



THE ROLE OF ETHIOPIAN HUMAN RIGHTS COMMISSION IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS: A COMPARATIVE ANALYSIS

A THESIS SUBMITTED TO JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE LL.M DEGREE IN HUMAN RIGHTS AND CRIMINAL LAW

SUBMITTED BY: MULUGETA SAHILE

PRINCIPAL ADVISER: Dr ALEMU MEHRETU

CO-ADVISOR: Mr. ZELALEM SHIFERAW (LLB, LL.M)

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Declaration

I, MULUGETA SAHILE, hereby declare that, this thesis prepared for the partial fulfillment of the requirements for LL.M Degree in Human rights and Criminal law in a title “The Role of Ethiopian Human Rights Commission in the Protection and Promotion of Human Rights: A Comparative Analysis” is my own work and that it has not been submitted for any degree in other university. Whenever other sources are used they have been duly acknowledged.

Student

Date

Signature

MULUGETA SAHILE

Approved by Board of Examiners

Name	Date	Signature
1. ALEMU MEHRETU (PHD) ADVISOR	-----	-----
2. -----	-----	-----
3. -----	-----	-----
4. -----	-----	-----

List of Abbreviations and Acronyms

ACHPR- African Charter on Humans and Peoples Rights

CHRAJ- Commission on Human Rights and Administrative Justice

CSOs- Civil Societies Organizations

ECOSOC- Economic and Social Council

ESCR- Economic, Social and Cultural Rights

EHRC- Ethiopian Human Rights Commission

FDRE- Federal Democratic Republic Of Ethiopia

ICC- International Coordination Committee of National Institutions

KHRC- Kenyan Human Rights Commission

NGOs- Non-Governmental Organizations

NHRIs- National Human Rights Institutions

SAHRC- South African Human Rights Commission

UNGA- United Nations General Assembly

UN- United Nations

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Abstract

Like many countries in the world, Ethiopia has established Ethiopian Human Rights Commission (EHRC) for the purpose of promoting the protection of human rights. But, the EHRC has not been effective in addressing the human rights concern it was established for. Its operational efficiency has been hindered by different challenges which undermined its internal excellence and external credibility. Majority of the community has not been the beneficiary of the service of the commission. The commission does not prefer to take proactive measures against human rights violations. There are even circumstances in which the commission refrained from hearing voices of sufferings.

This study mainly aims to table appropriate solutions to the challenges affecting the effective functioning of EHRC. To achieve this, it critically analyzes the normative and institutional frame works and the practical works of the EHRC in line with Paris principles. It also did comparative and contextual looking at the experiences of selected human rights commissions because relying only on Paris principles may not provide panacea for the challenges since Paris principles have their own short comings. Accordingly, the study compares the EHRC with South African Human Rights Commission (SAHRC) and Kenyan Human Rights Commission (KHRC) in terms of mandate, composition, process of appointment of the officials, resource capacity, accessibility, level of cooperation with other relevant institution, accountability, and transparency. The relevant experiences of Commission on Human Rights and Administrative Justice (CHRAJ) of Ghana are also considered in relation to some key issues.

By using qualitative methodology, this thesis analyzed both primary and secondary sources of data collection. Interview with the concerned officials of the commission and other individuals is another method employed. Finally, the thesis has found that, in addition to compliance with conditions provided under Paris principles, the political willingness of government, developing the culture of democracy, promoting and encouraging the engagement and participation of civil society in the process of human rights promotion and protection and strong leadership and management are crucial for the effective functioning of EHRC. As a result of these findings and on the basis of lessons drawn from the experiences of the selected human rights commissions, the thesis recommends different measures to be taken by the government and the EHRC so as to enhance the effective functioning of the EHRC.

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Background of the Study

Although the UN system has recognized the importance of the protection and promotion of human rights through adopting various international and regional human rights instruments and institutions, the issue of effective implementation of these norms at national level is inadequate. Many states are not properly discharging their duty to respect, protect and fulfill human rights as provided under the international human rights instruments they have ratified. And the existing international system of human rights protection has been proven to be insufficient in making states responsible for human rights violations and in ensuring the effective protection of human rights.¹ This shows that the international and regional human rights standards cannot be adequately enforced unless the national system, as the primary machinery, engages in the effective protection and promotion of human rights at the national level.²

This concern necessitated the adoption of national human rights institutions (NHRIs) for the purpose of promotion and protection of human rights at national level. The first attempt for the establishment of NHRIs was made by the UN Economic and Social Council (ECOSOC).³ Resolution enacted by ECOSOC recognizes the potential roles NHRIs could play in the protection and promotion of human rights and encourages the governments to establish NHRIs which cooperate with the UN human rights system.⁴ This effort under the UN system continued and the Paris principles were adopted in the first international workshop on national institutions for the promotion and protection of human rights held in Paris in 1991.⁵

