P. 134

54. Peter R. Baechr, supra at note 2. p.68

55. id p. 69

56. Rhad E. Howard and Jack Donelly, supra at note 15.p.9

57. Peter R. Baechr, supra at note 2. p.69

58. id p. 60

59. id. P.70

60. id p. 69

61. Rhad E. Howard and Jack Donelly, supra at note 15.p.9

62. Ramcharan, supra at note 53, p.56

63. Ship M. Gowok, supra at note 16. p. 4

64. Prof. U.O Umozurike, The African charter on Human and peoples Rights, 1992. p. 3 Quoted in shipi M. Gowok, supra at note 16-p.4

65. Ship M. Gowok, supra at note 16. p. 4

66. ibid

67. ibid

68. id.p 5

69. ibid

70. Peter R. Baehr, supra at note 2.p.81

71. B.G Ramcharan, supra at note 57.p.134

72. Peter R. Baehr, supra at note 2.p.81

73. ibid

74. Shipi M. Gork, supra at note 16.p.17

75. Peter R. Baehr, supra at note 2. p.81

76. B.G Ramcharan, supra at note 57.p.134

77. id.p. 175

78. Paul Sieghart, The International Law of Human Rights. 1986.p. 16

CHAPTER TWO

THE NEED FOR AND ROLE OF THE ETHIOPIAN HUMAN RIGHTS COMMISSION

Preliminary Remarks

While we have made a great steps in elaborating international human right standards under the FDRE constitution in accordance with the UN charter the UDHR and other convention and convents, we have not get been able to put a stop to human rights violation. Unfortunately enough involuntary disappearance, torture, unlawful dismissal, extra judicial killing, illegal detention etc. have been the order of the day. Ethiopia has found the task of translating principles into performance still problematical and she presents a considerable challenge for future action.

And as has been pointed out in the preceding chapter, because HR are mostly violated at the domestic level by the government officials and because of the very nature of these rights, which involve relations among individuals, between individuals and the state, makes the practical task of protecting and promoting human rights rests primarily on the national government. [1] This being the case our government has the responsibility to safeguard and develop these rights which itself recognized and guaranteed in the constitution. The establishment of national human right institutions like the Ethiopian Human rights commission plays a major role to give effect to these commitments. [2]

There have been along tradition of protecting human rights at the national level through the creation of such organs as human rights commission though the majority of them are set-up since the 1980's.[3] Likewise, based on the commitments made by the Ethiopian government

to protect and promote human rights; a Human Rights Commission has been established. Taking these commitments at their face value, one may argue that they are clear indications of our government willingness to guarantee real and effective protection of human rights to its citizens.

Be that as it may, why do we need a national human rights commission? Generally a human right commission investigates human right violations, collects information with regard to such violation and ensure that government's polices do not contravene the human rights of citizen guaranteed by the constitution or other laws. It issues series of report with recommendation based on the findings of its investigations to be submitted to any concerned organs of the government. Based on the recommendation the organ concerned takes appropriate measures or passes regulations that would be designed (if possible) to do away with the underlining problems of human rights violations. [4]

As such, a human right commission will be a cure for the chronic disease of human right violation which has been one of the most for midable barriers on the road to democracy and development. It enables the citizens of the country to live their lives in dignity and freedom under rule of law and democracy. The commission does these by gathering facts on which HR legislations could be soundly based, and stimulating positive action to be taken by the government regarding HR, etc. [5]

Before we delve in to the next section and assess the role of the commission, it is high time to observe the establishment of the Ethiopian Human Right Commission.

As we will see in the next section, Ethiopia has subscribed to undertake various measures by being a party to international human rights instruments. The first step in this pursuit is to carry out legislative

measures to endorse the provisions of those instruments in to the municipal law of the country. This has already been done. The next step which is a logical corollary to the first one is the establishment of a national institution to promote and protect the citizen human rights. The rational is clear. The mere recognition and adoption of human rights standards could achieve no end by itself. It needs to be complemented by the step- up of an institution for their implementation.

The covenant of the Ethiopian nation's nationalities and peoples the 1995 FDRE constitution in its preamble provided the basic objective of the nations, nationalities and people of Ethiopia as to build jointly one political community founded on the rule of law. This objective is to be achieved by guaranteeing respect for the fundamental rights and freedoms of the individual and of nation nationalities and peoples.

Therefore to transform this objective into performance and develop a regime in which human rights are promoted and protected, it has become necessary to establishes human rights commission as one of the organ that play a major role in enforcing such rights and freedoms. [6]

As such Art 55 (14) of the Federal Democratic Republic of Ethiopia constitution has imposed a legal obligation on the part of the government concerning the set up of a Human Rights Commission. It provides as follow:

> *It (the HPR) shall establish a human rights commission and determine by law its powers and functions (emphasis added)*

The government has bound itself to guarantee in practice the observance of human rights in the country pursuant to Art 55(1) cum 55(14). The establishment of a human right commission discharges the government's

constitutional obligation. Thus the Ethiopian human rights commission has been established by proclamation N<u>o</u> 21012000.

Nevertheless, though the commission was established by law in 2000, regrettable enough, it took more than five years to properly start functioning in the 2005-2006 budget year. [7] And it is during this fiscal year that the commission got its budget for the first time. [8].

Bearing these realties of the commission at the back of our mind, we shall herein under see in-depth the need for and role of such institution in Ethiopia.

2.2 The Commission Discharges or Assist to Discharge International Obligation.

Especially countries which adopted their basic legal text after the promulgation of the UDHR of 1948 have provisions for the protection and promotion human rights. [9] Our present constitution is a case in point. If we explore chapter three of this text, it contains ample provisions on human rights (art 13-44) which are almost a direct replica of international human rights instruments. As such one may say that the universal human rights standards have found their expression in the domestic supreme law of the country.

Under the FDRE constitution provisions on human right are given a very secure place in the legal system of the country. Art 105(1) of the FDRE constitution makes them among the entrenched provision of the same. Pursuant to this article, they can only be amended by a qualified majority vote. To put it otherwise, if all the state councils (by a majority), the HPR (by a two thirds majority) and the house of federation (by a two

thirds majority) vote accept the proposed amendment, all right and freedoms enumerated in chapter three of the constitution can be altered, otherwise not. On top of this, these rights and freedoms are to be interpreted in conformity with international human rights instruments which Ethiopian accepted or ratified (Art, 13(2)).

Nevertheless, constitutional provisions recognizing human rights are not sufficient to discharge human rights obligations and to guarantee the observance of those rights. They must be reinforced by the setting up of appropriate institutions such as courts, office of ombudsman, human rights commission etc. Otherwise they would remain being generous words and empty promises which are meaningless.[11]

This being the case, the FDRE government with a view to promote and safeguard those rights enunciated under the constitution and international human rights instruments established a Human Rights Commission in 2000.

Now let- us address the query how the human rights commission discharges or assists the discharge of international human rights obligations? The commission *interalia*, enables the weight of the country's legal system to be mobilized in support of compliance with international human rights standards. Besides it facilitates, or takes the lead in the undertaking of researches and studies designed to bring national human right legislations into conformity with the standards embodies in the UDHR, the UN charter and other human rights instruments.

Ethiopia is, nowadays, saddled with many international obligations. In deed the country has never been a party to international human rights conventions. It did not ratify even the most famous covenants, the ICCPR

and the ICCPR, nor did she incorporate the list of human rights prevailing in those instruments in her past constitutions except some fundamental rights which had remained on paper.[12]

However, recently by ratifying Ethiopia become a party to many of the important international human rights treaties. For instance at its sixth regular session of 20 April, 1983, the people representative ratified those two convents.[12] Besides Ethiopia ratified the international covenant.[13] on the right of the child in 1992 by proclamation No 10/1992. Consequently the country has undertakes a legal obligation to abide by the provision contained therein i.e. Ethiopia by voluntarily accepting international human rights instruments undertakes to put into effect the universal human right standards. If this is the, could the established human rights be of help to discharge the obligations incorporated in those covenants? Could it assist the implementation of the right enshrined therein?

Regarding the obligations undertaken by ratifying the ICCPR, the text of the covenants makes their implementation immediate i.e. the convention has no provisions of progressively achieving. The country rather undertakes to respect and ensure their observance with no reference to time and resource. They are as has been discussed under chapter one, the kind of rights by which the government is not required to intervene, and support their implementation by providing assistance. Consequently there is no doubt that where there is a human right commission, it would entertain complaints that might be submitted to it alleging violation of civil and political rights and could see to it that they are implemented and protected.

However, when we turn to economic social and cultural rights there is a split of opinion. There are individuals who oppose the idea that such

rights are Human rights and therefore the human right commission could not entertain the petition of complaints that alleges violation of these rights. The writer does not concur with their opinion for various reasons (refer, chapter one sec, 1.1.2 some of the reasons which enable the writer to contend that the commission could have jurisdiction over such right and the detail of the argument in general).

Thus the role of the commission with regard to economic, social and cultural right could be to undertake tasks to monitor the progress being made by the government in the materialization of the same. It could report on and make proposals for the removal of impediments to their achievement, and require the furnishing to the HPR and to the public at large such information as would assist in bringing about their realization thereby helping the government in the discharge of its covenant obligations. [14]

Moreover, most human rights treaties require nations to make periodic report on their compliance with the treaty obligations to international HR bodies over-seeing the treaties. For instance states that are parties to the convent on civil and political rights (ICCPR) are obligation to report to the UN Secretary General on national measures taken to implement the treaties. Art 40 (1) of the ICCPR spelled out that:

> *"State parties undertake to submit report on the measures they have adopted which give effect to the rights recognized in the covenant..."*

Parties are required to submit the initial with in a relatively short period of time after ratification, where as latter periodic reports are to be submitted at intervals determined by the treaty body or by the treaty

itself. [15] Failure to submit the report is clearly a violation of a treaty obligation. [16]

Another requirement is that report shouldn't be incomplete in the sense that if it doesn't refer to progress which is clearly required by the treaty, it cannot be considered to be complete. And if it does not provide a medium of information it does not even deserve to be called a report. Only when this is present can consideration be said to have started and the reporting obligation to have been fulfilled. [17]

The human rights commission could under take such activities as to forward its opinion on the report, [18] and provide the government with standard and guidelines on the human rights report submitted to international organ. In doing so, the commission enable the country to discharge its international reporting obligation.

Furthermore, the commission in participation in international human rights meeting and symposium,[19] will have abundant knowledge of international human rights standards. Besides the commission access to international human rights while it disperse and translate in to local vernaculars international human rights instruments adopted by Ethiopia will add to the above.[20] Consequently, the commission while receiving complaint of alleged violation and entertains the same, will foster the implementation of international human rights standard and thereby discharge the government conventional obligation.

2.3 THE COMMISSION PROMOTES AND PROTECTS HUMAN RIGHTS.

So far we have made an exploration with regard to the role of the commission in discharging or assist to discharge the government

obligation under international human rights treaties. Under this section an attempt has been made to address the promotional and protective role to be played by the commission in Ethiopia.

When we say that the commission protects human rights, we mean that it examines and take actions on petitions which allege human rights violation. Thus protection of human rights implies taking measures to secure respect for them in a clear distinction from promotional activities which imply the inclusion of a greater respect for human rights among peoples and governments. In other words, the idea of protection is based on the presumption that promoting respect for human rights is not sufficient that it is surely necessary to see it that they are not violated.

2.3.1 PROMOTIONAL ROLES OF THE COMMISSION

2.3.1.1. Enhance Awareness of Human Rights among The People of Ethiopia

Human rights have to be promoted and safeguarded in every terms in order that they be endowed with substance and meaning. [22] The essential ingredient to this effect is the awareness of them. [23] This is because the citizen should not remain ignorant about their rights for any body that is ignorant of his/her human rights will not, indeed, and cannot exercise these rights.

Ato Demmozie Mammie, deputy commission of the Ethiopian human rights commission, in a press interview, stipulates that lack of awareness about one's rights poses one of the biggest challenges to the commission as it tries to ensure respect for human rights in Ethiopia. [24]

The responsibility for educating the public on human rights issues is part of the statutory mandate. [25] In fact the first mission or task given to the commission is the creation of awareness among the people. [26] As such the commission is required to educate the public using mass media programme or other means to foster public understanding of the rights and freedoms recognized under the FDRE constitution and those enshrined under international agreements ratified by the country.

The commission has to inform the general public of the nature of their rights provided for in the constitution and human rights instruments, ensure that the individual is ware of his or her rights and those of other and ultimately mobilizes public opinion in the country against human rights violation. For an alert and educated public opinion is a basic element in the protection of human rights. In this regard the commission should encourage the government to make the teaching of human rights part and parcel of the curricula of the formal education. Having this importance in view, the deputy commissioner for children and women's affairs had discussed with Ministry of Education officials about incorporating human rights in school curriculum and it is being studied [24]

Be that as it may, what could be the different ways by which the commission achieves its goal of fostering awareness of human rights among the people of Ethiopia?

The commission could avail itself of the radio and television broad casts. [28] This is of course an effective means by which the commission develops awareness. It may undertake short broadcasts which might make known, in a more rapid and dynamic manner, the importance of human rights in the political, social, and economic development of the country, the manner of guaranteeing them and the activities of the commission in the performance of its mandate. Of course may be due to lack of fund

lack of interest, government interference, etc, as to the best knowledge of the writer, the commission did not broadcast any radio or television programme with a view to sensitizing public awareness on human rights. Nevertheless, recently the commission has prepared a five year strategic plan. [29] According to the strategy designed the main component is the promotion of the human rights concept. And this is done through the media or direct contact. The commission planned to contact religious institutions, civil societies and other not for profit organization and disseminate the information to the society. [30]

The commission may also hold workshop or seminars regarding human rights. It has a paramount significant in fostering awareness of human rights. Taking into consideration this importance, the Ethiopian Human rights Commission has conducted different workshops with different segments of the society. [31] Accordingly a two day workshop was held with parliamentarians on the rights of children, people with disabilities and elderliness. Another workshop was also held at the UN conference center on the rights of children to be registered at birth.

The wide dissemination of publication on human rights is another way by which the commission could develop awareness of human rights. The human right commissions of various nations are making use of this method of spreading information on human rights. For instance the Australian Human Rights commission published hand -book on human rights for the purpose of educating the public concerning human rights issues. [33] Our commission too, carried out this kind of activity. [31] Accordingly during 1997 (Ethiopian calendar which falls between Sept 11, 2004 and Sep 10, 2005) the commission published a small journal about election and human rights in three local languages, i.e. Amharic, Tigrigna and Afan Oromo.

Nevertheless, we have experienced that seminars, workshops, publications, etc usually do not reach the remote areas of the country but are mostly confined to cities and to some places proximate to them, and even in this case, it is only some individuals/ groups of the population that benefit from them. As such the writer is of the opinion that, the commission should be making use of methods such as distributing pamphlets dealing in popular style with subjects that are useful to the ordinary citizens, enable the concept of human rights to reach those who are not reached by the usual methods of workshop, and the like. Of course, to carry –out this task to the remotest villages of the country could be a slow and tiresome process but I fell it is a sure method of promoting human rights.

2.3.1.2 Prepares Studies and Research on Human Rights and Advise the Government in Respect of Human Rights.

The human rights commission could also undertake studies and report as it considers advisable in the performance of its duty i.e. protection of human rights violation. Individual members of the commission may be assigned the task of researching and reporting on various topics relating to human rights. The Ethiopian human rights commission establishment proclamation like the Canadian and Australian legislation.[34] have specifically authorized the commission to carry out research and submit report to the house. [35]

Accordingly, by launching studies, the commission can cure from their cradles those laws, regulations, directives and government decision that caused human rights violation [36] Because this provides the opportunity to investigate the underlying causes of the problems which are brought to attention through the complaint handing process.

The other function of the commission indeed the most important is its power to review systematically existing government laws and polices towards human rights and to suggest improvements thereto to the appropriate organ. [37] Moreover, the commission has to provide consultancy services on matter of human rights for any governmental or non governmental organization in time of need.[38]

On top of this the commission is responsible for advising the government on the acceptance of any international instrument on HR. [39] Beside, it may give advice on the human right implication of any policy or legislation proposed by the government. [40] In doing so, the commission, by providing consulting service enable those national laws and polices keep international standards. [41]
Generally, if the commission succeeds in its promotional activates, the government could no longer act secretly concerning any action it takes in relation to human rights. Sooner or later the measures that are taken by the government will be exposed to the glare of the public opinion. Since the public will be better informed and better able to assess human rights situation than ever before, it will be able to criticize effectively any act done by the government that would have an adverse effect on the human rights of the population.

2.3.1 PROTECTIONAL ROLES OF THE COMMISSION.

2.3.2.1 Undertakes Investigation In Respect Of Human Rights Violation and Seek Remedies

Albeit an interesting achievement have been made in the promotion of human rights (if I opt to be optimist), this doesn't mean that there is no human rights violation. This is because if there were no human rights

violations, it would be of no use to establish a human rights commission in Ethiopia. This being the case human rights institution is set- up to protect the human rights of citizens.