The Paris principles provide standards to be met by the NHRIs and these standards were recognized and incorporated under UN Commissioner for Human Rights and UN General

¹ UN Office of the High Commissioner for Human Rights, Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Center of Human Rights Professional Training Series No.4/1995 (UN Hand Book), par. 21

² *ibid* par.13

³ C. Raj Kumar, 'National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights' (2003)19 (2) AUILR 266

⁴ UN Economic and Social Council's Resolution No. 2/9/1946; See also Kumar (n 3) 266

⁵ UN Hand Book (n 1) para.22-25; Morten Kjaerum, *National Human Rights Institutions Implementing Human rights* (MartinusNijhoff Publishers 2003) 6

Assembly as official principles relating to the status of NHRIs.⁶ There are also other international, regional and national human rights instruments which recognize the roles of NHRIs and requires for their establishment and functioning in line with the Paris principles (as discussed in the next chapter).

Despite the recognition given to the NHRIs, some NGOs and scholars undermine the role of NHRIs in Africa claiming that African NHRIs were established to skip international criticism but serve nothing.⁷ However, this argument is a hasty generalization and too skeptical. We have witnessed NHRIs in Africa serving as an effective instrument in the protection and promotion of human rights by supervising the conduct of the government. For instance, the SAHRC has been playing great role in the protection of human rights, promoting culture of respect for the rule of law and promoting good governance by supervising the conduct of South African government and making it accountable, transparent, and responsive to the needs of the people.⁸ The role of NHRIs is quite important especially in developing countries where parliaments and courts are not strong and effective enough in discharging their mandate of human rights protection.

Currently, many countries in the world have established National Human Rights commissions as a means of enforcing human rights at national level. The current government of Ethiopia also established the EHRC as one mechanism of redressing human rights violations in Ethiopian. The EHRC was established and operating in line with the standards provided by the FDRE constitution and the EHRC establishment proclamation.⁹ It is mandated to promote the protection of human rights through different mechanisms.¹⁰

But, the EHRC has not been adequately and effectively addressing the human rights concern it was established for. Majority of the community has not been the beneficiary of the service of the commission; even some of them do not know the existence of the institution. The commission does not prefer to take proactive measures and the shaming and naming style of reporting against

⁶ UN General Assembly Resolution No.48/1993, The Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (The Paris Principles); UN Commission on Human Rights Resolution No.54/ 1992

⁷ Chinedu Idike, Deflectionism or Activism? The Kenya National Commission on Human Rights in Focus, available at < <http://projects.essex.ac.uk/ehrr/VIN1/Idike.pdf>.> (accessed on May 23, 2018)

⁸ Tseliso Thipanyane, 'Strengthening Constitutional Democracy: Progress and Challenges of the South African Human Rights Commission and Public Protector' (2015) 60 NYLSLR 130-132

⁹ The Constitution of Federal Democratic Republic of Ethiopia 1995 (FDRE Constitution), Article 55(14); The Ethiopian Human Rights Commission Establishment Proclamation No.210/2000 (EHRC Establishment Proclamation)

¹⁰ EHRC Establishment Proclamation (n 9), Article 6 (1) (2) (3) (4) (5) (6) (7), Article 19 (2) (d)

human rights violations. There are even circumstances in which the commission refrained from hearing voices of sufferings which affected its credibility before the public.¹¹ This is because of problems in its normative and institutional frame works in relation to its mandate, composition, and methods of appointment of its officials. Lack of independence, resource and accessibility, low level of cooperation with other relevant human rights institutions and lack of accountability and transparency are the major practical problems affecting the operational efficiency of the EHRC. So, this study mainly aims to table appropriate solutions to the challenges affecting the effective functioning of EHRC. This will be done through critical analysis of the normative and institutional frame works and the practical works of the EHRC in line with the standards provided under the Paris principles and in comparison with the national human rights commissions in other jurisdictions there by drawing lessons for Ethiopia.