Be it as it may, how does a human right commission undertakes its tasks of protecting human rights? What are the procedures it follows in the process of carrying out this function? Does the Ethiopian human rights commission launched detailed investigation of human rights practice in Ethiopia? The next section pivoted around these questions.

The commission normally begins investigation of human rights violation after a complaint is lodged with them. [42] But in rare case, the commission may initiate the same on its own motion, where it so finds necessary.[43] More probably this happens when they think of the presence of an issue at stake which effects the public at larger and hence not likely to be concern of an individual complainant.

After receiving complaints, the commission proceed to examine them to determine whether the applications are admissible based on various grounds. For instance if a complaint doesn't state the facts that tend to establish the violation, or it if pertains to matter outside the jurisdiction the commission then, the commission may declare the complaints in in admissible

However, once the application is declared admissible the commission proceeds to investigate the facts. In this regard the commission has all the powers for the production of evidence .[44] This is to the extent of inflicting penalty in case of non – compliance with the commission order.[45]

Subsequently, the commission is under legal obligation to attempt to arrive at amicable settlement between the disputing parties. To put it otherwise, if the complaints are found to be genuine, the commission tries to bring together the parties in dispute to resolve the matter amicably.[46] Because once a government department has committed human rights violation which it has it self rectified it is not likely that it will commit this again. This is one advantage of amicable resolution of dispute.

In case in which no settlement can be reached the law often provides the producers to be followed. As such once the commission genuinely established the occurrence of human right violation in accordance with the investigation it shall notify the finding of the investigation and its opinion i.e. remedies thereon to the parties concerned. [46]

However, if an injustice caused by human right violation is not remedied in accordance with the recommendation, the commission establishment proclamation imposes penalty on those who are reluctant to take corrective measures.[48] Besides, if those measures are not taken, the commission will report to parliament. At this point in time, one cannot dismiss the importance of one executive body being forced to appear in front of a parliamentary committee accused of violation the rights of people. [49]

When we come to the practice, it is a well established fact that though the commission was established by law in 2000, it took more than five years to properly start functioning in the 2005-2006 budget year. Also it was during this fiscal year that the commission obtained its budget first time. Moreover as I aforementioned, the biggest activity carried out by the commission during this budget year is the preparation of the action plan. Accordingly, the second most important component of the strategic plan is strengthening the

investigation procedure. [50] The plan tries to address issues like, how the commission investigates complaint? What kind of procedure should the commission follow to investigate a particular complaint? How can the commission train professionals in investigating complaints?

Any how, has the commission yet launched detailed investigation of human rights practice in Ethiopia? The prevailing circumstance we touched up on propelled us to answer the question in the negative.

Nevertheless, this doesn't mean that, no protect ional activity be carried out by the commission. In fact before the commission properly starts functioning it has carried out same protectional activities. People from the commission visited those in prison who were arrested due to the political unrest following the June 2005 election. Besides together with prison fellowship Ethiopia, a local NGO, the commission has been monitoring how people is prison were being handled. [51]

2.3.3. The Commission Enables the Poor to Exercise Their Human Rights Effectively

The problem of poverty has become one of the greatest problems of modern society even in the affluent countries. When we come to our country this problem becomes visible and it is needless to address the harsh realities of its under development. The majority of the population is in need of food and other necessities and the government is not yet in apositions to fully furnish the indigenous with those basic needs. On top of this, the sufferings of the poor are aggravated by the presence of one highly noticeable problem in the legal system.

The most pronounced problem in the system is that the legal remedy of court action is often not available because of its sheer cost. Many people

simply cannot afford litigation, and they certainly cannot understand the technicalities connected with court action against government bodies. Besides inequality of resource between the individual litigant and government department or giant business corporations which resulted in the poor to receive inequitable treatment.[52] Thus we can say deadly that a large portion of the population is neglected.

Since the use of the existing machineries to handle complaints of the victims of human right violation requires financial resources and is time consuming, to this extent the establishment of a human right commission with its lack of cost [53] and easy access is of paramount importance. The needy will have a resort to it whenever their human right are threatened or violated. The current inequality existing between the poor the one hand and the riches on the other can not prevent the former from availing themselves of the commission. The poor will have enormous advantage that it costs them nothing to complain to the commission and at no stage it entail no liability if their complaints turned out to be unjustified or not well founded.

Despite this however there are certain draw backs which impairs its utility like, geographical accessibility and the problem of public awareness.

As we all know Ethiopia is a large country comprising of an area of some 1. 12, 000 km^2 with a population of around 71, million. However having such large country with large population associated with poor communication system the commission is seated in the capital, Addis Ababa only it has no regional or sub office else where in the country mainly due to financial and human resource problem. As such this geography barrier seriously affect the commission's utility towards not only to the poor but also other part of the society.

0036404/001

Moreover, the fact that the majority of the population hence the majority of the vulnerable group, live outside the seat of the commission along side the poor communication system and absence of an out reach programme embarked upon by the commission, resulted in lack of knowledge on the part of the mass about the institution which in turn hinder the commission importance in assisting the poor.

Nevertheless, though due to these constrains the role played by the commission may often less then desirable, we should always remember that in the absence of such role the situation would certainly not be better.

END NOTE ON CAHPTER TWO

1. National Human Rights institution (NHRI), A hand book on the establishment of and strengthening of national institution for the protection and promotion of Human Rights. 1995. p. 16.
2. መሀሪ ታደሰ፤ የኢትዮጵያ ሰብአዊ መብት ኮሚሽን በዲሞክራሲያዊ ስርአት ግንባታ ሚና መጋቢት 1983. ገፅ
3. Supra at note 1, p. 16
4. Supra at note 2, p.3
5. id p.5
6. id. p.1
7. Newspaper the reporter, Saturdays, September 9, 2006-12-24 ibid
8. ibid
9. Getachew Assefa, problem of implementing international Human Rights laws by Ethiopian courts, proceeding of the symposium on the role of courts in the enforcement of the constitution. . 2000. p. 89
10. id, p. 90
11. Supra at note 1. p.20
12. Hirut Malese, Economic, social and cultural rights covenant of UN. Its application in Ethiopia, senior Research paper, 1980, p. 40
13. ibid
14. id p. 54
15. Antonio Cassese, Human Rights in a changing world, 1990. p.14
16. id p. 16
17. ibid
18. "Ethiopian Human Rights commission Establishment proclamation No. 210/2000." Art 6 (7)
19. id Art 6(9)
20. id Art 6(8)

21. Lawernce, J. Lebalance, <u>The OAS and the prrokmotion and protection of Human Rights</u>, 1977p. 91
22. id p. 80
23. ibid
24. Supra at note 7.
25. Supra at note 18.Art 6(3)
26. Supra at note 7.
27. ibid
28. ibid
29. ibid
30. ibid
31. ibid
32. ibid
33. ibid
34. Supra at note 21.p. 60
35. Supra at note 18.Art 19(2) (d))
36. Supra at note 2 .p. 22
37. Supra at note 18.Art 6(3)
38. ibid 6(6)
39. supra at note 2, p 18
40. ibid
41. ibid
42. Supra at note 18.Art 24(1)
43. id Art 24 (2)
44. id Art 25)
45. id Art 41 (1)
46. id Art 26 (1)
47. id Art 22 (2)
48. id Art 41 (2)
49. supra at note 7
50. ibid

51. ibid
52. Roy Gregory, The Ombudsman observed, *The International Ombudsman Year Book,* Vol. 1, 1997.p. 88
53. Supra at note 18. Art 22(4)

CHAPTER THREE

HISTORICAL BACKGROUND OF THE INSTITUTION OF Ombudsman AND THE NEED FOR ITS EXLSTANCE

3.1. Sweden - Source of the Ombudsman.

Ombudsman – a bizarre and seemingly unpronounceable world was becoming very familiar across the world in the 1960's and 1970's [1] It was however, in the last 6 or 7 years that the Ethiopian public started hearing the frequent mentioning of this name even with national name, ***Emba-Tebaqi***, and with a national sense. Ombudsman is not a term coined for modern political innovation. Rather it is a very old Swedish word referring to an age old Swedish institution. In Swedish the word 'ombud' used to refer to a person who stands in representation and protection of other interest. [2] This include any kind of agent acting on behalf of another. Nevertheless the term gained its present meaning after the Swedish constitution of 1809 introduced an official called an ombudsman who keep eyes on the public administration so as to ensure its fairness and legality. [3]

There are certain prevailing circumstance that immediately proceeding and accompanied the institution of ombudsman in Sweden.

There has always been a felt need to inspect public officials to make sure that they are functioning with in the limit of the law. [4] Especially citizens right as encoded in the laws really sought for guardian against its frequent breacher the public authorities. [5] Concerning the appreciable need of over seeing the public officials the crown and his council has created an office called the chancellor of justice in 1713. [6] But the purpose and philosophy of the justice chancellor were very different from those of a modern ombudsman [7] The main function of the justice

chancellor was to help the ruler to detect and correct short comings in the work of government officials. [8] Any benefit accruing to the king's subjects was incidental a by- product of the chancellors activities. In this regard pressor Walter Gellhorn puts in his pioneering study of the Ombudsman institution. [9]

> *In the eighteenth century ... along absent Swedish monarch having lost touch with his tax gatherers and other employees, and moved more by desire to insure himself against embezzlement than by desire to insure his country men against oppression, named an overseer of officials.*

Since protecting the citizens from the abuse of officials discretionary power seemed to be aside business of the justice chancellor as aforementioned above, it was held therefore that controlling the public authorities takes an entirely independent office. This independent office was needed to be a body more closer to the citizens' heart. [10]

Fortunately enough, a new polity was introduced in the new constitution of Sweden which was promulgated in 1809. It was this constitution which incorporated a justitie ombudsman (justice ombudsman), a position to be filled by a person of known legal ability and standing integrity elected by the Riksdag (the parliament). The objective of the institution was to supervise public administration as part of the legislature and was to report to parliament rather than to the monarch. Therefore it was the 1809 constitutional rearrangement that officially birthed the office that is now widely known as ombudsman in to the political worlds. [11]
Consequently the emphasis of administrative oversight changed' and the possibility of wrong against the ruled rather than the ruler become the chief concern of the Swedish parliamentary ombudsman. [12]

The Swedish parliamentary Ombudsman continued and continues still to put the emphasis very much on supervision, judgment, censure and discipline concerning themselves largely with the prosecution of government officials and judges found to be neglect or corrupt. This is essentially to maintain a good standard with in the public service. [13]

However that may be, in the 1960's as the ombudsman office was imported in to New- Zealand and other part of English speaking worlds, major change of focuse clearly occurred regarding the function of the office. Accordingly, the ombudsman duty is to investigate grievance and, when appropriate, recommend some form of remedial action. Thus the ombudsman function becomes primarily to re dress grievance. In Sweden the re-dress of grievance is not the main concern of the ombudsman. [14]

Moreover, during the 1970's some ombudsman offices began to develop functions even further removed in sprit from that of the Swedish prototype. Here the emphasis is increasingly placed up on " conciliation" achieving or helping to achieve " local settlement" or out comes satisfactory to complainants and the agencies concerned as quick as possible often over the telephones and with a minimum of formality. The approach is sometimes described as the "quick fix" technique. [15]

Ever since the office of ombudsman had its beginning is Sweden, it has tremendously taken a variety of forms over the years, consequently, this gave rise to a number of disagreements over the issue as to what exactly constituent an ombudsman office.

Despite a diversity of historical, and differences in scope, function and jurisdiction all ombudsman institutions, be they in Africa, or Europe, share the following essential characteristics: [16]

(i) The institution should be able to give quick and affordable complaint resolution and re- dress;

(ii) There should not be too much red- tape, rigid formalities and technicalities that would hardly distinguish the ombudsman from courts:

(iii) The institution should be accessible to all irrespective of social status. It should in that respect be objective and non in its handling of complains brought before it ;

(iv) The institution should be transparent with in the limit of the law but always guided by the principle that no one should be condemned without being heard; and

(v) For the institution to be effective, should enjoy the confidence of both individuals (and group of individuals0 as well as administrative officials without, however allowing any to influence its investigations and decisions.

3.2 Expansion of the Institution with in and Outside Nordic Countries.

It has been said time and again that Sweden has a special and reverted place in the history and practice of ombudsman-ship because it was there at least in its modern western form, first saw the light of the day with the establishment of the office of justice chancellor in 1713. [17] Nevertheless, the term gained its present meaning after the Swedish constitutions of 1809 introduce an official called ombudsman.[18]

Since then until 1950 no other nations in the world save Finland gave attention to this institution. Art 49 of the constitutional act of 1949 established the parliamentary ombudsman of Finland. [19] This very article states briefly the essential feature, position and functions of the parliamentary ombudsman. Accordingly the ombudsman must have

formal legal education, and along carrier in law before they become ombudsman. The design of the Finland ombudsman office exactly followed the model of the Swedish prototype.[20]

After the Second World War, Norway and Denmark followed Finland's example and introduce the office in 1952 and 1953 respectively. Norway introduce it only for the control of military administration, section 55 of the Danish constitution of June 5, 1953 allows the parliament (floketing) to appoint one or two persons who are not members of the parliament, to supervise the civil and military administration of the state. The institution established took the Swedish system as its model. However at several points in particular with respect to the jurisdiction of the ombudsman the Danish office differs. [21]

As we have seen previously the institution of ombudsman has its root in ancient time. But it was only during the last thirty or forty years that it began to gain world wide acceptance and spread outside Nordic countries. In the late 1960's there were in existence at that time national ombudsman schemes in four Scandinavia countries Sweden, Denmark, Norway and Finland. [22] In 1975 the Federal Republic of Germany was the first Non- Scandinavia country to adopt the institution. Likewise from the British common wealth countries, New-Zealand took the lead by incorporating the office in 1962. Many members of the Births common wealth followed the example of New-Zealand. To come near to our content, Tanzanian stood first in the adoption of the ombudsman idea in 1966 [23]

What happened subsequently, in the 1970's and early 1980's is now familiar story. As more and more countries proved receptive to the increasingly popular ombudsman concept, the office spread rapidly though out western Europe, North America, Australia and the pacific region, and reached part of Africa and the India sub – continent. [24] Then

over and above the counting spread of the 'classical' ombudsman office to existing mature liberal democracies around the world, the 1980's and 1990's saw the appearance of a second extensive wave of ombudsman office following and associated with numerous "regime transformation" or "new" democracies establishes in parts of sub- Sahara Africa, Latin America, pacific East Asia and southern, Eastern and central Europe. [25]

The expansion of the ombudsman office can be witnessed not only by their proliferation, i.e. the number of countries adopting the office, but also by their diversification the various different type of categories of ombudsman office. [26] In 1970 or there about almost all the ombudsman schemes existing at that time fall into the single category now, classified in the literature as "government ombudsman office with general jurisdiction over administrative conduct". Over the years, this has indeed becomes a heavily populated and much sub-divided classification, including as it does " classical" and "executive" ombudsman; ombudsmen operating at national, regional, or provincial levels and at local or municipal levels; and ombudsmen set up by legislation, by executive decree and by constitutional provision [27]

Consequently Ombudsman comes in many different forms they work in different ways and they well in varity of different habits. As one survey puts it. [28]

> *(The office) ... is found in old countries and new countries, rich countries and poor countries small countries and large countries .... In unitary state and federal states civil regimes and military regimes states with strong administrative law systems and states, with weak administrative law systems, presidential and cabinet system, political systems were legislatures enjoy constituents case work and political*

systems where they do not....

Nevertheless, in every country in which the institution has been established, its introduction has not been without problems. [29] when in due course the parliamentary ombudsman scheme was eventually launched by Harold Wilson's labor government in 1967, it was grated with a chorus of disapproval and, indeed derision. [30] It was variously described as a "toothless tiger" a "sword less crusader", an "ombuds mouse" on "ombudsboob", an "ombuds flop" , a "political gimmick" and so on. [31] When the office of Inspector General of Government (IGG), Ugandan ombudsman was established in 1986, there were mixed feelings towards it in the press [32]. Some people criticized it even before it had taken off, saying that it was unnecessary since it would duplicate the work of institutions which already existed. Others welcomed it with exaggerated hopes that maladministration was going to disappear once the institution was firmly in place. Others have argued that the institution is for mature democracies and yet others have argued that in fact it is more needed in societies where deficient institutions leaves the majority of the people without protection against maladministration. What about the people of Ethiopia? Did they greet it with a chorus of disapproval? Or welcomed it with exaggerated hopes?

There are some definite factors that triggers and facilitated the importation of the ombudsman idea by nations east to west. The major ones were the very nature of the institution, the ever growing administrative agencies that demand additional controline mechanisms and the existence of strong agent that propagate the idea across nations.

Professor Dennis Pearce pointed out at the international ombudsman institute's 1992 conference in Vienna that there were at least four

explanations for the world wide popularly of the office.[33] He states that the office of ombudsman is; quick by comparison with other review bodies, informal and therefore more accessible to complains, cheap for both complainant and decisions makers or, not as threatening as other review mechanism.[34] Such properly of the office interalia, propelled nations to import the institution.

Alongside the powers accumulated by the state, there has been arise in its responsibilities, which has necessitated a devolution of powers to government officials and agencies. For reason of efficiency an expediency while undertaking its wide ranging responsibilities, the executive is allowed to enjoy a massive discretionary power and it is highly probable that, the action /decision of a given officials in exercising its discretion may go against individuals rights. Thus every state confronts the challenge to balance between the freedom of executive and protection of individual rights. The effort has to be directed towards finding the most effective safeguards to protect individual from administrative or arbitrariness. And this safeguard is, interalia the institution of ombudsman.[35]

Talking of the agents there were strong individuals, regional organs and international bodies that vigorously promoted the ombudsman concept. Professor Stephen Hurwitz's, sir Guy Powle, Alzerd Bixelius of Sweden Walter Gellhorn, Stanley Anderson, and Donal Rowt can never escape to be mentioned with the expansion of the institution [36]

The European Union and the UN play an important role. In 1991, the European parliamentary conference on human rights held in Vienna recommended member states to consider favorable the establishment of an organ authorized to receive and examine individual complain. In the 1960's the UN Division of Human Rights held seminar in different places

for making the institutions known to the world. Because of this effort more then ten states accepted the idea of the office immediately. [37]

Having these triggering and facilitating factors in mind, let us now delve into the sub- topic and assess the aborative attempt to introduce the concept of ombudsman during the Imperial regime and the successful plan to establish the same under the FDRE constitution

3.3 The Arrival of the Ombudsman in Ethiopia

In Ethiopia, the idea of the ombudsman was first raised during the last days of Emperor Haile Selassie's regime. At that time the people of Ethiopia who had been embittered by the exploitive and suppressive ruler rose in unions against them irrevocably determined to bring a change.[38]

The monarchy after having been convinced that every thing went amiss, he had grudgingly consented that his hither to unbridled sovereign power relax so as to appease the uproars of the people.[39]

To achieve this a committee was established which was invested with responsibility to come up with a new constitutional order through which it had been intended to place the supreme executive power in the hands of a cabinet government, whilst the emperor was to be the lead of the state of Ethiopia and the symbol of the nation's unity and history.[40]
The draft of the proposed constitutions consists of eleven chapters. Of which the ninth chapter with four provisions is devoted to the establishment of the ombudsman. In line with the classical ombudsman system which originated in Scandinavia countries, it had been intended that the Ethiopian ombudsman would be accountable to the national Assembly which was to be the legislature. [41]

In general, the ombudsman envisaged by the proposed draft constitution of 1974, deals with matters relating to appointment, of ombudsman inspection of administrative malpractice by the office, independence of the ombudsman in discharging his obligations, the irrevocability of the ombudsman from office-save in a few instance etc. [42]

Having said enough about the proposed draft which died before its birth, let us proceed to consider the ombudsman establishment under the 1995 Federal Democratic Republic of Ethiopia constitution.

Pursuant to Art 50 of the FDRE constitution the Democratic Republic of Ethiopia comprised the federal state and the federating units. With in the federal state, there are two houses; the House of People's Representative and the House of Federation. The HPR is the legislative organ and the highest authority of the federal government. Its power and functions are enunciated in Art 55 of the constitutions. Accordingly the HPR is empowered by the constitution to establish the institution of ombudsman. The constitution provide under Art 55 (15) as:

> *It (the HPR) shall establish the institution of the ombudsman, and select and appoint its members. It shall determine by law the powers and functions of the institutions.*

With a view to discharge its constitutional obligation, the HPR promulgated the institution of ombudsman establishment proclamation in 2000 with a view to see contribute (rather than binging about) to the formation of good governance by engaging itself in the work of ensuring that citizens right provided for by laws are respected by the executive organ.

In Ethiopia, as in growing numbers of countries around the world, the willingness of government to subject their ongoing administrative function to the independent scrutiny of an ombudsman institution become an important measures of the quality of democratic governance at least rhetorically.

The ombudsman is a creation of the Ethiopian legislature and was established independent of the government, at lease ideally with a legislated mandate through the ombudsman establishment proclamation No 211 /2000 to investigate complaints against government mal-administration brought by members of the public or on its own motion.

Before winding up the discussion of this chapter it is high time to raise issue like what is the rational behind setting up such as institution. Because in any legal and social system when an institution is set-up there must always be reasons for its inception

3.4 The Need for an Ombudsman

Its cradle being in Sweden-Scandinavia- the institution of ombudsman has reached the different corners of the world with varity of forms. Definitely there were triggering or facilitating factors contribute for the expansion of the institution as aforementioned above. But countries in different parts of the world have their own rationales in adopting such an institution. As such now let us see the rational behind the adoption of this momentous institution.

3.4.1 A Means to re-dress grievance of maladministration.

As I mentioned above while carrying out the responsibility entrusted to it, the action/decision of given official may go against the right of

citizens. As a matter of fact however, neither disciplinary measures nor ultimate parliamentary control can be relied upon to cure such violations.[43] The major traditional institution of bureaucratic control* is so inadequate in effectively regulating the administration and protecting individuals who are aggrieved as a result of the sins and wickedness of government departments and their officials.

As regards the courts, it has been said by people about the inadequacies of the legal process as a means of settling disputes between the citizens and public authorizes. The legal remedy of court action is often not available because of its sheer cost. Many people simply cannot afford litigation, and they certainly cannot understand the technicalities connected with court action against government bodies. Another problem associated with the use of legal avenues for seeking inequality of resource the individual litigant and government department or giant business corporation. [44]

---

* *These are judicial control and non- judicial control the former includes judicial review and judicial appeal whereas, the latter include parliamentary control and administrative review.*

Further in a congested court system like Ethiopia even if aggrieved individuals can afford the cost of litigation and are equal in resource, the litigation process is protracted and slow. As a consequence.[45] further grievances often occur because of delay in rendering justice. It is the commonest thing to hear cases of individuals unjustly fired out of job who unreasonably denied of their pension right and so on who, are suffering more every new days because of the courts delay in giving

judgment. Furthermore, even after judgment is given in favor of the individual litigant, the delay and complexities the stage of execution creates, causes greater pain on the part of the individual. Therefore, we easily see a need for a mechanism from which nurses individual injured by administrative action get remedy in a cheaper, speedy and non rigorous manner.

When we look at the traditional non- judicial means of control i.e. administrative reviews, we still see a gape to be filled. The system which is laid down in the administration to hear complaints and to revise decisions may lack impartiality. There is greater livelihood that superior administrative officials and tribunals tend to protect the "administrative ego" than the rights of ordinary citizens. [46]

The parliamentary means of control is also with some limitations in regulating administrative assault made against individual. This is because the parliament becomes over burden if it indulges itself into investigating complaints against administrative dysfunction at the grass root level. If we see the Ethiopia case this vast task of listening to the cry of individual requires the parliament additional capacity.[47]

Therefore we see need for a simple seedy and cheap means of dressing administrative caused grievances. We also see the need for a simple and powerful body to cut across complex bureaucratic procedure to secure a remedy for truly injured individuals. There has to be, in a democratic system, a body which opens its doors to help the poor, the ignorant and the timid citizen the socially disadvantaged, need a body that speaks in their stead, makes them able to catch –up and defend their interests through the bureaucratic route which is full of hurdles and complications. These people "need the help of someone who has greater power than a lawyer or politician to investigate their complaints, if the

seem to merit investigation, and try to negotiate a remedy for them. The ombudsman is such a held...." [48]

One can easily imagine the resentment that may be growing against authorities where there are more and more individual whose case could not be addressed by the traditional, formal and sometimes remote means of grievance reducing mechanisms. The ombudsman should step in between the citizens and the administration to reduce inevitable friction between the two. Unless such gap is filled it builds a sheer resentment against the administrative system which in effect is adverse to the development of a society. [49]

3.4.1 A mechanism To Protect and promote Human Rights.

In 1995, the UN charter laid down the foundation of modern international human rights law.[50] Ever since a number of declarations, international conventions and covenants have been made proclaiming many different rights ranging from civil and political to economic, social, and cultural right and solidarity rights. These different international human right instruments contain *interalia*, a right to have all these rights enforced. The UDHR under Art 8. provides that:

Every one has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.

This international human rights instrument i.e the UDHR promise safeguard for individual's rights and requires government to take up the initiative in enforcing and extending individual rights. By the same taken

the International Convention on Civil and Political right under Art 2 provide the same thing.

The implementation of human right standard under the existing international human rights regime based largely on inquiry and exposure. These involves the creation of supervision bodies under the major global and regional treaties...[51]

To this end machinery for the enforcement of a human right had been set-up both at the international and regional planes. However enforcement of the rights enshrined under this major international human rights instrument is often rendered difficult as some states may complain of encroachment on their internal affair.[52]

This is why it is indispensable to nurture democratic institutions like the ombudsman at the national level and address issue of human rights violations.

Obviously in its traditional role and functions originating in the Scandinavia countries, the institution of ombudsman does not handle human rights issues. Nevertheless the institution whenever it exists investigates unfairness and injustice occasioned by administrative action or in action by public officials against member of the public. This is an area that also attracts the concerns of human rights institutions.
Judicial process i.e. the court can be regarded as an efficient means of enforcement of human rights and fundamental freedom particularly in the area of civil and political rights such as freedom of speech, freedom of press, freedom of Assembly, and association, security of the person, freedom from arbitrary arrest, and the right to fair trial.[53]

However there are many other rights, particularly economic social and cultural rights where the ordinary machinery of the law, and ever administrative law, is not at all well suited to remedy many of the problems confronting individuals.[53] Wrongful dismissals of public servant, denial of payment of salaries or gratuity, violation of the right to pension, violation of the right to property etc. are interalia, the economic, social and cultural rights that are exposed to abuses. [54] Hence it is the area of human rights that are vulnerable to violations. However, unfortunately enough the ordinary institution i.e. courts and administrative tribunals are not well fitted to remedy such violations because the legal remedy of court is not often available due to its sheer cost, the technicalities connected with court action, its inaccessibility, too restrictive and disputive, Therefore we need an institution like ombudsman to remedy such violation in a cheaper, speedy and informal manner.

Moreover in developing countries like Ethiopia the lion's share of Human Rights violation goes to public officials and employers. The office of ombudsman, thus, by receiving and entertain complaints of aggrieved individuals against those officials, play a significant role in promoting and protecting human rights.

On top of this, recently the right of third generation or solidarity rights have appeared. The bearer of these rights is not the individual but the community. The ombudsman plays an important role as the lawyer of society in exercising these rights. [55]

The ombudsman in its most recent versions of the last decade, such as in Argentina, is committed not only to administrative dysfunction but also to the defense of human rights of any generation that are playing a decisive role in modern societies. [56]

True evidence of the current importance of the ombudsman today is the recent pronouncement by the UNESCO, which had recognized the ombudsman as the main actor in the enforcement and respect for human rights and obligation..... [57] Therefore it is the opinion of the writer that the institution of ombudsman plays significant role not only to redress administrative malfunction caused by authorities but also to safeguard and promote human rights of whatever generation.

To sum up, there is indeed a great need for this kind of institution in Ethiopia having regard to the high level of illiteracy and poverty, the expanding civil service with insufficiently trained officers etc. The office is extremely valuable to our citizens. It helps, among other things, to combat exclusion, which may otherwise lead to social deterioration and disintegration it helps to bring public services closer to the people. In the end, it gives the people the freedom to criticize with the result that democracy itself becomes richer and stronger. This in turn, is linked to our economic development and respect for human values, which we all desire for our motherland.

The writer of this paper would like to wind- up this chapter by saying that, the ombudsman is:

- ❖ An instrument of human rights;
- ❖ A unique mechanism of democratic control over bureaucracy;
- ❖ A formal avenue for redress of grievances against administrative wrongdoing; and
- ❖ And instrument for tackling bureau pathologies.

END NOTES ON CHAPTER THREE

1. Srig Jaerskiod, "The Swedish ombudsman: 1601 -1775, "university of Pennsylvania law Review, vol. 109 (1961). P. 1077
2. Rowat Donald , "Why an Ombudsman to supervise the court ?"T he ombudsman Journal 10(1992),p.16
3. Gerald E. Caiden- " The institution of the ombudsman", evaluation and present function: International handbook of the Ombudsman Caiden, Gerald E. (ed) (1983) vol. 1 p. 3
4. Rowat Donald, supra at note 2. p. 24
5. id p. 19
6. id pp3-4
7. Roy Gregory, The Ombudsman observed in: The International Ombudsman Year Book : Linda C Reif (ed) (1997). V. 1 p. 82
8. ibid
9. W. Gellhorn. "Ombudsman and others," (Cambridge; Harvard University press, 1966) p.2, Quated in Roy Gregory, supra at note 7. p. 83
10. Rowat Donald, supra at note 2. pp. 3-4
11. ibid
12. Roy Gregory, supra at note 7. p.82
13. ibid
14. ibid
15. id p. 83
16. J. F Mbwiliza, The Permanent Commission of Enguriy the content and the law in : The International Ombudsman Year Book: Linda c Reif (ed) (1999) vol.3. p. 150
17. Roy Gregory, supra at note 7. p. 87
18. ibid
19. Jorma S. AALTO, "Finland country surverys. In: The

International Hand Book of Ombudsman,
(1983) Vol. 2. p. 83

20. id p. 94
21. ibid
22. Roy Gregroy, Supra at note 7. p. 87
23. Gerald E. Caiden, supra at note 3. pp10-11
24. Roy Gregory, supra at note 7. p.78
25. ibid
26. id. p. 79
27. ibid
28. id p.84
29. A. Ruzindana, the role of the Ombudsman in Enforcing Accountability in : The international Ombudsman year Book; Linda C. Reif (ed) (1999), p. 182
30. Roy Gregory, supra at note 7. p. 85
31. A. Ruzindana, supra at note 29.p. 182
32. ibid
33. id. p. 88
34. ibid
35. Gerald E Caiden, supra at note 3. p. 27
36. ibid
37. ibid
38. Mengestu Rezena, The Relevance of the Institution of Ombudsman to Ethiopia (unpublished (1994), p. 47
39. ibid
40. ibid
41. id 48
42. ibid
43. Roy Gregory, supra at note 7. p.88
44. Gerald. E Caiden, supra at note 3. p.7
45. Ahadu G/ Amlak, Analysis of the Effectiveness of the Draft

Proclamation for the Establishment of the Ombudsman office in the Ethiopia, (unpublished) (2000) p. 26

46. id p.28
47. Gerald E caiden, supra at note 3.p. 7
48. ibid
49. Ibrahim Idris, supra at note 23, chapter one p. 54
50. Tim Dunne and Nicholas J. wheeler; Human Rights in Global Politics; Tim Dunne (ed), (1999), p. 282
51. Mengestu
52. ibid
53. ibid
54. Compiled Report of the Ethiopian Human Right council (E HRCO) (ed), Jan 2003.
55. Jore Mainorano, "The Challenges facing Ombudsman in Argentina and around the world in." The International Ombudsman Year Book; Linda C. Reif(ed (1999) vol. 3. p. 190
56. id-p. 191
57. ibid

CHPATETER FOUR

DESCRIPTION AND ROLE OF THE ETHIOPIAN OMBUDSMAN OFFICE

"Every man's affairs however little, are
Important to himself"

4.1 Preliminarily Remark

Since its formal creation in Sweden in 1809, the ombudsman office has witnessed deep social, economic, and political transformations which have obviously influenced its present profile. The office has expanded in different corners of the world as the office has become a valuable means of democratic control over bureaucracy, a formal avenue for the re- dress of damage caused by the immoral behavior of the government (executive} This is what the writer has discussed in the preceding chapter.

Now in this chapter we will focus on describing the kind of ombudsman office the establishment proclamation envisages and the role ascribe thereto. As such the pertinent question we need to address is: with the new socio–economic and political challenges before the Ethiopian society, is the ombudsman institution a mere symbol in Ethiopia? Does the ombudsman office play an important role in Ethiopia in the twentieth century and by extension, in the twenty first centaury? If the answer to this question is in the affirmative, as it ought to be, can the role of the Ombudsman be advanced by the current form of institution? As individuals citizens are choking to death with red- tapeism and drawing in to the sea of bureaucracy, what about the ombudsman?

With a view to examine and, hopefully address some of these salient questions, we may need to mention of why the office is needed, the task

it is supposed to carry out, its jurisdiction, how access to the office is possible the impact and sanction the office can make and others

4.2 PURPOSE AND TASKS OF THE OMBUDSMAN

The classical ombudsman is defined as an office established by constitution or statute, headed by an independent high level public official who receive complaints about injustice and maladministration from aggrieved persons against government agencies, officials and employees. [1]

From the above definition, the constant variable is that the ombudsman is a complaint handling institution. The common interest and common goal is to create and improve the quality of democracy and the rule of law by providing the people with the opportunity to have an efficient, independent and impartial organ for investigation of complaints and remedy of injustice and unfairness.[2] In other words the ombudsman's primary concern is centered on investigation of individual complaints and seeking re- dress for aggrieved complainant

4.2.1 Purpose of the office (objective)

Basically, ombudsman is a complaint- handling institution. Its main task is to conduct investigation once the complaint has passed the test competence and admissibility and issues a settlement of recommendation based on his investigation and then notify, the finding of its investigation to the concerned authority and the complainant.