Accordingly, this study compares the EHRC with the SAHRC and the KHRC. These human rights commissions are selected for the following reasons: First, before the coming to existence of these human rights commissions, the respective countries share the history of massive human rights violation and these human rights commissions were established to respond against the depressive past. For instance, the South Africans have faced massive human rights violation under the apartheid regime and the SAHRC was established as one mechanism of ensuring the human rights protection in South Africa.¹² Kenyans have also been in a challenging human rights environment and an important step towards the protection and promotion of human rights in Kenya was taken when the KHRC was established.¹³ Similarly, Ethiopians have been in a challenging human rights environment because of dictatorial (Derg) regime and the EHRC was adopted as one means of remedying depressive past through human rights protection.¹⁴

Secondly, the SAHRC and KHRC are the most effective NHRIs in Africa in ensuring the protection of human rights and their trend can be a role model for other human rights commissions including the EHRC. According to Francis, “There has been progress in South

¹¹ Mohammed Abdo, *The Human Rights Commission of Ethiopia and Issues of Forced Evictions- A Case-oriented Study of its Practice*, available at < <https://biblio.ugent.be/publication/5826348/file/5847861.pdf> > (accessed on January 18 2018)

¹² Thipanyane (n 8) 126

¹³ Idike (n 7) 51; See also Kithurie Kindiki, ‘On the Independence of the Kenya National Commission on Human Rights: A Preliminary Comment’ (2004) 2 (2) EJHRD 120

¹⁴ Mohammed Abdo, *The Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance: Challenges and Prospects* available at <<https://biblio.ugent.be/publication/5855951/file/5876631.pdf>> (accessed on June 10, 2018)

Africa in making the right a reality for many as the result of the effort of South African Human Rights Commission”.¹⁵ Because of its independent and effective functioning the SAHRC is recognized as NHRIs fully compliant with the Paris Principles and accredited with ‘A’ status.¹⁶ The KHRC has also been discharging its human rights protection mandate in an independent and effective manner, has built popular credibility for its independent practical operation and considered as champion of democracy and human rights protection in the country.¹⁷ Because of its independent and effective functioning the KHRC is recognized as NHRIs fully compliant with the Paris Principles and accredited with ‘A’ status.¹⁸

There are also something common in the legal system adopted by the respective countries which is another reason for selecting the KHRC and SAHRC. Kenya adopted common law legal system¹⁹ while South Africa and Ethiopia adopted the legal system which is hybrid of common law and civil law tradition. In South Africa, substantive laws such as contract, tort, criminal law and family law are subject to civil law legal tradition while common law tradition governs evidence and procedural laws.²⁰ In Ethiopia, substantive laws such as civil code which deals with contract, tort, etc and criminal code are adopted from civil law legal system while evidence and procedural laws reflect the characteristics of both civil and common law legal system. For the above reasons, the comparison with the SAHRC and the KHRC will help the EHRC to share experiences and to find solutions for the challenges facing its effective functioning. Besides, the relevant experience (practices) of CHRAJ of Ghana is also considered in this study in relation to some key issues.

¹⁵ Francis Khayundi, *The South African Human Rights Commission's Role in the Promotion, Protection and Monitoring the Right to Education in South Africa* (Rhodes University 2013) 228-240

¹⁶ South African Human Rights Commission Annual Report 2017 (SAHRC Annual Report 2017), 9 available at <<https://www.sahrc.org.za/home/21/.../SAHRC%20Annual%20Report%202017%20HR.P> > (accessed on May 30, 2018)

¹⁷ Kenya National Commission on Human Rights Annual Report 2016/2017 (KHRC Annual Report 2016/2017), 1, 30-31 available at <<https://www.khrc.or.ke/mobile-publications/other-practical-information/176-kenya-human-rights-commission-2016-2017-annual-report.html?path=other-practical-information>. > (accessed on May 23, 2018); See also Idike (n 7) 51

¹⁸ Kenya National Commission on Human Rights Annual Report 2013/2014 (KHRC Annual Report 2013/2014), 19, 55 available at <[www.knchr.org/.../Annual Reports/KNCHR%20Annual%20Report%202013-2014](http://www.knchr.org/.../Annual%20Reports/KNCHR%20Annual%20Report%202013-2014) > (accessed on May 23, 2018); See also Kenya National Commission on Human Rights, 12th Annual Report 2015/2016 (KHRC 12th Annual Report 2015/2016), 15 available at <[www.knchr.org/.../Annual Reports/Annual%20English%20FINALE%20COPY.compre](http://www.knchr.org/.../Annual%20Reports/Annual%20English%20FINALE%20COPY.compre) > (accessed on May 30, 2018)

¹⁹ Joireman Sandra F, *The Evolution of the Common Law: Legal Development in Kenya and India* (Political Science Faculty Publications 2006) 13-20

²⁰ Obeng Mireku, Three Most Important Features of the South African Legal System that Others Should Understand, 215, available at <<http://www.ialsnet.org/meetings/enriching/mireku.pdf>>(accessed on February 01 2018)

Although the Paris principles provide fundamental standards with regard to the status of NHRIs, the details about these principles are not provided which makes them general and vague. So, the contextual looking at the experiences of the selected human rights commissions will help to set appropriate and comprehensive remedy to the challenges affecting the EHRC through drawing lessons.

1.2.Review of Related Literatures

There are few studies conducted in relation to the EHRC. For example, Mohammed Abdo, in his work entitled “The Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance: Challenges and Prospects”²¹ discussed about the establishment of the commission, the pushing factors for its establishment and its normative frame works. This work also discusses factors affecting the effective functioning of EHRC with emphasis on the independence aspect. This work is limited in terms of addressing the overall achievements and challenges of the commission in line with the Paris principles. The work did not provide comprehensive solution to the challenges affecting the effective functioning of the EHRC. Helina Azezes paper entitled “Assessing the Effectiveness of the Ethiopian Human rights Commission in Light of the 1991 Paris principles”²² discussed issues such as the origin of the commission, the pushing factors for its establishment, the mandate and challenges facing its effective functioning. Similar issues were raised by Yemisrach Indales work entitled “The Role and Challenges of Ethiopian Human Rights Institutions in the Protection of Human Right in Light of the Paris Principle”.²³ These two works analyze the role of EHRC in line with the Paris principles and their findings and recommendations are totally dependent on the Paris principles.

Although making reference to Paris principle as standard is appropriate, in the opinion of the author of this work, relying only on the Paris Principles cannot serve as a comprehensive remedy to the challenges affecting the EHRC. This is because, as will be discussed latter, the details about the Paris principles are not provided which makes them general and vague. So, the author found it appropriate to have contextual looking at the good and relevant experiences of the

²¹ Abdo, The Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance (n 14)

²² Helina Azeze, ‘Assessing the Effectiveness of the Ethiopian Human rights Commission in Light of the 1991 Paris principles’(Masters Theses, Addis Ababa University 2014)

²³ Yemisrach Indale, ‘The Role and Challenges of Ethiopian Human Rights Institutions in the Protection of Human Right in Light of the Paris Principle’ (Masters Theses, Central European University 2010)

selected human rights commissions to set appropriate and comprehensive remedy to the challenges affecting the EHRC through drawing lesson.

According to the knowledge and access of the author until the writing of this study, there is no comparative study conducted in relation to EHRC. None of the above works have resorted to the jurisdiction of other national human rights commission as means of addressing the problems of EHRC through drawing lessons for Ethiopia. So, this study mainly aims to table appropriate solutions to the challenges affecting the effective functioning of EHRC through critical analysis of the normative and institutional frame works and the practical works of the EHRC in line with the standards provided under the Paris principles and in comparison with the selected human rights commissions there by drawing lessons for Ethiopia.

1.3.Statement of the Problems

Ethiopians have been in a challenging human rights condition under the ruling system of different governments specially the Derg regime. And the EHRC was established as one of the means of repressing the depressive past by protecting and promoting the human rights of people. But, the EHRC has not been adequately and effectively addressing the human rights concern it was established for. Majority of the community has not been the beneficiary of the service of the commission; even some of them do not know the existence of the institution. In addition, the commission does not prefer to take proactive measures and its system of operation may not deter the violation of human rights because the commission does not prefer to use shaming and naming style of reporting against human rights violations. There are even circumstances in which the commission refrained from entertaining complaints alleging eviction and human rights violation by government.²⁴

The in effectiveness of the commission is attributable to problems in its normative and institutional frame works in relation to its mandate, composition, and methods of appointment of its officials. While the Paris principles requires abroad and specific mandate for the effective functioning of the NHRIs, the FDRE constitution and the EHRC establishment proclamation failed to give explicit mandate to the EHRC with regard to the realization of socio-economic rights in Ethiopia. As can be inferred from article 11 of the proclamation, the process of appointing the commissioners of the EHRC excludes the Civil Societies Organizations (CSOs) or

²⁴ Abdo, The Human Rights Commission of Ethiopia and Issues of Forced Eviction (n 11)

Non-Governmental Organizations (NGOs) since they are excluded from the nominating committee. In practice, the committees do not allow the public and the CSOs to participate and comment on the nomination of the commissioners which makes the process of appointment non-open and non-participatory. The composition of the EHRC is not sufficiently representative since its current composition excludes representatives from relevant bodies such as CSOs, media and disabled people which in turn compromise the independent and effective functioning of the EHRC.

Generally, lack of independence, resource and accessibility, low level of cooperation and lack of accountability and transparency are the major factors affecting the operational efficiency and effective functioning of the EHRC.²⁵ These challenges hindered the commission in its overall human rights protection and promotion and affected its credibility.

So, this study mainly aims to table appropriate solutions to the challenges affecting the effective functioning of EHRC.

1.4.Objectives of the Study

1.4.1. General Objective

The general objective of this study is to provide appropriate solutions to the challenges affecting the effective functioning of EHRC through critical analysis of the normative and institutional frame works and the practical works of the EHRC in line with the standards provided under the Paris principles and in comparison with the selected human rights commissions there by drawing lessons for Ethiopia.