There is, however, the danger of assuming that all ombudsmen are in the some game and working towards the same end. Only very broadly does such generalization held true. There is a fairly clear procedural

distinction between these systems, as in the UK, where the ombudsman can only respond to a complaint from an individual and there where the ombudsman may himself initiate action as in Scandinavia and has an inspection role. [4]

But, behind this procedural distinction lies a difference of philosophy between those systems where the ombudsman's prime task and objective is to seek satisfactory action for the individual aggrieved and those like Sweden where the primary objective is the very wider one of keeping a general watch on the efficiency and fairness of the administration. [5]

Taking into consideration the procedural differences among ombudsman which determine the objective and ultimately resulted in different methods of working, we can deduce that all ombudsmen are not in the same game and working towards the same end. However, when we take their intersection point, we find that they operate in the public sector and carry out the objective of receiving complaint from individual concerning administrative grievance against government department and agencies.

Consequently, we will examine the purpose which the Ethiopian ombudsman is supposed to serve as it is envisaged under Art 5 of the institution establishment proclamation.

> *The objective of the institution shall be to see to bringing about good governance that is of high quality, efficient, and transparent and are base on the rule of law by way of ensuring that citizens" rights and benefits provided for by law are respected by organs of the executive.*

Looking at this provision, we can easily appreciate that the central tenet of the office is the creation of " good governance", characterized especially by high quality, efficiently and transparently. The provision stipulates that government of high quality, efficiently, and transparency should based itself upon the principle of rule of law for it to be 'a good governance'

The last line of the provision is worth mentioning here to give full picture of the provision. This last part incorporates the basic task almost all Ombudsmen should undertake i.e. keeping eyes on the executive organs to see whether they act in accordance with the law.

A broad interpretation of the provision enable us to sum up that this ombudsman office is setup to contribute (rather than "bring about") to the formation of good governance built upon the rule of law by engaging itself in the work of ensuring that citizens right provided for by laws are respected by the executive organ of the government. This in other words, means that the office strives towards making sure that the interest of the rule of law is serves in the various faculties of the executive.

Thus we can easily appreciate that the office is with the conviction that the public administration should be one saturated with the rule of law, there by avoiding all forms of injustice and arbitrariness from its act, and having a workable mechanisms with which it can correct itself let it to be corrected. The preamble of the ombudsman office establishment proclamation makes this statement more vivid in its third and fourth lines where it mentions reasons why the office of ombudsman is needed in our country. The first reason is that because the office is believed important that unjust decision and orders made by the executive organs be swiftly corrected or/ and prevented from occurring. Secondly, because

it is necessary to provide the citizens with a means through which the grievance caused by maladministration is easily heard and satisfied. Consequently the writer of this paper sums up the purpose of the office in the following two statements.

1. To help the individual get his right respected by the administration and in case where he identifies violation, works to get such grievance re-dressed.
2. To help the administration in the translation of its commitment to protect the rights of citizens while serving them.

This intended objective of the office seems to stand parallel with that of the Swedish pro-type. Both have the same purpose of limiting public officials in their legal boundaries by way of guarding individual from administrative excess.

4.2.2 FUNCTION (TASK) OF THE OFFICE

In order for the office to attain its objective envisaged under Art 5, the ombudsman and its staff are assigned to certain function set forth under Art 6. These are activities which the office needs to make in order to be able to hit its target. Under Art 6(7), it is stated that the office can perform any functions that are related to its objective. However the law has provided the office with specific functions which the office is expected to undertake.

In the following paragraph we will shortly discuss those functions. For the sake of convenience the writer condense those functions of the office under the following sub- headings

4.2.2.1 Supervising executive directives, decisions and practice and other functions of the executive.

In the course of normal public administration one of the major problems faced by the ordinary person vis-à-vis the public official is bureaucracy (or red- tape) and error in the exercise of authority. [5] Thus, the ombudsman advice to ensure that justice is done and that bureaucracies treat their client fairly, promptly and respectfully, is given the task of going through all administrative directives, and decisions made by government office or public enterprises and other organs rendering administrative or related services. He is also expected to supervise the administrative practice there of. Under sub Art 3 the office has also the duty to watch over the day to day functions of the executive.

The functions of the executive, among others include passing regulations and directions and making decisions in administrative tribunal or at office desk at different level of hierarchy. The office, there for, conduct supervision for the purpose of checking whether such directives, decisions, and practices comply with the rights of citizens as provided under the constitution and other laws. Under art 6(3), besides checking on the compliance of the executives with the law of the land, it is expected to find means of preventing maladministration where it comes across with areas which are susceptible to maladministration.

Undoubtedly, this is quite a vast work. The responsibility surprisingly enough is stretched to covering the decision of government departments and agencies which are plenty in number and found everywhere throughout Ethiopia. However the Ethiopian office of ombudsman at the out- set and till this time, has it office set-up in Addis Ababa alone office albeit the HPR have empowered to set up branch office in other as it deems necessary.*

* *The commission shall have its head office in Addis Ababa and it may have branch office at any place as may be determined by the house*

Taking this fact into consideration, how dare the HPR impose such a vast undertaking? As to the opinion of the writer the absence of such branch office seriously affect the office to undertake the supervisor function which ultimately affect the institution to hit its target provided under Arts

4.2.2.2 Receive and investigate complaints and seek Remedies.

For the seek of proper understanding of the law and practice with regard to this function of the office, it is better to have a look at a case decide by the Ethiopia ombudsman office on 2 Oct 2006, for a complaint lodged by Ato Akililu Hailu against Federal Reserve Food Agency, Shashimene branch. For detail of the case see the annex.

The fundamental premise of an ombudsman office is that every members of the public has the right to be treated fairly and justly by government departments. However, these fundamental rights are made meaningful when every member of the public has the right to ledge complaint and to seek an independent review to determine whether treatment is unfair or unjust.[6]

As such the office has the duty to lay down rules of procedure by which it able to receive and investigate complaints. The establishment proclamation provided that for the office to receive and investigate complaints, the complaint should relate to maladministration. [7] Here to identify which complaint is due to maladministration and which does not, we need to define the term maladministration. Though, the term maladministration is difficult to define the proclamation made an

attempt to define it broadly. Pursuant to Art 2(5), Maladministration is any act committed or decisions given, by the executive organ in contravention to laws relating to administration.

When we see the case at hand, we can easily appreciate that the office before it completely involved itself with the investigation process had made sure that the complaint lodged is based on maladministration as defined under Art 2(5) of the proclamation, course from the parties involved we can easily know that the complaint is due to maladministration.

Besides the proclamation impose a duty on the part of individual complainant to exhaust solution at his disposal by bringing the complaint before the relevant organ in respect of the alleged maladministration. [8] As we can understand from the material facts of the case before Ato Akililu (the complainant) lodge his complaints to the institution, he had brought the case before the discipline committee of the office and by way of appeal to the civil service administrative court.

Nevertheless things are remain unchanged. At this juncture, we can appreciate that the complaints had excused remedy at his disposal.

Anyhow once a complaint has passed accordingly, the test of competence and admissibility, it is ready to be subjected to investigation.[9] The investigation should be conducted on the basis of the complaint submitted.[10] The process begins with the formulation of the subject of the investigation and the specific questions that must be answered.[11] When we come to our case, the ombudsman office with a view to rectify the alleged grievance of Ato Aklilu had of the investigated the complaint and formulate the subject investigation and the specific questions that

must be answered. Accordingly, the office frame the issue in such away that:-

1. Does the complainant fried- out following the procurers of the law?
2. Is the decision of the discipline committee fair in precluding the complaint back to his work once the ground cause that lead him to be fired – out i.e. misappropriation of the office property turn out to be untrue by the court decision?

The investigations process which the office launch will revolve around these issues.

Investigation, where the ombudsman is concerned means trying to establish what had happened in the contact between the public and the government. These calls for the active deployment of all competencies and resources that the ombudsman has at his disposal: information gathering and the collection of other materials, interviewing parties and any witness, and engaging the service of expert where necessary. [12]

The authority of the ombudsman's judgment is a direct derivative of the quality of his investigation. To formulate the right question necessitates expert knowledge in the specific area of government concerns. Besides the ombudsman must have the ability to order and analyze the investigation material that has been obtained. This pertains to the degree of access to information the office enjoys and the office's power to compel the production of evidence. [13]

All investigations should be undertaken in private and using inquisitorial procedure. * The office should have a mechanism of preventing interference by any other body while investigating the complaints, after once decided to entertain the complaint. The office has to have the necessary power to order the furnishing of all the information and

* *Because, the complainant may not know technical matters involved in the investigation process thought less technical matters are involved.*

document relevant to the decision. Besides the office has to be equipped with the power to order an official or any other person to submit to an interview, and the power to summon and examine witness at a formal inquiry it set- up. These powers of the office should be accompanied by sanctions and should if necessary be enforced by court order. Generally there has to be effective machinery by which the office secures the co-operation of the relevant authorities. [14]

However, effort ought to be made to establish a good working relation between the office and governmental bodies so as to straighten the investigation process. Since hostility, resentment, and suspicion grew on the part of officials, government department may drug their legs in the course of the office's investigation at their office. They may be tactfully in co-operative to the office's work. Therefore; smooth line of communication between government department and the institution should be established. In this regard, it is important for the office's success to protect officials against unreasonable and malicious complaint that they may not develop hostility against the institution. [15]

With regard to the idea discussed above, the pertinent provision of the proclamation provides that the office is entrusted with certain powers and this is to the extent of imposing penalty on those who fail to comply with the order of the office. Any person who is requested by the institution to give evidence or produce documents, paper or things relevant to an investigation being conducted by the institution must comply with the institution's order (Art 25). Moreover, according to Art 41 (1) any person without lawful justification, doesn't appear or refuses

to be examined before or to answer any question put to him by the institution, he can be taken to a court of law where he, if proven guilty, will be liable to a fine from 200 to 1, 000 birr or with imprisonment from one to six months or both.

The investigation can be closed once the specific question formulated at the beginning of the investigation has been satisfactorily answered. This implies the existence of a significant moment of assessment, when it must be decided which of the information gathered in the course of the investigation may by qualified as facts and which must be shown to be plausible. This then leads to the judgment culminating in the decision on the well founded ground or otherwise of the complaint.[16]

Thus it is this investigation which the office undertakes that leads to its duty of finding remedies in case where maladministration occurred. This is, however, done if the efforts of the office to settle the dispute amicably turn out to be impossible (Art 26(1)). Then the office has the duty to seek remedies for victims of maladministration (Art 26 (2)). Seeking remedies necessarily demands communicating and negotiating with the appropriate ministers, government department and agencies, or body that caused the lodging of the complaint. This is because an ombudsman system can only be succeed if all the actors co-operate. [17]

The ombudsman has the power to make his decision regarding the merit of the complaint according to once finding during the time of investigation. But his decisions are not readily enforceable as the ombudsman has no executive powers. He can only give his opinion and recommendation to the offending organ to rectify the in justice. In those cases where the government organizations refuse to implement the recommendation, the ombudsman has the discretion to report to the legislature. [18] The ombudsman neither implement nor enforces, as these are the function of government department (executive) and the

legislature, but has the power to monitor whether the recommendation is properly implemented. [19]

The Ethiopian ombudsman establishment proclamation under Art 26 (3) provides remedies regarding grievance caused due to administrative dysfunction. Accordingly the Ethiopian ombudsman can recommend:

a. The act or practice which manifest maladministration be stopped.
b. The directive having caused same be rendere inapplicable
c. The offending act be rectified.
d. Any other appropriate measure be taken.

When we come to the practice and look at the case at hand, after a throught investigation launched by the office, the latter has believed that the defendant office has committed administrative dysfunction. per to Art 2 (5). Accordingly the office has passed the following decision:

1. the complainant be turned to his work
2. Promotion and salary be calculated had the complainant obtained if he remained in work
3. The compliant is entitled to use the Annual rest not consumed before he is fired out.

Looking at the open – end ness of the provision (Art 26(3) it seems that the office is given a wider remedial power. The phrase "*any other appropriate measures*" may include power to recommend for the grant of compensation for the damage the complainant sustained covering of expenses and losses, referring a case for possible action by a court, or tribunal, seeking an injunction and still others. [20]

However, it is high time to emphasize that the office's effort should be directed to find amicable solution. The very uniqueness and power of the institution, as to the opinion of the writer is its ability to conciliate and mediate between the people and public administration. This is because

in trying to resolve complaints one should as much as possible rely on conciliation and persuasion so that at the end of the day, we do not have a winner/ loser situation as happens in the courts every day rather a win/win situation occur. Besides once department has committed a mistake which it has itself rectifies it is not a likely that it will commit the same mistake again. [21] This is why the legislature under Art (26(1) gives priority for such amicable resolution of dispute.

Nonetheless, it goes without saying that the office should also have a mechanism of enforcing its recommendation where the office believes that the recourse would bring clearly tangible results Art 26 (2) makes it clear that the ombudsman refers his opinions to the supervision head of the organ investigated for it to take measure. What happen, if the "superior head" of the concern organ keep silent? The office has to have a mechanism of letting his opinion be practicable. In this respect, the proclamation under Art (41(2) imposed penalty on those officials who without good cause, fails to take measures with in three months from the receipts of reports recommendations and suggestions of the institution or does not state the reason for such failure.

The proclamation does not specifically address cases where there is controversy between the office's opinion and the opinion of the superior head.

The Swedish prototype as we have seen in chapter three resolve such matter by reporting to the parliament for it to takes whatever due measure it deems right. Therefore, the proclamation should clearly stipulate the manner in which such disputes between the office and given governmental authority will be settled in such cases.

4.2.2.3 Undertakes Studies and Research, and Giving Recommendation

Art 6(5) of the establishment proclamation requires the office to undertake studies and researches on ways how to curb maladministration and sub Art 6 expect the office to make recommendation as to how good governance can be attained. This two sub- articles are very much interrelated. The first serves as a means to reach the other. The research existing activities which the office launches on laws practice or directives which a given official made may give it a better insight to propose for the making of new laws and formulation of better polices towards the desired end i.e. good governance.

Especially, when there is recurrent case of maladministration the establishment proclamation impose a duty on the part of the chief ombudsman to undertake research and study and forward to the HPR together with the recommendation as per to Art 19 (2) (d). The ombudsman, thus, with a view to bringing about good governance has to make an ongoing studies/researches on the same area and show vigilance to find ways and means of curbing maladministration.

4.3 ACCOUNTABILITY AND JURISDICTION OF THE OFFICE

4.3.1 Accountability

No state or governmental institutions can be allowed to exist without due accountability in a democratic society. [22] Unaccountability is an essential distinguishing mark of a dictatorship; naturally, therefore, it is not the hall mark of democratic institution. [23] In a democratic society there is no responsibility without accountability. [24] And since the

ombudsman is a kind of institution that can grow only in a democratic soil, it should be accountable.

Thus, the question here should be to whom the institution be accountable. The ombudsman can be created by a national constitution or by an act of a parliament. It is also the practice of many countries to provide for its establishment in the constitution and making further details in specific statue. Moreover, though it is rare, an ombudsman may be crated by the executive directive or orders. Here the modes of establishment has bearing on the issue to whom the office is accountable.[25]

The establishment of the Ethiopian ombudsman office is provided for under the FDRE constitution accordingly art 55(15) provides that:-

> *It (the HPR) shall establish the institution of the ombudsman, and select, and appoint its members it shall determine by law the powers and functions of the institutions.*

Here we see that the constitution may mention that the house will establish such institution. It does not go on and provide for the jurisdiction, power and function of the offices. Some constitutions like that of Tanzanian's provides for the detail of the institution. Under chapter VI it defines its jurisdiction. Powers, function and modus operandi etc. such ombudsman institution will benefit from, for instance, any unreasonable proposal to change the fundamental structure of the institution requires a special parliamentary vote, or referendum.[26]

The body to whom the office will be accountable will have wide possibility of intervening into controlling, and supervising the institution.

As such, to whom the office owns accountability has bearing on the independence of the office. [27] An ombudsman made accountable to the parliament (parliamentary ombudsman) has strong link with the parliament. The Ethiopian ombudsman office is made to be answerable to the upper chamber of the House (Art 3). This office could also be made accountable to the executive as experience of some African states are growingly witnessing. The Permanent Commission of Enquiry (Tanzanian Ombudsman) is constitutionally answerable to the president which is head of the executive. [29] However, making the office accountable to the executive would amount to placing the controller under the authority of the controlled. [30] Then we see that the Ethiopia ombudsman is parliamentary ombudsman being totally accountable to the parliament

4.3.2 Jurisdiction

In analyzing the concept jurisdiction regarding the office of ombudsman we may refer to two closely related questions. The first pertains to the question what kind of complaints is the office authorized to investigate or the complaint allowed to lodge. In discussing the duty of the offices to receive and investigate complains under section.5.2.2.1 we have indirectly but fully raise these issues. There under we have said that only complaint containing cases of maladministration, as defined under Art 2(5), fall under the jurisdiction of the Ethiopia ombudsman office.