1.4.2. Specific Objectives

This comparative study has the following specific objectives:

- To critically analyze the problems in the mandate, composition and process of appointment of the officials of the EHRC in line with the Paris principles and in comparison with the selected human rights commissions
- To critically analyze the independence and resources capacity of the EHRC in line with the Paris principles and in comparison with the selected human rights commissions

²⁵ Abdo, The Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance (n 14)

- To critically analyze the level of accessibility, cooperation, accountability and transparency of the EHRC in line with the Paris principles and in comparison with the selected human rights commissions
- To provide comprehensive solution, through the above analysis and comparison, to the Challenges affecting the effective functioning of EHRC by drawing lessons from the experiences of the selected human rights commissions

1.5. Research Questions

- What are the problems in the mandate, composition and process of appointment of the officials of the EHRC if seen in line with the Paris principles and in comparison with the selected human rights commissions?
- Is the EHRC sufficiently independent and does it have adequate resources as required by Paris principle and when compared with the selected human rights commissions?
- Is the EHRC sufficiently accessible, cooperative, accountable and transparent if seen in line with the Paris principles and in comparison with the selected human rights commissions?
- What lessons can be drawn from the performances and experiences of the selected human rights commissions?

1.6. Scope and Limitation of the Study

This study assess and evaluate the normative and institutional frame works and performance of the EHRC on the bases of the effectiveness criteria's such as independence, mandate, adequate fund, accessibility to the public, level of cooperation with other bodies, accountability and transparency. It is a comparative study and the experiences or good practices of the selected national human rights commission are raised in the areas where the EHRC have problems which affect its effective functioning.

The issue of studying NHRIs in a comparative base is wide concept which needs the analysis of the normative and institutional frame works and practical performance of the institutions. On the other hand, time and resource constraints have hindered me while dealing on each and every aspect of these issues.

1.7. Significance of the Study

Massive human rights violation is the long standing trend in Ethiopia and the EHRC is one of the institutions mandated to respond against these violations through different mechanisms. So, this study is important to assess and judge the effectiveness of EHRC in reference with standards under the Paris principles and the human rights commissions of other jurisdiction. The study mirrors out, through a comparative analysis, the limitation and legal and practical gaps of EHRC. It also shows the ways as to how the Ethiopian government, policy makers and the EHRC should act in order to fulfill the gaps. The study will also contribute to the academic issues in relation to the effective functioning of EHRC.

1.8. Research Methodology

This study is a comparative study and a doctrinal one which in some areas uses information's obtained through interview to substantiate issues and support the analysis. In doing so, it seeks to make comparison mainly between three national human rights commissions such as the EHRC, SAHRC and KHRC. The reasons for choosing these commissions are provided above. Besides, the relevant experience of CHRAJ of Ghana is also considered in this study in relation to some key issues. The study compares these human rights commissions on the bases of criteria such as independence, mandate, and composition, process of appointment of the officials, resource capacity and level of accessibility, cooperation, accountability and transparency.

The approach pursued is qualitative in which different data collection mechanisms are employed. A qualitative analysis of relevant theoretical concepts, international and regional human rights instruments and jurisprudence of the selected human rights commissions are conducted. In doing this study, both primary and secondary data are employed as research process to study the various issues involved in the research. Secondary data are collected from books, journals, websites, scholarly articles, reports, unpublished thesis etc while constitutions, laws, documents, cases, international and regional human right instruments are used as primary sources. Besides, to critically analyze the current reality in the ground about the effectiveness of EHRC, the concerned officials of the EHRC and others are interviewed.

1.9. Structure of the Study

The thesis contains five chapters, which are organized as follows:

Chapter one covers introductory points on the back ground of the study, literature review, statement of the problems, objective of the study, research questions, research methodology, scope and limitation of the study, significance of the study, and organization of the study.

Chapter two of this study is devoted to the discussion about the conceptual and normative frameworks of NHRIs. It discusses the definition and types of NHRIs and the international, regional and national normative bases for the establishment and functioning of NHRIs.

Under *chapter three*, the study makes critical analysis of the normative and institutional framework of the EHRC in line with the Paris principles and in comparison with the selected human rights commissions. In this chapter, the mandate, composition, method of appointment and removal of officials and the institutional and financial independence of the EHRC are analyzed in line with the Paris principles and through comparative study. The purpose here is to identify the normative and institutional gaps hindering the effective functioning of EHRC by way of comparative and critical analysis and to find the ways for ward.