The second question regarding jurisdiction pertains to the question whom to investigate? In the following section we will deal with these dimensions of the question of jurisdiction, any mention of the term jurisdiction hereunder should be taken in the second sense unless specified otherwise.

Basically the office of ombudsman was meant to guarantee fairness in public administration. As a result the jurisdiction of the ombudsman's

authority in almost all countries extends to entertaining complaint of mal administration by all offices. The scope of jurisdiction, however, varies from country to country. Even among the Nordic countries differences are pronounced. In the original ombudsman system of the Sweden and Finland, the ombudsman successfully supervise the court. While in Denmark, as a result of the theory of independence of the court, court personal have been entirely excluded from the concern of the Danish ombudsman. Whereas, Finland and Denmark vested power over ministers, in the ombudsman, Sweden does not permit their ombudsman to investigate complaint against ministers. [30]

Thus in consideration of practice of a good numbers of ombudsman system, certain public officials are not subject to the investigation of the ombudsman. Subsequently, we shall see how the establishment proclamation defines the jurisdiction of the office.

As we can infer from Art 6, the Ethiopia ombudsman has a very wide jurisdiction patrolling the executive organ of the government. Pursuant to Art 2(13) cum Art 2(11), the executive organ embraces ministry, a commission, an authority, an agency and institution or any other government offices and other government enterprises. Public enterprise in its turn includes as per to Art 2(10) enterprise owned by federal or regional government which render production and distribution of good and service to the public.

Apparently though vast the jurisdiction of the ombudsman, like other ombudsman system, the establishment proclamation limited the power of the office. According to art 7 certain governmental departments are clearly excluded from the jurisdiction scope of the office subsequently will see some of this governmental department. Art 7(1) provides that decisions given in their legislative capacity by the councils both at federal and state level, cannot be investigated. The reasons for the exclusion in

obvious. The HPR is the highest authority of the federal government [31] as such it is governed by the constitution, the will of the people and their consequence only [32] Consequently they cannot be investigated. Secondly as we have seen once the office has established the existence of maladministration, it will report to the HPR to take action, thus it will be ridiculous notion to investigate the house, report to the House about its own conduct and expect it to take action against itself. Consequently, any decision action or order the House makes cannot be challenged.

As we can clearly seen from the lists the judiciary is not included in the jurisdictional scope of the office. We have seen that the Swedish ombudsman's jurisdiction converse the judges as well. The reason for the new trend of excluding the judiciary seems recognition to the fact that the judiciary is an independent and inherently impartial body subjecting the judiciary under the review of another body would go country to the very idea of taking courts as the very dwelling place of justice and fairness.

The judiciary is an independent organ established by the FDRE constitution, to subject it to constitution can negatively affect its independence and there by its prestige. Besides the judiciary is already under the supervision of the judiciary administration council, the office of ombudsman jurisdiction should not over - lap with the councils. [33]

The establishment proclamation under Art 7(4) sets aside from the office's jurisdiction decisions given by Security Forces and units of Defense Force. From the wording of this sub - article it seems that the decision made of these bodies should pertains to matter of national security or defense in order to fall out of the office's ambit. Moreover the constitution under Art 55 (7) empowered the house to investigate and take necessary measures, if the conduct of national defense and security forces infringes up on human rights .... Hence it is important to except

out these bodies from the jurisdiction supervision because these are area which may involve top national secrets whose disclosure may endanger the political and economic well being of the nation.

4.4 Accessibility and Resources

4.4.1 Adequate Resource

Resource is one of the fundamental factor which every institution in general and the institution of ombudsman in particular needs in order to meet its objective.[34] It is not an overstatement to say that an ombudsman office improperly budgeted is noting but a front and façade. The allocating authority i.e. the house must provide the fund to the office in such away that it is able to have its own staff and premises and readily available money to run its activities.

The office has to be free from financial control and manipulation. Otherwise, the independence and integrity of the institution will highly be questionable. Moreover, even if the finance is freely secured, it has to be adequate to enable the office for the task it carries out. Besides the fund has to grow proportionally with the growth of work load and expansion of its activities. "The power of the purse. [35] therefore, has a considerable influence on the management, independence and integrity of the institution.

Art 36 (10 (a) of the proclamation provides that the government will allocate budgetary subsidy to the office, and under sub- 1 (b) it further stipulates that the office has the right to receive assistance, grant and other financial sources. However here the legislature does not make it clear on which part of the government, using what standards and procedure extend the budget of the office. Since the bodies which helds and exercise allocating, accounting, and auditing authority will have a crucial direct and indirect influence on the institution concerned. [36] The

writer is of the opinion that it would have been more protective for the independence and integrity of the office, had the parliament it self secured the amount of money which the office requires for its activities. Since it is not possible due to the socio economic reality of the country, the legislature has to clearly determine which part of the government and using what procedure and standard to extend the budget necessary for the office. Besides the term "budgetary subsidy" should be defined clearly. Does the offices budget stand on par with the manner that the judiciary for example gets its budget or is it just by a subsidy given by part of the executive say the ministry of finance, that it is in funded?

On the other had the legislature uses a protective mechanism to prevent undue influence and political interference by the government under the guise of maintaining the financial utilization. As such under Art 37(2) of the proclamation, the legislature designed an organ that audit the account of the office.

Besides finance, adequate resource includes adequate staffing this is an indispensable factor for the effectiveness of the office. The Zimbabwe ombudsman in its fifth annual report said that" serious staffing in adequacies have persistently and frequently hampered the effective discharge of our role and function" [37] The necessarily staff is one of the constituents of the Ethiopian ombudsman office per Art 8.Under the proclamation for the office to have the staff which is fit and resourceful. there has to a mechanism to attract qualified persons to screen the best among them and to retain them in job. For attracting qualified staff the office need to after good salary and other incentives. And there has to be a good administration climate which keep the staff functioning.

4.4.2 Access to the Office

For the office of ombudsman to play its role effectively and efficiently, it is compulsory intra alia, that the office should readily be accessible to those people whose rights the office set out to promote and protect. The institution has to be psychologically and practically accessible. The people have to feel free to go the office, knowing they will avail them selves of the institution service such reliability of the office depend at large on the image of the functionaries of the office, and the practical result which the office demonstrate.

Accessibility can also be measured by the geographical location of the office. Here accessibility is provided when district office exist or where you have a chief ombudsman at the national level co- coordinating the work of jurisdiction's at state provincial or district level especially in countries with federal system or countries with large population or poor communication system. [38] like that of Ethiopia. However, where district offices do not exist accessibility is enhanced where complaints can be heard in cities out side the capital on scheduled days or outside working hour. [39]

The manifest readiness of the office to help complaint will also add something to the accessibility of the office. This readiness should be noted in the manner and procedure the office uses to receive complaint. Accordingly the proclamation has stipulated some workable mechanisms. The free of charge service the office give, and the informal manner of lodging complaints makes the office accessible to the public. The fact that third party can lodge complaints adds to the above point. Besides the office ability to initiate investigation on its own will makes the office available to the public since the offices itself goes to where the people are.

Nevertheless, the major problems of the Ethiopian ombudsman office, I will say boldly with out fear of contradiction, is geographical accessibility and the problem of reaching down i.e. public awareness.

Ethiopia is a large country comprise an area of some 1, 12,000 km^2 with a population of around 71 million. But having such a large country with large population associated with poor system of communication, the office of ombudsman is seated in the capital, Addis Ababa, and has no regional or sub office elsewhere in the country mainly because of financial and human resource constraints. Because of its large size I believe, we do have the same problem faced by some large countries i.e. knowledge of the existence of the ombudsman and access to the office.

Since the Ethiopian ombudsman office is a government agent, it is located in the seat of government. In away this concedes with the fact that African Governments are highly centralized and tend to have most of their bureaucracy in the same location. [40] Even in the capital, still the office of ombudsman may be placed inconspicuously. This situation can, quite imperceptibly isolate the ombudsman from complaints located outside the capital. The majority of Ethiopia, and hence the majority of the vulnerable group live outside Addis Ababa, and so often have great difficulties communicating with the office.

The other problem of the Ethiopia ombudsman relating to accessibility is public awareness. As interviewed individuals with different living standards and educational background, I found that people with higher level of education were more likely to be aware of the services of the

Ethiopian ombudsman whilst people who were more vulnerable i.e. people with low level of education were less likely to know about the service and they had more complaint.*

Thus, conscious of the need for the ombudsman to be more visible in this area, an outreach programme has to be embarked upon. This aimed not only at collecting complaints and informing people about the office of ombudsman but, also mainly at appraising them about the fundamental rights and freedom enshrined under the FDRE constitution and how to deal with alleged violation there of. But as to the best knowledge of the writer, the office has never conduct such an outreach programme since its establishment

4.5 THE Needs and Requirements for the Office of Ombudsman to Perform Effectively.

Being an officer appointed by the legislature the office of ombudsman stands for the protection and respect for the rights of individuals, the protection of the rule of law, the elimination of corrupt practices in public life and the promotion and advancement of democracy and good governance. [41] From this it is clear that the citizen expectation of the ombudsman is very great. The question therefore are; is the Ethiopian ombudsman well equipped to meet these expectation and what are the ombudsman's requirements for effective performance of its function?

** This is new however, based on a very limited number of individual Interviewed; but I hope it will represent the general reality.*

With a view to address theses question it is better to divided those requirements which the ombudsman needs personally and those requirements that are needed at institutional level. Subsequently we will see these requirements respectively.

William K. Reid in paper presented at the world conference in vianna in oct 1992 said that, for the ombudsman to be able to perform effectively" 42.

> *The ombudsman must have the expansion of remaining in office for an in disputed tenure, only in gravest circumstance should there by a possibility of removal from office before the natural end of that tenure, and the holder of the office must have;*
>
> (i) guarantee of complete expectation investigation complaint of maladministration subject to any limitations placed of the constitution or enabling act on his jurisdiction;
>
> (ii) Absolute privilege, the is , freedom fro, prosecution for defamation in respect of what he writes in his report,
>
> (iii) authority to present his report on in investigating to the head of state or to the legislature or to the government;
>
> (iv) The ability to delegate certain of his powers to his deputies.

An ombudsman whose tenure of office has not been defined or if defined, is made so flexible that the he can be removed or replaced easily, cannot achieve any meaningful results in the time he would be in office. On the other hand guarantee of complete independence from both the legislature and the organ to be investigated, reduces the possibility the

ombudsman's finding being compromised. Absolute privilege or immunity from prosecution is a must if the ombudsman is to discharge his duties without fear or favor, affection or ill will. [43]

Moreover the authority to present his/her report to the legislature is a very important provision from my point of view. Since the ombudsman lacks coercive power, he is expected to mediate and persuade both parties practices to abide by his decisions as contained in his recommendation. He cannot compel compliance and most organizations he deals with know this. Unlike the advanced democracies in developing democracies the compliance rate is law due, no doubt to the level of development. If therefore a good judgment or a good recommendation is ignored, this can easily be brought to the attention of parliament (the repository of power) and such organ can, by parliamentary fiat, be compelled to comply or face the consequence. [44] Besides the ombudsman's report enable the legislature to see, in part, how the law works and, if there is any perceived malfunction to set machinery in moth in for a review of the particular law. [45] In this way the ombudsman's work helps to shape the legal perspective of the nation.

These are some of the needs for an ombudsman to perform his/her task effectively. Subsequently an attempt has been made to show the requirements of the ombudsman at the institutional level for it to function effectively and be successful.

The first requirement has to do with the funding of the institution. The ombudsman office must be properly funded if it is to provide an effective and efficient service. Not only adequate funding but also independent financing system is needed.[46]

Because, an "institution" whose operations are subject to day to day monitoring.... as they must if their finance is controlled by other bodies

....cannot be free from political interference or manipulation. and this may leads to doubt as to its independence and therefore, its images as an impartial guardian of citizens rights. [47] The ombudsman office should therefore, be made to operate on independent budget appropriated by parliament and controlled by ombudsman

The second essential requirement is training and staffing. Poor training and staffing is one of the most topical issues facing the ombudsman office in Africa today, [48] In which case Ethiopia cannot be an exception. The bottom line is that training helps the person to be more effective in the performance of his/ her duties. The quality of an organization is indeed a reflection of the quality of men and women who run it. To this end the ombudsman should enjoy unfettered freedom to set up an internal structure and machinery to appoint, discipline and train staff without recourse to any external authority.[49] This is because the investigation staff must be versatile, well informed, highly analytical, skilled in communication, humble and tactical.

The third requirement related with publicity. The myrid of problems facing the ombudsman institution both in the internal operations and its intricate web of interrelation ships with other bodies can be traced to ignorance and apathy on the part of both the government and the public. [50] Publication is especially important national human rights institutions like the office of ombudsman because their success very much depends on the confidence placed upon them by the public confidence can be enhanced greatly if the public become aware of the view of the office and its achievement and short coming are and that it doesn't hide anything, from public view. [51]

Thus the pertinent question here is: What step should be take in the long and short term to stem the ugly trend of misinformation or absolute dearth of information about ombudsman activities.

There is a need to establish a full –fledged information and "public enlightenment" department in the ombudsman office. This is very necessary if the organic relationship existing between the press and the ombudsman is to be nurtured and sustained. Moreover, period press briefings should be organized to high light some news worthily cases for public consumption. The use of calendar and information pamphlets to highlights the function of the ombudsman in picture and captions will also add to the above. Besides radio and television dram programs, similar to the documentary drams of the Argentina ombudsman and South America Public Protector are also far-reaching and worthy for emulation. [52] Furthermore, there is a need for the ombudsman or its representative to grant press interviews and contribute occasional lead article, highlighting its functions and selective case studies, while still maintaining oath of confidentiality.

The last but not the least requirements has to do with case managements system i.e. computerization. We are in the 21st century and in spite of transterritoriality of information, it is regrettable that the Ethiopian ombudsman office does not have access to computer technology as to the best of the writer's knowledge. The benefits of a word processor as opposed to a type writer are well known. In the same vein, the benefits of data bases in storing and retrieving cases and information need not be over flogged. The computer can be used for accounting and as an effective managements tool to monitor cases and work progress, to schedule meetings and communicate with staff.[53] The computer is, therefore, necessary as essential office equipment and is not aluxury if the Ethiopian ombudsman office is to be relevant in the twenty first century.

Nevertheless, it is so pre- mature to raise certain gaps which the office of ombudsman happened to show, because the office is on the whole at the earliest stage to flourish

If all or most of these requirements are not fulfilled the Ethiopian ombudsman office may easily be turned to a week one which provides the form but not much substance. Albeit It may do good work in remedying a small number of minor cases it may fell to be known widely enough to reach all segments of the public and many be unable to remedy serious cases of administrative dysfunction.

Nevertheless, we should always bear in mind that the ombudsman's role is primarily complementary i.e it is to give support or lessen the burden of existing institution or provide remedies in situation where they do not exist. Thus the ombudsman office alone cannot cure administrative dysfunction and should not be expected to do something miracles. But the ombudsman with other institutions can do good in re- dressing individual grievances and betterment of the working of the government.

Finally the writer of this paper would like to say that, thought the results achieved by the effort of the ombudsman office may often be less than desirable one should reminder that in the absence of these efforts, the situation would certainly not be better.

END NOTES ON CHAPTER FOUR

1. Jackson I. Edokapa, Strategies for Improving Ombudsman Institution in Africa: The International Ombudsman Year Book Linda C. Reif (ed) 1999, vol. 3 p. 173
2. id p. 174
3. Mengestu Rezena, "The Relevance of the Institution of Ombudsman to Ethiopia". (unpublished) (1994) p.25
4. ibid pp. 24-25
5. ibid
6. Frank Kajwara, Impact of the Ombudsman on Good Governance and Public Service Administration. International Ombudsman Year Book. Linda C Reif (ed) 1997. vol 1 p. 55
7. Robert Jamieson, Serving with Equity; Report of A Journey; International Ombudsman Year Book. Linda C. Reif (ed) 1997. vol 1 p. 112
8. Institution of the ombudsman Establishment proclamation. No 211/2000. Art 22 (1)
9. id art 22 (3)
10. Marten Oosting, the Ombudsman; A Profession. International Ombudsman Year Book, Linda C. Reif (ed). 1997. vol. 1. p. 7
11. Supra at note 7, Art 24(1)
12. Oosting, supra at note 9. p. 7
13. ibid

14. id .p.8

15. id p. 9

16. id. 14

17. id 16

18. id 18

19. Jamieson, supra at note 6. p. 111

20. id pp 111-112

21. Ahadu G/ Amlak, <u>Analysis of the Effectiveness of the Draft Proclamation for the Establishment of ombudsman office in Ethiopia,</u> (unpublished) p. 53.

22. S, M Hatteea, "The Ombudsman in Mauritius- Thirty Year on, <u>International Ombudsman Year Book</u>. Lin Reif (ed) 1999, vol 3 p. 170

23. Mesfin G./ Hiwot, <u>Concept Paper on Human Rights commission and office of Ombudsman; Prepared and Submitted to the Standing Legal Committee of the HPR</u>: (unpublished) January 1998. p.35

24. ibid

25. መሀሪ ታደሰ፤ የኢትዮጵያ ሰብአዊ መብት ኮሚሽን እና በዲሞክራሲያዊ ግንባታ ሂደት ሰው ሚና መሀሪ ታደሰ (አሳታሚ) መጋቢት 1983.(The role of the Ethiopian Human Rights Commission in the Democratization process)

26. A. Ruzindana, "The Role of the Ombudsman in Enforcing Accountability", <u>The International Ombudsman Year Book</u>. Linda C. Reif (ed). 1999. vol. 3 p. 182

27. J.F Mwiliza, “The Permanent Commission of Enquiry, the Context and the law, International Ombudsman Year Book. Linda C. Reif (ed) 1999. vol. 3. p. 156

28. Ruzindna, supra at note 25. p. 187

29. Mbwiliza, supra at note 26. p. 156

30. Mesfin, supra at note 22. p. 36

31. Mengestu, supra at note 3. p. 28-29

32. The federal Democratic Republic of Ethiopia constitution 1995 (unofficial English Translation from the Amharic original) Art 55(3)

33. id Art 55(4)

34. Mesfin, supra at note 22. p. 39

35. Arne Fliflet, The Ombudsman’s Budget, Account and Audit, their influence on the Ombudsman’s ability to fulfill his responsibilities, The International Ombudsman Year Book. Lind C. Reif (ed) 1997vol p. 49

36. id p. 50

37. Hatchard John, “National Human Rights Institution Manual”, Human Right unit and Common wealth Secretariat Document University of Buckingham; Jan 1993. p. 32

38. Ruzindana, supra at note. 25 p. 184

39. ibid

40. Victor Ayeni, "Ombudsman Institution and Democracy in Africa – A Gender Perspective", <u>The International Ombudsman Year Book</u>, Lind C. Reif (ed) 1997. vol 1 p. 67

41. Ruzindana, supra at note 25. p. 186

42. Edokapa, supra at note 1. p. 175

43. id pp. 175-176

44. id p. 176

45. ibid

46. ibid

47. Mesfin, supra at note 22. p. 20

48. Edokapa, supra at note 1. pp. 176-177

49. id p. 178

50. id p. 177

51. Mesfin, supra at note 22.p. 42

52. Edokapa, supra at note 1. pp.176-177

53. id p. 178

SOME CRUCIAL POINTS ABOUT THE ETHIOPIAN HUMAN RIGHTS COMMISTION AND OFFICE OF OMBUDSMAN

Effectiveness and Binding nature of their decision

We have seen that these institutions have no power to pass binding decisions on complainants that might be submitted to them alleging human rights violations and maladministration. But only a mere recommendation.

Since these institutions can give only recommendation not binding decision, they should have a mechanism of enforcing their recommendation in order to be effective in the arsenal of protecting and promoting human rights.

After a through investigation of the complaint the institutions give the finding of the investigation and their recommendation to the "superior head" of the concerned organ per Art 26(2) of the respective establishment proclamation. Nevertheless the problem is what happened if the "superior head" of the concerned organ keep silent? What happen, if there is a controversy between the opinion of these institutions and the opinion of the "superior head" in the matter.

The establishment proclamation doesn't clearly provide whether these institutions submit their report to the HPR in case the concerned organ refuse to take action. Even if I opt to be optimist and the institutions can submit their finding to the HPR, still the respective establishment proclamation remain silent as to the action that the HPR going to take.

Consequently, these institutions can only be one modest element in the process of realizing human rights in the country. At best they can be effective propagator of the good news of the promotion and protection of human rights. And the most they can do will be the amicable settlement of dispute arising out of the alleged of violation and maladministration.

Therefore, the respective establishment proclamations should clearly stipulate the manner in which such dispute between the institution and the concerned governmental authority be resolved. To put it otherwise, the proclamations should provide the manner of reporting to the HPR and the action that the latter going to take. Unless otherwise, the institutions alone cannot be more than a small part of the freight of the human rights movement conducted in the country.

COMPOSITION OF NOMINATION COMMITTEE Vs INDEPENDENCE OF THE INSTITUTIONS

One of the most essential aspects of the nature of the human rights commission and office of ombudsman independence take place is through appointment of their members. An institution cannot be independent if the individuals of which it composed are not free. The granting of legal, technical and even financial autonomy to the commission will be insufficient, if these lacks a corresponding specific measures to ensure that its members are individuals and collectively capable of generating and sustaining independence of action.

The founding legislation of these respective institutions specify all maters relating to voting and other procedure to be followed, criteria for appointment, pre- requisite including nationality, profession, qualification.

The method of which members of the institutions are appointed and elected could be criteria in ensuring independence. Who should therefore, be responsible for nomination and appointment of members.

When we see the composition of nomination committee that recruit appointees, for instance, of the office of ombudsman, among ten members seven of them are very, likely to be members of the incumbent party.

As such it is, these appointees that are recruited by such nomination committee that presented to the house after receiving two-third vote to be appointed by the latter. From this one can understand that the appointees recruited by the nomination committee are very likely to be appointed by the House, because here and there it is member of the incumbent that play the game.

Nevertheless, in developing countries like Ethiopia, the lion's share of human rights violation goes to the executive and its officials, which are appointed in one way or another by the incumbent. And it is these human right violation and maladministration perpetrated by such official that the institutions are supposed to protect.

Thus, the method of appointment of members of the institutions highly influences its independence and impartiality, which ultimately reduce its utility in promoting and protecting human rights.

Consequently, the writer is of the opinion that the respective establishment proclamation be amended in such a way that, the number of nomination committees provided under Art 11(1-3) of each proclamation be reduced and the number of nomination committee that represent other part of the society be proportionally increased.

CONSTITUTIONALITY OF THE INSTITUTIONS

Since 1995, under the FDRE constitution, the Ethiopian state is declared to be a federal one. [1] In line with the federal tradition the respective powers of the federal government and the federating units are distributed by the federal constitution. [2] One of the most important of such power is the power to legislate.

The constitution enumerated the legislative power of the federal government. As a general principle the member states exercise all powers that are not expressly granted to the federal government alone. Accordingly member states have concurrent as well as all powers which are not given to the federal exclusively, concurrently, or otherwise called residual power.

The legislative powers of the federal government are those expressed in the constitution. These enumerated powers are found mainly under Art 51, 55, 96 and 98. Thus, the federal government have such limited and enumerated power only, the residual power belongs to the states.

A glance at Art 55 of the constitution which enumerate the legislative power of the HPR, we can understand that the constitution give such power to the HPR to enable the country to attain the objectives set- forth in the preamble. Among the powers given to the HPR to establish a Human Rights Commission and institution of Ombudsman are the most important in this regard.

One of the basic aspiration of the FDRE constitution is to build jointly one poltical community founded on the rule of low.

As such, the establishment of institutions like the office of ombudsman whose objective is to contribute in bringing about good governance of high quality, efficient and transparent which are based on the rule of low, [4] play an important role to attain this aspiration.

The establishment proclamation in its preamble provide that the immense sacrifice paid by the people of Ethiopia in the protected struggle they waged with aview to securing poltical power and to realizing the rule of law calls for taking measure of laying the foundation for good governance by way of setting easily accessible institiutions like the office of ombudsman to prevent and rectify maladministration.

Consequently, the establishment of institutions like the office of ombudsman play an important role in helping Ethiopia to fulfill its democratic aspirations.

The writer is of the opinion that, due to the justifications provided above that the constitution empowered the HPR to establish the institution of ombudsman and determine by law the powers and function. The HPR with a view to discharge its constitutional obligation provided under Art 55(15), establish the institution of ombudsman in 2000 by proclamation. And determine its power and scope in such away that the office could have jurisdiction to maladministration committees by the executive organs and their officials of a regional government. [5]

Of course the constitution empowered regional states to organize and administrate their civil service. As such granting such right and forcing regional government to be surprised and investigated by a federal government organ such as the institution of ombudsman seems un constitutional.

Thus, due to the aforementioned justification, the power of the HPR in establishing regional sub- office or applying the established office to investigate maladministration committed by regional government and officials thereto is not unconstitutional.

---

1. Constitution of the federal democratic republic of Ethiopia. 1995. Art. 1
2. Id, Art 51and 52.
3. Id, Art 52(1).
4. The institution of the ombudsman establishment proclamation No 211/2000, Art 5
5. Id, Art 4(2)

CONCLUSION

Albeit there is no universally accepted definitions of human rights and despite the fact that there is a split of opinion regarding the choice of which group of rights to defend first, today more then ever, a person needs to be assured that his or her human rights is guaranteed and protected. And whatever the current attitudes and policies of government, the reality of popular demands for human rights is now beyond debate. A deepening and widening concern for the protection and promotion of human rights is now woven into the fabric of contemporary world affairs.

However, the path of human right does not run smooth and straight. Human rights are trodden under root. Many are the forces that oppose Human rights authoritarian regimes, heavy handed and all incisive government structures as well as private groups (think of terrorist organization) that treat defenseless and innocent people with ruthless violence human right have suffered tremendously through out the world.

To combat this sad occurrence, it is neither sufficient to multiply nor to regionalize declaration, conventions and so forth. Much more is required as regards mechanisms for their promotion and protection. Nowadays, ample progresses are made in this regard. Substantially organs responsible for the protection and promotion of human rights at the international and regional levels have been set – up. The UN has set-up, interalia, a human right commission for the promotion of human rights among the peoples of the comity of nations. Actions for the protection and promotion of human rights have also proceeded at the regional level. One of the significant forms for the protection and promotion of human right in Africa is the Africa human rights commission created in 1987 under Art 30 of the convention. American and Europe have similar

institutions for the protection and promotion of human rights Asia clearly lags behind as it has not yet taken the first step in the matter.

Despite the existence of such regional human rights bodies because human rights take their original with in the national area and look for survival in the national forum and relay on national machinery for enforcement, efforts should also be made at the domestic level to promote and safeguard the human right recognized in constitutions and international human rights instrument by setting up national human rights institutions such as human rights commission and office of ombudsman.

Why a human right commission and office of ombudsman so attract Ethiopia to adopt? In deed, the desire to set – up a human rights commission and office of ombudsman is a response to genuinely felt need. There were constitutional and historical rational for the set- up of these momentous institution.

We have said that the very idea of human rights as a legal concept is based on the principle *ubi jus ibi remedium.* Where there is a right there must be a remedy. This principle has already been expressed in the UDHR. According to Art 8 "*everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him/ her by the constitution or by law*". This obligation on the part of the state cannot be limited to access to judicial remedies. These are necessary but not sufficient conditions for a satisfactory national system of implementation. This is one of the reasons that justifies the establishment of human rights commission and office of ombudsman.

Moreover, the slow and often costly court system necessitates the set-up of the commission and the office to which an easy, quick and cheap access to it be possible and enables especially the poor to exercise their

rights properly. It is also important that the commission and the ombudsman office assumes independent function and thus supplements the judicial mechanisms for the protection and promotion of citizens human rights. It also implement or assist for the implementation international human rights obligation which the Ethiopian government has assumed by being a party to the various human rights instruments.

As regard to the structure of a good, potent and effective human rights commission and office of ombudsman, we have said that the institutions should function independently of the government departments which only a limited restriction by the HPR that establish them and determine their power and function.

Finally, since how well the commission and the office performance will depends on how well the members want to perform and how well they are allowed to perform, they must not be blocked in and their influence be not minimized by the government. For all their independence impartiality, accessibility, expertise they should not be emasculate and must have support in the system and be not denied adequate resource. Publicity and reporting to the appropriate origin of the institutions finding also add to the above, for protection of human rights is largely through exposure.(mobilization of shame)

RECOMMENDATIONS

Democracy cannot be developed, nor could the rule of law be respected in a country where citizens do not know their rights. So to promote democracy and the rule of law, the institutions * have to carry out public awareness programmes by organizing work shop and seminar, and through radio and television. Besides brochures high lighting the function and power of the institutions and how complaints should be logged etc. have to be distributed to various institution The use of calendar and information pamphlets to highlight the function of the institutions in picture and captions have paramount significance in this regard. There is a need for the commissioner and the chief ombudsman or their representatives to grant press interviews and contribute occasional lead articles, highlighting its functions and selective case studies, while still maintaining its both of confidentiality.

Taking into consideration the poor communication system prevalent in Ethiopia the government by employing different mechanisms should case the process of lodging complaints. The government should facilitate correspondence between the institutions and the public. Moreover a scheme of free legal aid has to be arranged, by organizing volunteers (if any) who are legally trained, to assist complaints.

---

*The word '**institutions**' is used to refer to both the commission and office of ombudsman unless expressly in provided otherwise.*

Since it is delay and cost involved that many people prefer to lodge their complaints with the institution rather the court the investigation should not be as lengthy as court proceedings. Defiantly investigation may involve examining departmental files. Interviewing practice and question officials and assembling the evidence relating to the case. However redress should not be delayed otherwise the value of the institutions would be lost. Of course this may depends on the complexity and significance of the case but the element of a speedy result remains important

As the institutions function is to level the playing field, not as an advocate but as independent government overseer, then the institutions primarily concern must always be the accessibility of the service to all sectors of the public. A glance at the provision of the establishment proclamations, we can easily appreciate that the proclamations has stipulated some workable mechanisms. The free of charges services and the informal manner of lodging complaints makes the institutions accessible to the public. The fact that third parties can lodge complaints adds to the above. Besides the institutions ability to initiate investigation by its own will, makes them available to the public, since the they go to where the people are.

Be that as it may accessibility can be constrained by the geographical location of the constitution. As we all know the offices of ombudsman and the HRC are located in the capital alone. Even in the capital still the offices are placed inconspicuously. This situation can, quite imperceptibly isolate the ombudsman or the commission from compliant located outside the capital. Therefore. The HPR, taking into consideration this problem has to create geographical accessibility by planting branch offices in each region according to Art 8 of the respective establishment proclamation.

See P. 91. P.2

Finally it should be borne in mind that owing to the inherent characteristics of the countries such as corruption, economic disarray etc we could not attain that precious goal forth with and it would not be an easy task. According to Antonio Cassese: it will take more than a day a month, a year, to ensure respect for human right, the time required is too long,, the effects of human right are slow moving .

BIBLOGRAPHY

TABLE OF LAW

ETHIOPIA

- Constitution of the Federal Democratic Republic of Ethiopia 1995 proc. No. 1/1995. Fed. Neg. Gaz, 1st year No 1
- Ethiopia Human Rights Commission establishment Proclamation. 2000. Proc No. 210/2000. Fed. Neg. Gaz, 6th year No 40
- Institution of the Ombudsman Establishment proclamation. 2000. Proc No. 211/2000. Fed. Neg. Gaz, 6th year No 41

International Treaties

- African Charter on Human and Peoples, Rights 1981
- Charter of the organization of Africa unity 1963
- The International Covenant on Civil and Political Rights of 1966
- The International Covenant on Economic, Social and Cultural Rights Of 1966
- International Convention Against torture and other Cruel In human or Degrading Treatment or Punishment 1984
- The Universal Declaration .of Human Rights of 1948
- The United Nations charter of 1945

TABLE OF BOOKS

- Abdullahi Ahmed An –Na"im. Problem of universal cultural legitimacy for Human rights, in Human rights in Africa; Cross cultural oprespective,(Zed Books ltd, London, 2000)

- Ayeni, Victor, "Ombudsman Institution and Democracy in Africa- A gender Perspective" The International Ombudsman Year Book

- ______________ " Training for Ombudsman work in African – An Agenda for Recovery" The Ombudsman journal 10 (1992)

- Baehr, peter R, " Human Rights: university in practice" 2001 (Palgrave, Houndmils, New York)

- Bloed, Aric, Monitoring Human Rights in Europe: Compating International procedures and Mechanisms (Martinus Nijhoff publisher, London, 1987).

- Bull, Hadlely, Human Rights and world poltics, In Moral claims in world Affairs (R. Pettmanned, 1979).

- Caiden, Gerald E, (ed) International hand Book of the Ombudsman; Evolution and present function (Westport, CI, Green wood press, 1983.)

- ______________ International Hand Book of the Ombudsman, country surveys (Westport, CT, Green Wood press, 1983.) , vol. 1

- Carey, john, International protection of Human Rights (ocean publication, Inc, New yourk 1968)

- Cassese, Antonio, Human Rights in a changing world (polity press, London, 1990.)
- ____________ Human Rights; National institution for the promotion and protection of Human Rights, fact sheet No. 19
- Cranston, Mauric, What are Human Rights, (the Bodley head, London, 1973)
- Dennelly, jack International Human Right; Dilemmas in World poltics (west view press, Sanfrancisco, 1993.)
- Edokpa, Jackson I. " strategies for Improving Ombudsman Institutions In Africa" The International Ombudsman year Book (Kluwer Law International, Alberta, 1999)
- Filfilet, Arne, "The Ombudsman's Budget, Account, and Audit- Their influence on the Ombudsman's Ability to fulfil his Responsibilities". The International Ombudsman year Book.(Kuwer Law Intrnational, Alberta, 1997)
- Flowe, Ross M, Thinking aboult Human Rights; contening Approches to Human Rights in US forgion policy (university press of America, New Yourk, 1987), 6
- Gregory, Roy. "The Ombudsman observed" the international Ombudsman year Book. 1997 Kuwer Law Intrnational, Alberta, 1997
- atchard, John, " Developing Government Accountability: The Role of Ombudsman. " third world legal studies- 1992
- ____________ "The Ombudsman in Africa Revised. " International and comparative law quarterly (1991)

- ____________ " The institution of the Ombudsman in Africa with special reference to Zimnanawe." Internationl and comparative law quarterly (1986) vol. 35 part 2.