Under *chapter four*, the study makes a critical analysis of the practical works of the EHRC in line with Paris principle and by way of comparative study. In this chapter, the works of the EHRC are assessed based on the criteria such as practical independence, accessibility to the community, level of cooperation with relevant bodies, accountability, transparency and operational efficiency. The purpose here is to identify the practical gaps hindering the effective functioning of EHRC by way of comparative and critical analysis and find the ways for ward.

Chapter five draws some conclusions and recommendations on how the EHRC will effectively function for the future. This chapter contains the final conclusions and recommendations which I will draw from the overall analysis.

CHAPTER TWO

THE CONCEPTUAL AND NORMATIVE FRAME WORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS: OVERVIEW

2.1. Introduction

The twentieth century has shown us the internationalization of human rights issues through the adoption of various international human rights norms and institutions. Because of the adoption of these norms and institutions, there was a general assumption that the protection of human rights is an international responsibility. However, recently there is a consensus that the international system of human rights protection should be supplemented by the regional human rights system and the national system of human rights protection should act as primary machinery for the effective protection and promotion of human rights. The adoption of large numbers of regional and national human rights instruments and the recent proliferation of NHRIs can be an evidence for this. Currently, many international, regional and national human rights instruments have been adopted which deals with the establishment and functioning of NHRIs. These instruments facilitate the effective functioning of the NHRIs by providing necessary criteria or conditions to be fulfilled by the NHRIs during their establishment and functioning. The conditions provided under these instruments are quite important to uniformly assess and determine the status and effectiveness of the NHRIs. And for a given NHRIs to effectively discharge its mandate, it should be established and function in line with these conditions.

This chapter, after providing the definition and types of NHRIs, discusses the international, regional and national normative foundation for their establishment and functioning.

2.2. The Definition and Types of NHRIs

Taking the protection and promotion roles of NHRIs in to consideration, the UN hand book defined NHRIs as Bodies established by a government under the constitution, by law or by decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.²⁶ But, this definition is criticized as too broad to include institutions at national level which do not qualify as NHRIs.

²⁶ UN Hand Book (n 1) para.6

Different writers also defined NHRIs in different ways. For instance, Jeong-Woo Koo and Francisco O. Ramirez have defined NHRIs as government sponsored organs whose functions are specifically defined in terms of the promotion and protection of human rights.²⁷ But, this definition failed to provide the criteria of independence which is quite important condition for the effective functioning of NHRIs. According to Anna Elina Pohjolainen, NHRIs are independent bodies established by the government for the specific purpose of advancing and defending human rights at national level.²⁸ Although this definition clearly provides the independence criteria, it is not free from problem because it does not clearly provide the way through which the NHRIs may be established; through the constitution, act of parliament or through decree. Mario Gomez has defined NHRIs as bodies set up under an act of parliament or under the Constitution and funded by state with the broad objective of protecting and promoting human rights.²⁹ This definition is relatively better when compared with the above definitions though it does not provide the criteria of independence.

In general, although many have tried to define the word NHRIs, there is no a single, comprehensive, precise and commonly agreed definition for the term. But, for the purpose of this study, NHRIs may be defined as an independent national institution established, either by the constitution and/ or laws and funded by the concerned government, for the purpose of protection and promotion of human rights. This definition taken from the above definitions can represent the true characteristics of NHRIs since it clearly provides elements such as the government as a proper authority to establish the institution, the institution should be established by law which cannot be easily changed, the institution should be established as an independent body, the institution should be funded by the government and the purpose of the institution should be the protection and promotion of human rights.

There are different types of NHRIs that can be included under this broad definition such as national ombudsman, national human rights commission, hybrid institution or other specialized human rights bodies.³⁰ National ombudsman is an individual or a group of persons who are appointed by the parliament in line with the constitution or other special law and who protects

²⁷ Jeong-Woo Koo and Francisco O. Ramirez, 'National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions' (2009) 87(3) SF 1324

²⁸ Anna Elina Pohjolainen, *The Evolution of National Human Rights Institutions: The Role of United Nation (Danish Institution for Human Rights 2006)* 1

²⁹ Mario Gomez, 'Sri Lanka's New Human Rights Commission' (1998) 20 HRQ 281

³⁰ UN Office of the High Commissioner for Human Rights, Fact Sheet No. 19/93 (UN Facet sheet)

individuals from mal administration of the government.³¹ The ombudsman may receive complaints from the public, makes an investigation and recommend the government on the base of such investigation and then may issue reports on this base.³² Currently, many countries have established ombudsman as a means of ensuring fairness and legality in public administration. Some jurisdiction gives different name for ombudsman. For instance, in South Africa, the name is changed to ‘public protector’ in order to avoid the gender insensitivity of the word ombudsman.³³