- Hatteea, SM "The Ombudsman In Mauritius – Thirty years on." The international Ombudsman year Book.(Kluwer Law International, Alberta, 1999)

- Jagerskiold, stig. " The Swedish Ombudsman" university of pennsyvania lawa Review (1960) vol. 1

- Kajwara, Frank "Impact of the Ombudsman on Good Governance and public service administration" The International Ombudsman year Book.(Kuwer Law Intrnational, Alberta, 1997)

- Lawson, Edwrd, Encyclopidia of Human Rights (Tylor and Francis Inc, 1991)

- Maiorano, Jorge, " The challenges facing The Ombudsman In Argentina nad around the word. " The international Ombudsman year Book. (Kuwer Law Intrnational, Alberta, 1999)

- መሀሪ ታደሰ፤ የኢትዮጵያ ሰብአዊ መብት ኮሚሽን እና በዲሞክራሲያዊ ግንባታ ሂደት ሰው ሚና መጋቢት 1983. አዲስ አበባ

- Mbwiliza, J.F, "The permanent commission of enjuriy the context and the law," The international Ombudsman year Book. (Kuwer Law Intrnational, Alberta, 1999)
- Oosting, Marten, " Rights of persons Deprived of Their Liberty" The International Ombudsman year Book. Kuwer Law Intrnational, Alberta, 1997

- ❖ ______________ " Rights of Refuges and Asylum seekers" The international Ombudsman year Book. (Kuwer Law Intrnational, Alberta, 1997)
- ❖ Ramcharan, B.G, Human Rights: thirty years After the universal Declaration (Martinus Nijoff publisher, London, 1979.)
- ❖ Robertson, Jhon "setting up an Ombudsman office" The International Ombudsman year Book. The International Ombudsman year Book (Kuwer Law Intrnational, Alberta, 1997)
- ❖ Rewat, Denald C. "The Ombudsman plan: Essays on the World-Wide spread of an Idea." (Toronto: McClelland and stewart, 1973).
- ❖ ____________ " Why an Ombudsman to supervise the courts?' The Ombudsman journal 10(1992)
- ❖ Ruzindan, A" The Role of The Ombudsman in Enforcing Accountability the international Ombudsman (Kuwer Law Intrnational, Alberta, 1999)
- ❖ Sieghart, paul "The International Law of Human Rights. 1986
- ❖ Singh, Nagendar, Enforcement of Human Rights, in peace and war and the future of Humanity (martinus NIjhoff publisher, London, 1977).

LIST OF OTHER MATERILAS

- Hirut Melese, Economic, social and Cultural Rights Covenat; Its Application in Ethiopia, senior research paper, unpublished Archives, AAU, faculty of Law, 1980.

- Mengestu Rezena, the relevance of the institution of Ombudsman to Ethiopia, senior research paper, unpublished, Archives, AUU, Faculty of Lwe, 1994

- Barrister Shipi M. Gowork, Human Rights: an African perspective, a paper presented on phase II of the training for judges of the Oromia regional state, Unpublished m Jimma University, Law faculty, 2006

- Mesfin G/ Hiwot, concept paper on Human Rights commission and office of Ombudsman; prepared and submitted to the standing legal committee of the House of People Representative, Unpublished, Civil Service Collage, Law Faculty, 1998.

- News paper, The reporter, Saturday sep. 9. 2006.

የመዝገብ ቁጥር አቤአ 1/59

ቀን መስከረም 22/1999 ዓ.ም.

አቤቱታ አቅራቢ ፡ አቶ አክሊሉ ሐይሉ

ተጠሪ መ/ቤት፡ በኢ.ፌ.ዴ.ሪ. የመጠባበቂያ ምግብ ክምችት አስተዳደር

መ ግ ቢ ያ

ከላይ በአቤቱታ አቅራቢነት የተጠቀሱት ግለሰብ በ17/09/98 ዓ.ም. ለተቋማችን ባቀረቡት አቤቱታ መሰረት ግለሰቡ የመጠባበቂያ ምድብ ክምችት አስተዳደር በሻሸመኔ የምግብ ክምችት አስተዳዳሪ ሆነው ከጠቅምት 6/1986 ዓ.ም. እስከ ግንቦት 1988 ዓ.ም. በሚያገለግሉበት ወቅት የመስራቤቱን ንብረት አጉድለሀል ተብለው በሰኔ 30/1989 ዓ.ም. በቁጥር **ሠአ17/12/21** በተፃፈ ደብዳቤ ከስራና ከደሞዝ ታግደዋል፡፡ በተጠሪ መ/ቤት በኩል በዲሲኘሊን በወንጀልና በፍትሐብሔር ክስ ተመስርቶባቸዋል፡፡ በዲሲፕሊን ክስ በነሐሴ 19/98 ዓ.ም. በቁጥር **ሠአ17/12/25** በተፃፈ ደብዳቤ ከስራ ተሰናብተዋል፡፡ ሆኖም በወንጀልና በፍትሐብሔር በተመሰረተባቸው የእምነት ማጉደል ክሶች ከወንጀሉና ከፍትሐበሔሩ ክሶዎች በፍ/ቤት ነጻ ቢወጡም ወደስራቸው ለመመለስ በተደጋጋሚ ለመስሪያ ቤቱ አመልክተው ወደ ስራ ገበታቸው ለመመለስ እንዳልቻሉና አስተዳደራዊ በደል ተፈጽሞብኛል ሲሉ አቤቱታቸውን አቅርበዋል፡፡

ተቋማችንም በ15/12/98 ዓ.ም. በቁጥር **ዘ1 አቤአ1/59/1** ለመጠባበቂያ ምግብ ክምችት አስተዳደር በፃፈው ደብዳቤ በጉዳዩ ላይ ያላቸውን መልስ አግባብነት ካላቸው ማስረጃዎች ጋር እንዲቀርቡ ጠይቆ ተጠሪ መ/ቤት ያለውን መልስ አቅርበዋል፡፡ በዚህም መሰረት ከተጠሪ መ/ቤት ጋር ባደረግነው ውይይት ሰራተኛው ከስራ የተሰናበቱት የመንድስት ሰራተኞች አዋጅ ቁጥር 262/94 አንቀጽ 67/3/እና በቀድሞ የመንግስት ሰራተኛ ደንብ ቁጥር 1/196 አንቀጽ 88/2/ መሰረት የአስፈጸመው ሂደትን ተከትሎ የተሰናበቱ በመሆኑ ወደስራ ለመመለስ እንዳልቻሉ ገልጸዋል፡፡

እኛም መዝገቡን መርምረናል፡፡

ት ን ታ ኔ

መዝገቡን እንደመረመርነው ጉዳዩን ለሁለት ከፍለን በሚከተሉት ነጥቦች ላይ ማትኮር ተገቢ እንደሆነ ተረድተናል፡፡

1. አቤት ባይ ከስራ የተሰናበቱት ህጉ የሚያዘው ስነ-ስረዓት ሁሉ ተከብሮ ነው ወይ?
2. ከስራ ከተሰናበቱ በኃላ ለስንብቱ ምክንያት የሆነው የንብረት ማጉደል በፍርድ ቤት ውሳኔ አቤት ባይ ከተጠያቂነት ነጻ ከወጡ ወደ ስራ እንዳይመለሱ መከልከሉ አግባብ ነው ወይ?

የመጀመሪያውን ነጥብ ስንመለከት ተጠሪ መ/ቤት ለአቤቱታ አቅራቢው በሰጠው መልስ አቤት ባይ ከስራ የተሰናበቱት ሕግና ስረዓቱን ጠብቆ በመንግስት ስራተኞች አዋጅ ቁጥር 262/94 አንቀጽ 67/2/ እና በመንግስት ሰራተኞች ደንብ ቁጥር 1/1967 አንቀጽ 88/2/ በሚያዘው መስረት የአፈጻጸም ሂደትን ተከትሎ የተከናወነ በመሆኑ መመለስ እንደማይቻል በመጋቢት 9/1997 ዓ.ም. በቁጥር ዘ1/ሠአ17/15/72 በተጠሪ መ/ቤት የተጻፋው ደብዳቤ ይገልጻል::

ወደ ተጠሪ መ.ቤት መልስ በጥልቀት ከመግባታችን በፊት አቤት ባይ ከስራ የተሰናበቱት በነሐሴ 19/1989 ሆኖ ሣለ ከ1994 ዓ.ም. ጀምሮ ስራ ላይ የዋለውን የመንድስት ሰራተኞች አዋጅ ቁጥር 262/94 አዋጁ ከታወጀበት ቀን በኃላ የሉትን ጉዳዮች እንደሚገዛ እየታወቀ ከአምስት ዓመት በፊት ለተከናወነ የሰራተኝ ስንብት መጠቀሱ አግባብ እንዳልሆነ ተቋማችን ይገነዘባል::

ስለዚህ የአቤት ባይ የስራ ስንብት በተፈጸመበት ወቅት በስራ ላይ የነበረውን ደንብ ቁጥር 1/1967 አግባብነት ስላለው የተጠሪ መ/ቤት በአቤት ባይ የወሰነውን የስራ ስንብት አካሄድና ስነ-ስረዓት ለመገምገም እንጠቀምበታለን:: ደንብ ቁጥር 1/1967 እንቀጽ 88/2/ የሚደነግገውን እንጠቅሳለን:-

« በዲስፐሊን ምክንያት የሚወሰነው ቅጣት ማናቸውም ፍ/ቤት የሚሰጠውን የቅጣት ውሳኔ ሳይከተል ሊፍጸም ይችላል»

የዚህ ድንጋጌ አላማ አንድ የመንግስት ሰራተኛ የተሰጠውን ሀላፊነት በአግባቡ አልፈጸመም ተብሎ የዲሲፕሊን ክስ ወይም እንደነገሩ ሁኔታ የወንጀል ክስ ተመስርቶበት እያለ በስራ ላይ እንዲቀጥል ማድረግ ሌሎች ውስብስብ ሁኔታዎችን ሊፈጥር ስለሚችልና ስራም ስለሚበደል ሰራተኛውን በአንቀፅ 88/1/ ላይ በተቀመጠው መሰረት ከስራ አግዶ ማቆየት ተገቢ ነው:: ከላይ የተጠቀሰውን ደንብ አንቀጽ 88/1/ እንጠቅሳለን:-

«....... አንድ የመንግስ ስራተኛ በወንጀል ወይም በዲሲፕሊን ጥፋት በሕግ የተከሰሰ እንደሆነና ሲመስከርበት ጥፋቱ ጥፋቱ ከስራ የሚያስወጣ ሆኖ ሲገመት ከስራ ታግዶ መቆየት አለበት::»

ከዚህ አንጻር አቤት ባይ በተጠሪ መ/ቤት የዲሲፕሊን ኮሚቴ ጉዳያቸው ተጣርቶ ውሳኔ እስኪያገኝ ድረስ በሰኔ 30/1989 ዓ.ም. በቁጥር ሰአ17/12/21 በተጻፈ ደብዳቤ መታገዳቸው ህግን በሰኔ የተከተለ መሆኑን ተቋማችን የገነዘባል::

የተጠሪ መ/ቤት የዲሲፕሊን ኮሚቴ በአቤት ባይ የተመሰረተውን የንብረት ማጉደል ክስ መርምሮ ለመስሪያ ቤት ስራ አስኪያጅ ባቀረበው የውሳኔ ሃሳብ መሰረት በነሐሴ 19/1989 ዓ.ም. በቁጥር ሠአ17/12/25 በተፃፈ ደብዳቤ አቤት ባይ ከስራ እንዲሰናበቱ ተደርገዋል:: አቤት ባይም በውሳኔው ቅር በመሰኘታቸው ለሲቪል ሰርቪስ ኮሚሽን የአስተዳደር ፍ/ቤት ይገባኛል ጠይቀው በተጠሪ መ/ቤቱ የዲሲፕሊን ኮሚቴ የተሰጠውን ውሣኔ በ01/08/90 ዓ.ም. በቁጥር 6005/4365/90 በተጻፈው ደብዳቤ ጸድቋል::

ከዚህ ቀጥሎ በተጠሪ መ/ቤት የዲሲፕሊን ኮሚቴና የሲቭል ሰርቪስ ኮሚሽን የአስተዳደር ፍ/ቤት የሰጡትን ውሣኔዎች ከሕግ አንጻር እንመረምራለን::

የመንግስት ሰራተኞች የዲሲፕሊን ጥፋት አጥፍተዋል ተብለው ሲከሰሱ ጉዳያቸዉ በየመስሪያ ቤቱ በተቋቋሙ ነፃና ገለልተኛ የዲሲፕሊን ኮሚቴዎች ተመርምሮ ፍትሐዊ ውሳኔ ሊሰጣቸው እንደሚገባ ህግ ያዛል:: ጉዳያቸው የሚታይላቸው የመንግስት ሰራተኞችም ከቀረበባቸው ክስ ራሳቸውን ባግባቡ እንዲከላከሉ እድል ሊሰጣቸው እንደሚገባ ህግ የደነግጋል::

ከላይ የተጠቀሰው መሰረታዊ መርሆች አንጻር የተጠሪ መ/ቤት የዲሲፕሊን ኮሚቴን ውሳኔ ስንመረምር በውሳኔው ውስጥ የተንጸባረቀ በራካታ ሕጸፆች እንዳሉ ለመገንዘብ ችለናል::

ለአብነት ያህል የዲሲፕሊን ኮሚቴውን አወቃቀር ስንገመግብ አቤት ባይ በተጠሪ መ/ቤት ለተመሰረተባቸው ክስ ለዚሁ ዲሲፕሊን ኮሚቴ በሰጡት መልስ ላይ እንደጠቀሱት በተከሰሱበት የእምነት ማጉደል ክስ /የንብረት ማጉደል/ ምክንያት ናቸው ካሉት መካከል በየጊዜው የተሰጣው ህግ ወጥ የአለቆቻቸው ትህዛዝ መሆኑን ጠቅሰው ከነዚህ አለቆቻቸው መካከን በያጊዜው የተሰጣቸውን ሕግ ውጥ የአለዎቻቸው ትሕዛዝ መሆኑን ጠቅሰው ከነዚህ አለቆቻቸው መካከል በወቅቱ የናዝሬት መአከላዊ መጋዘን እተዳዳሪ የነበሩት አቶ **መና ደንዱን** ተጠያቂ እያደረጉ የዲሲፕሊን ኮሚቴው እኚሁ ግለሰብ በአባልነት አቅፎ ነው ውሳኔ የሰጠው:: ይህ ደግሞ ከላይ የተጠቀሰውን በየመንግስት መስሪያቤት የሚቆቆሙ የዲስፕሊን ኮሚቴዎች ገለልተኛ መሆን ይገባቸዋል የሚለውን መርህ የጣሰ ነው::

ሌላው የዲሲፕሊን ኮሚቴው ስራውን በሚሰራነበት ወቅት በተከሳሽና በከሳሽ መካከል የቀረቡትን ክስና መከላከያ ከመረመር በኃላ ተከራካሪ ወገኖች ያልተስማሙበትን/የተካካዱበትን/ ፍሬ ነገር እንደ ጭብጥ አስቀድሞ በማውጣጥ ማስረጃዎችንና መከራከሪያዎችን መመርመር እንደሚገባ በሕግ ተደንግጓል:: ከዚህ አንጻር የተጠሪ መ/ቤትም የዲሲፕሊን ኮሚቴ አሰራር ስናይ በወቅቱ ተከሳሽ /ያሁን አቤት ባይ/ እና ከሳሽ /ያሁን ተጠሪ መ/ቤት/ መካከል በነበረው የሚሲፕን ክስ ላይ ዳኝነት ሲሰጥ የጉሳዩ ፍሬ ነገር በጭብጥነት ሳይወጣ መሆኑ ትልቅ ህጸጽ ነው::ተከራካሪ የሆኑ ወገኖች የተለያዩበትን ውይም የተካካዱበትን ጭብጥ ሳይታወቅ ፍታዊ ውሳኔ ለመስጠት የሚያስችል ምርመራ ማድረግ አይቻልም ይን ህግ የሚያዘውን ስነ-ስረዓት ሳይከተል በዲስፕሊን ኮሚቴ የተሰጠውን ውሳኔ ተራ ቁጥር 2 ለአብነት እንጠቅሳለን::

«እኔ በሌለሁበት የሌሎች ሰራተኞች በራሳቸው የገቢ ደረሰኝ ስለ መስሪያቤታችን ሆነው የተረከቡት ስንዴ የቶር /TOR/ የሰነድ ሰራተኛ ጎዶሎ ሆኖ የገባውን እህል ሙሉ አድርጎ እንዳስገባ አድርጎ በጸፍ እና እኔ እህሉን እንደተረከብኩኝ ሆኘ ይህንን ሰነድ በመ/ቤትችን በመቀበሌ ለደረሰው ጉድለት ተጠያቂ አልሆንም ቢሉም፣

ሀ. ማንም ሳያስገድዳቸው በራሳቸው የእጅ ጹፍ ሰነድን ያወራረዱና ስለመረከባቸው የፈረሙ በመሆኑ፣

ለ. ችግር የፈጠረባቸውና ያላመኑበት ቢሆን ኖሮ ለመ/ቤቱ ከአሁን በፊት ያቀረቡት የቅሬታ ሰነድ ባለመኖሮ፣»

ከላይ በጥቅሉ የተቀመጠው የውሳኔ ሀሳብ ትንተና ስንመለከተው አቤት ባይ በተጠሪ መ/ቤት የበላይ ሀላፊዎች ትእዛዝ እሳቸው በሌሉበት የሌላ መ/ቤት ሰራተኞእ ንብረት ተረክበው በሰነድ መወራረዱ ነው:: የዲስፕሊን ኮሚቴው ውሳኔ ሕግ ወጥ የተጠሪ መ/ቤት የበላይ ሀላፊዎች ትህዛዝ መኖሩን አምኖ በዚሁ ትእዛዝ ምክንያት አቤት ባይ ጎድሏል የሚሉትን የመንግስት ንብረት አይቀበልም:: የማይቀበሉበት ምክንያት አቤት ባይ የሌላ መ/ቤት የንብረት ርክክብ ሰነድን ያለ አንዳንች ግዴታ በራሳቸው ፍቃድ በተጠሪው መ/ቤት የንብረት ርክክብ ሰነድ ላይ ተክለው በመፈረማቸው ነው :: አዚህ ላይ አቤት ባይ በበላይ አለቆቻቸው ስለ አለ መገደዳቸው የዲስፕሊን ኮሚቴው ያጣራው ነገር የለም:: ታዲያ በሌላ መ/ቤት ሰነድ ተወራርዶ አቤት ባይ በሌሉበት እሳቸው በሚያስተዳድሩት መጋዘን ውስጥ እንዲራገፍ ትእዛዝ ከተሰጠ ርክክቡ ህጋዊ መልክ እንዲይዝ በተጠሪ መ/ቤት ሰነድ ላይ እንዲገለበጥና ተፈርሞ እንዲወርብላቸው አያዙም ብሎ መገመት የሚያስችል አይደለም::

በዚህ መልኩ ተመርምሮ የቀረበው የዲስፐሊን ኮሚቴው የውሳኔ ሀሳብ ያለምንም ተቃዎሞ በተጠሪ መ/ቤት ስራ አስኪያጅ ጸድቋል:: ቀጥለን የፌደራል ሲቪል ኮሚሽን ያስተዳደር ፍ/ቤት የተሰጠውን ውሳኔ እንመረምራለን::

እዚህ ላይ ሊጠቀስ የሚገባው ነጥብ ያስተዳደር ፍ/ቤቶች የመደበኛ ፍ/ቤቶችን ተክተው ስለሚሰሩ እያንዳንዱ ያስተዳደር ፍ/ቤት ፍትሕዊ ውሣኔ ለመስጠት የሚያስችለውን ያሰራር ሥነ-ስርዕት (Procedures) መከተል ይገባዋል:: በአሰራሩም እንደ መደበኛው ፍ/ቤት ነፃና ገለልተኛነቱን መጠበቅ አለበት::

ከላይ ካነሳነው ሀሳብ ጋር የፌዴራል ሲቪል ሰርቪስ ኮሚሽን ያስተዳደር ፍ/ቤት ውሳኔን ስንመለከት አንዳንድነ የስነ-ስርዓት ጉዱለቶች እንዳሉበት ለመገንዘብ ችለናል::
ለአብነት ያህል የሚከተሉትን እንጠቅሳለን::

ያስተዳደር ፍ/ቤት በተከሳሽ /አቤት ባይ/እና በከሳሽ /ተጠሪ መ/ቤት/ መካከል በተደረገው ክርክር ተከሳሽ / አቤት ባይ/ ተጠያቂ የሆኑበት የተጠሪ መ/ቤት የኦዲት ሪፖርቱ ጋር ያየያዙ ቢሆኑም ይህን መግለጫ ኦዲተሩ ገንጥሎ ጉድለት የሚያሳየውን የኦዲት ምርመራ ሪፖርት ብቻ ለተጠሪ መ/ቤት በማቅረቡ ይህን ማስረጃ ለፌዴራል ሲቪል ሰርቪስ ያስተዳደር ፍ/ቤት ሊያቀርቡ ቢሞክሩም ፍ/ቤቱ በስር ክርክር /የዲሲኘሊን ኮሚቴ/ ያላቀረብከውን ማስረጃ ማቅረብ አትችልም በመባላቸውን አቤት ባይ በአቤቱታቸው ላይ ገልጸዋል ያስተዳደር ፍ/ቤቱም ውሳኔ ይህንኑ ያቤት ባይ ቅሬታ ይደግፈል::

ያስተዳደር ፍ/ቤቱን ውሳኔ እንጠቅሳለን

« የክርክር ነጥቦቹ አብዛኞቹ በዲሲኘሊን ኮሚቴ ያልተነሱ አዲስ ጭብጥ የሚያስነሱ በመሆናቸው የፍ/ብ/ሥ/ሥ/ሕ.ቁ.329 እና345 መሰረት በማድረግ ተቀባይነት የሌላቸው ከመሆናቸውም በላይ ......»

ያስተዳደር ፍ/ቤቱ በአቤት ባይ ይግባኝ ላይ ውሳኔ ሲሰጥ የተጠሪ መ/ቤት/የመልስ ሰጭ/ እና አቤት ባይ በሙግታቸው የተለያዩበትን ወይም የተካካዱበትን ጭብጥ ለይቶ ሳያወጣና ጉዳዩን ከጭብጡ አንጻር ሣይመረምር ለይግባኝ ሰሚ ያስተዳደር ፍ/ቤት ያቀረብካቸው ክርክሮችና ማስረጃዎች በስር ክርክ ያላቀረብከውን ነው ተብሏል:: የይግባኝ ክርክሩ ጭብጥ ተለይቶ ሳይወጣ የአቤታ ባይን የክርክር ነጥብ በስር ክርክር አላቀረብክም ነበር ለማለት ከቶም የሚቻል ነገር እንዳልሆነ እና የፍትሐብሄር ሥነ-ስርአት ህግ አንቀጽ 246/1/ን በግልጽ የጣሰ መሆኑን ለመገንዘብ ችለናል::

በመሰረቱ ያስተዳደር ፍ/ቤት በየአስተዳደር መሰሪያ ቤት ስላለው አሰራር የተሻለ ግንዛቤ እንዳላቸው ታምኖ ሲቋቋም ከመደበኛው ፍ/ቤቶች ይልቅ ስለየመስሪያቤታቸው ፍትሐዊ ውሳኔ ለመስጠት የሚያስችል ብቃት አላቸው ተብሎ ታምኖ ነው:: ባሰራራቸውም ፈጣንና ቀልጣፋ እንዲሁም ፍትሐዊ ውሳኔ ለመስጠት የሚያስችሉ ሥነ-ስርዓት መከተል ይገባቸዋል:: የፌዴራል ሲቪል ሰርቪስ ያስረዳደር ፍ/ቤት የመደበኛውን ፍርድ ቤት አሰራር (procedure) አጥብቆ ለመከተል ባደረገው ጥርት ያቤት ባይን መሰረታዊ መብት (substantive rights) ማሳጣቱ ተገቢ አይደለም::

በሕግ ምሁራን ዘንድተቀባይነት ያገኘውና

"Incidental procedural matters must not kill substantive rights"
የሚለውን መርህ ያልተከተለ ውሳኔ ነው:: በፌዴራል ሲቪል ሰርቪስ ኮሚሽን ያስተዳደር ፍ/ቤት የተሰጠው ውሣኔ::

በትንታኔ መግቢያችን ላይ ካነሳናቸውና አሁን የያዝነው ጉዳይ መሰረታዊ ነጠቦች የመጀመሪያውን ከላይ በተመለከተው መልኩ ከተነተንን ወደ ሁለተኛው ነጥብ እናመራለን::

በሁለተኛ ደረጃ የምንመረምረው ፍሬ ነገር በመግቢያችን ላይ እንደጠቀስነው ተጠሪ መ/ቤት በአቤት ባይ ላይ ከመስረተው ክስ አቤት ባይ ከወንጀሉ ክስም ይሁን ከፍትሐብሔር ክኩ ነፃ መውጣታቸውን ያመነው ጉዳይ ነው::

ከተቋማችን ተልኮና ስልጣን አኳያ በፍ/ቤቶች የተሰጠውን ውሳኔ ተመልሰን ለማየት አንፈልግም:: ፍ.ቤቶች የሚሰጡት ውሳኔ የመጨረሻና አስገዳጅ እንደሆነ እና ፍ/ቤቶች የሚሰጡትን ውሳኔ መሻር የሚቻለው በሕግ በተዘረጋው የይግባኝ ስርዓት ብቻ እንደሆነ ተቋማችን ይገነዘባል ያምንበታልም::

በተጠሪ መስሪያ ቤት የዲሲኘሊን ኮሚቴ ታይቶ አቤት ባይ ከስራ እንዲሰናበቱ የተደረገበት ዋናው ጉዳይ የመ/ቤቱን ንብረት በማጉደል ነው:: ነገር ግን ይህንኑ ጉዳይ ተንተርሶ በመደበኛ ፍ/ቤት አቤት ባይ ከተከሰሱበት የእምነት ማጉደል ወንጀል ነፃ ሲወጡ ፍ/ቤቱ የሚከተለውን አስፋረል:: እንጠቅሳለን::

በብዙ ሺህ የሚገመት እህል በማንቀሳቀስ ሂደት ውስጥ ጉዱለት ሊከሰት አይችልም ብሎ ማሰብ የማይቻል ከመሆኑም ሌላ ቁጥጥሩ አሻሚ በሆነ ሁኔታ የተከናወነ በመሆኑ ተከሳሽን ጥፋተኛ ማድረግ አስቸጋሪ ስለሆነ የመከላከያ ምስክሩ የበለጠ አሳማዘኝ ሆኖ በመደኘቱ::

በኢትዮጵያ ወንጀለኛ መቅጫ ህግ ስነ-ስርዓት አንቀፅ 149/2/ መሰረት ተከሣሽ ጥፋተኛ አይደከሉም ብለን በነፃ አሰናብተናል፡

በጥቅሉ በግልፅ እንደተገለፀው የመንግስት ንብረት የጉደለው በአቤት ባይ ጥፋት ሳይሆን በመስሪያ ቤቱ ክርክር አሰራር ምክንያት እንደሆነ ያሳያል፡፡

ይህንኑ ጉዳይ የበለጠ የሚያጠናክርልን ነጥብ አቤት ባይ በፍታብሄር ከተከሰሱበት ክስ ሊጠየቁ አይገባም ሲል የኦሮምያ ጠቅላይ ፍ/ቤት በቀን 30/03/94 በዋለው ችሎት የሰጠውን ውሳኔ እንጠቅሳለን፡፡

«......... የተሰራው ስራ ለዚህ ለተከሰሰበት ችግር ምክንያት ቢሆንም ተከሳሽ ይህንኑ እየገለጸ ከመኪናው ወደ እህል እየጫነ ኦዲተሮችም እንደተመዘነ አድርገው በመቁጠር እንዲሁ በጭፍን አስበው በተከሳሹ ላይ ጉዳት ለማዱረስ ካልሆነ በቀር ጉድለት አስከትሏል ሊያሰኝ የሚችል አይደለም፡፡

አቤት ባይ አጉድለዋ የተባለው የምንግስ ንብረት በተጠሪ መ/ቤት ያሰራር ችግር የጎደለ መሆኑ ከላይ በተጠቀሱት ነፃና ገለልተኛ ፍ/ቤቶች ተረጋግጧል፡፡

በነዚህ ፍ/ቤቶች የተሰጠው ውሳኔ አስገዳጅ ከመሆኑም አንጻር በተመሳሳይ የንብረት ማጉደል ክስ የተወሰደው አስተዳደራዊ የስራ ስንብት እጣ ፈንታ ምን መሆን ይገባዋል? የሚል የማቀጥለው ጥያቄአችን ነው፡፡

ለተጠሪ መ/ቤት የዲሲኘሊን ኮሚቴ ውሳኔ መነሻ የሆነው ምክንያት በአቤት ባይ ላይ የተመሰረተው የንብረት ማጉደል ክስ በነጻና ገለልተኛ ፍ/ቤት አቤት ባይ ሊጠየቁበት የሚችል ንብረት አልጎደለም ከተባለ የዲሲኘሊን ኮሚቴው ውሳኔ የሚቆምበት መሰረት የለውም፡፡ ነፃና ገለልተኛ ፍ/ቤቶች አቤት ባይ ያጎደሉትን ንብረት የልም እያለ የዲሲኘሊን ኮሚቴው ውሳኔ በተመሳሳይ ሰበብ (cause) አቤት ባይን ተጠያቂ ለያደርግ የሚችልበት የህግም የሁን የአመንክዬ መሰረት የለውም፡፡

ስለዚህ ተጠሪ መ/ቤት አቤት ባይ ወደ ስራ መልሱኝ ብለው በጠየቁት መሰረት አቤት ባይን ላለመመለስ የጠቀሰው የመንግስት ስራተኞች ደንብ አንቀጽ 88/2/ አቤት ባይን እንዳይመለሱ ስለማይከለከላቸው በተጨማሪም ጎድሏል የተባለው የመንግስት ንብረትን ተንተርሶ የተሰጠ የስራ ስንብት ውሳኔ በፍ/ቤት የጎደለ ንብረት የለም አቤት ባይ ሊጠየቁ አይገባም ተብሎ በተወሰነ ግዜ ያለምንም ተጨማሪ መመሪያ(automatically) አቤት ባይን ወደ ስራ መመለሱ ከህግም ይሁን

ከአመንክዩ አንጻር ተገቢ ነበር:: በዚህ ረገድ ተጠሪ መ/ቤት ባይ ለጠየቁት ወደ ስራ ልመለስ ጥያቄ ላይ በመጋቢት 9/1997 ዓ.ም. በቁጥር ዘ1/ሰአ17/15/72 የተፃፈው ደብዳቤ ፈጹም ህግን ያልተከተለና አቤት ባይ ወደ ስራ እንዳይመለሱ የሚከለክል አንዳች ምክንያት መጥቀስ ያልቻለ ነው::

የ ው ሳ ኔ ሃ ሳ ብ

ከላይ በትንታኔው ክፍል እንዳብራራነው አቤት ባይ ከስራ ሲሰናበቱ የተጠሪ መ/ቤት የዲሲፕሊን ኮሚቴና የሲቪል ሰርቪስ ኮሚሽን የአስተዳደር ፍ/ቤት በሰጡት ውሳኔዎች ላይ በርካታ ህጸጾች እንዳሉ ተቋማችን ተገንዝቧል:: ከዚህ በተጨማሪ አቤት ባይ በተጠሪ መ/ቤት ከተመሰረተባቸው የፍርሐብሄርና የወንጀል ክሶች ነፃ ከወጡ በኃላ ወደ ስራ አለመመለሳቸው በተጠሪ መ/ቤት የተፈፀመ ፅፋት ነው::

በአጠቃላይ ተቋማችን ባደረገው ምርመራ ተጠሪ መ/ቤት የሕዝብ እንባ ጠባቂ ተቋም በተቋቋመበት አዋጅ ቁጥር 211/92 አንቀፅ 2/5/ላይ በተገለፀው መሰረት የአስተዳደር በደል ፈፅሞአል ብሎ አምኖል::

ስለዚህ ከላይ በተጠቀሰው አዋጅ አንቀፅ 26/2/ መሰረት የሚከተለውን የውሳኔ ሀሳብ ያሳልፋል:፤

1. አቤት ባይ አቶ አክሊሉ ሀይሉ ወደ ቀድሞ ስራ ገበታቸው ይመለሱ
2. የደረጃ እድገታቸውና ደሞዛቸው በስራ ቢቆዬ ኖሮ ሊያገኙት ከሚችሎት ደረጃና ደሞዝ አንፃር ታየቶ የስራ ምደባው ይከናወን::
3. ከስራ ከመሰናበታቸው በፊት የልተጠቀሙበትን የዓመት እረፍት እንዲሁም አበል ካለ ህጉ በሚያዘው መሰረት ይፈፀምላቸዋል::

ተጠሪ መ/ቤት ይህ የውሳኔ ሀሳብ በደረሰው በአጭር ጊዜ ውስጥ የወሰደውን እርምጃ ለተቆማችን እንዲያሳውቅ እናሳስባለን::

This work is licensed under a
Creative Commons
Attribution – NonCommercial - NoDerivs 3.0 License.

To view a copy of the license please see:
http://creativecommons.org/licenses/by-nc-nd/3.0/

This is a download from the BLDS Digital Library on OpenDocs
http://opendocs.ids.ac.uk/opendocs/

Institute of
Development Studies