National human rights commissions are NHRIs established on the basis of the constitution or special law with the mandate of promoting the protection of human rights through various mechanisms. They mainly aim to protect persons against all forms of discrimination and with the protection of civil and political rights.³⁴ But, there are national human rights commissions with specific mandate of protection and promotion of socio-economic rights. For instance, the SAHRC has specific constitutional mandate to promote the protection of socio-economic rights in South Africa.³⁵

The national human rights commission is different from the ombudsman institution in that the purpose of the national human rights commission is the promotion and protection of the human rights while the ombudsman institution oversee the fairness and legality of public administration.³⁶ Most of the times the ombudsman institutions are headed by an individual but the national human rights commissions are known for their multi members. While the ombudsman focuses on the conduct of government, the national human rights commission may investigate issues of human rights violations arising from private bodies, individuals as well as the government.³⁷ The national human rights commissions do have specific jurisdictions and mandates over human rights issues while the ombudsman institute focuses on the fairness and legality of the conduct of the government. But, in many cases both may have similar power causing overlapping of their jurisdiction. In such case it is appropriate to adopt effective means of solving the problem of overlap in jurisdiction.

³¹ UN Fact Sheet (n 30); UN Hand Book (n 1) para.56-62

³² UN Fact Sheet (n 30)

³³ Lilian Manka Chenwi , ‘National Human Rights Institutions: A Comparative Study of the National Commissions on Human Rights of Cameroon and South Africa’ (Masters Theses, University of Pretoria 2002) 3

³⁴ UN Fact Sheet (n 30) UN Hand Book (n 1) para.48

³⁵ The Republic of South African Constitution 1996 (South African Constitution), section 184 (3)

³⁶ UN Hand Book (n 1) para.46-62

³⁷ UN Fact Sheet (n 30)

There are hybrid institution which is the combination of ombudsman and national human rights commission. The CHRAJ of Ghana can be the best example of this type of NHRIs.³⁸

Other types of NHRIs are human rights bodies or specialized human rights institutions like parliamentary bodies or other specialized institutions which deals with human rights issues. They mainly aim to protect the rights of particular vulnerable groups, such as ethnic minorities, indigenous populations, refugees, women or children through monitoring the conduct of government and guiding the government to act in line with international human rights standards.³⁹

In general, to have such different types of NHRIs is an important opportunity for the effective implementation of international human rights norms at national level.

2.3. International Normative and Institutional Foundation of NHRIs

As provided under chapter one of this study, the effort of the international community to establish NHRIs is not a recent phenomenon and it dates back to 1946. It was at this time that the first attempt for the establishment of NHRIs was made by the UN ECOSOC. Resolution enacted by ECOSOC recognizes the potential roles NHRIs could play in the protection and promotion of human rights and encourages the governments to establish NHRIs which cooperate with the UN human rights system.⁴⁰

This effort under the UN system continued and the Paris principles were adopted in the first international workshop on national institutions for the promotion and protection of human rights held in Paris.⁴¹ The Paris principles provide standards to be met by the NHRIs and these standards are recognized and incorporated under UN Commission for Human Right and UN General Assembly as the official principles relating to the status of NHRIs.⁴² The Paris principles have been serving as an international normative foundation for the establishment and functioning of NHRIs (the details are discussed below).

³⁸ E. Gyimah-Boadi et al, *Achieving Successful Governance In Africa: The Case of Ghana's Commission on Human Rights and Administrative Justice* (African Power and Politics 2011) 7

³⁹ UN Fact Sheet (30); UN Hand Book (n 1) para.53-55

⁴⁰ ECOSOC Resolution (n 4); See also Kjaerum (n 5) 6; Kumar (n 3) 266

⁴¹ UN Hand Book (n 1) para.22-25; See also Kjaerum (n 5) 6

⁴² UN GA Resolution (n 6); UN Commission on Human Rights Resolution (n 6)

There are also other international instruments which supplement the standards provided under the Paris principle. For example, the Vienna Declaration and Program of Action recognize the importance of NHRIs for the promotion and protection of human rights at the national level.⁴³ This declaration was adopted in the 1993 World Conference on Human Rights and the meeting conducted in this conference considered the purposes of and criteria for the effectiveness and appropriateness of NHRIs.⁴⁴ The thirty sixth paragraph of this declaration provides:

*The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the Principles relating to the status of national institutions and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level*⁴⁵ which shows the recognition given to NHRIs and the Paris principle.

The committee on the rights of child adopted General comment which endorsed the Paris principles and recommends the state parties to establish NHRIs which will assist states in their effort of implementing the child convection.⁴⁶

The UN committee on Economic Social and Cultural Rights also emphasized on the roles that can be played by the NHRIs in the promotion and protection of economic, social and cultural rights and provided that the mandate accorded to the NHRIs should take in to consideration the issues of economic, social and cultural rights.⁴⁷

The UN handbook and UN Fact Sheet No 19 are another works under UN system that can be used as reference regarding NHRIs.⁴⁸ The UN hand book defines NHRIs and make a detailed discussion and clarification on the standards provided under the Paris principles.

Some binding international legal documents recognize the normative role of Paris principles and recommend the establishment and functioning of NHRIs as provided under the Paris principles. For example, the Convention on the Elimination of all Forms of Racial Discrimination recommend for the establishment and functioning of NHRIs as a means of implementing this

⁴³ Vienna Declaration and Program of Action 1993 (VDPA), para.36

⁴⁴ UN Hand Book (n 1) para.29-31

⁴⁵ VDPA (n 43)

⁴⁶ Committee on Convention on the Rights of Child, General Comment No. 2/2002

⁴⁷ Committee on Economic, Social and Cultural Rights, General Comment No 10/1998

⁴⁸ UN Hand Book (n 1); UN Fact Sheet (n 30)

legal document.⁴⁹ The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment obliges state parties to establish an independent national mechanism to prevent torture and stipulates that this shall be done with due consideration to the Paris principles.⁵⁰ The Convention on the Rights of Persons with Disabilities obliges state parties to take the Paris principles into account when establishing an independent mechanism to promote, protect and monitor the implementation of the convention.⁵¹

There is also international institution the so called the International Coordination Committee of National Institutions (ICC) established to ensure the compliance of NHRIs by the Paris principles. ICC was established in 1993 with the aim of facilitating common activities of NHRIs and coordinating their cooperation with international and regional organizations.⁵² Currently, ICC is a network of over 100 NHRIs from around the world.⁵³

Under the ICC system, there is a process called peer review procedure (accreditation system) by which the committee (represented by one NHRIs from each region) checks whether the NHRIs are complying with the conditions provided under the Paris principles.⁵⁴ Upon examining in line with the accreditation rules and guidelines, the committee accredits the NHRIs and makes recommendation. NHRIs may have A-status if they are fully compliant with the Paris principles or B-status if they are an observer member not fully compliant with the Paris principles or C-status if they do not comply with the Paris principles at all.⁵⁵ Currently 72 NHRIs are accredited with “A” as fully in compliance with Paris principle.⁵⁶

The decision given by ICC does not have legally binding effect under international law. But its decision on accreditation has important practical effects. NHRIs accredited with A status will become full member of ICC, can be elected in ICC bureau, do have seat in sessions of the UN Human Rights Council, do have the right to vote at common meeting and can make oral

⁴⁹ Convention on the Elimination of all Forms of Racial Discrimination 1969, Article 14

⁵⁰ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 2006, Article 18(4)

⁵¹ Convention on the Rights of Persons with Disabilities 2008, Article 33(2)

⁵² Veronika Haasz, ‘The Role of National Human Rights Institutions in the Implementation of the UN Guiding Principles’ (2013) 14 HRR 171

⁵³ International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights: ICC Position Paper on NHRIs Participation in the UN Human Rights System, 4 available at <<https://nhri.ohchr.org/EN/News/Documents/ICC%20position%20paper.pdf>> (accessed on June 5, 2018)

⁵⁴ Haasz (n 52)

⁵⁵ *ibid*

⁵⁶ ICC Position Paper on NHRIs Participation in the UN Human Rights System (n 53)

interventions or written statements.⁵⁷ Those with B status will only be the member of ICC with no right to be elected at ICC bureau and with no right to vote at the common meeting while those with C status will only have observer status.⁵⁸

So, the Paris principles are the fundamental international normative foundation for the establishment and functioning of NHRIs. As such it needs further and detailed discussion and the following part provides a brief discussion about the content and status of the Paris principle.

2.3.1. The Paris Principles

The adoption of Paris principles relating to the status of NHRIs is an important step in the establishment and functioning of NHRIs.⁵⁹ It provides conditions and set standards to be met by NHRIs in order to effectively function.⁶⁰ The first criteria, as provided under section A (2) of Paris principles, is that the NHRIs shall be given broad mandate which shall be clearly provided in the constitution or enabling legal document and clearly specify the composition and competence the NHRIs. But the Paris principles did not provide what mandate means and how broad it should be. According to the UN Handbook, mandate relates to the purpose the NHRIs are going to serve and the NHRIs should be given adequate power which enables it to effectively address human rights related matters.⁶¹ The potential strength and effectiveness of NHRIs are directly related to the legal mandate and sufficiently defined jurisdiction of the institution.⁶²

The second criteria relate to the procedures for composition, appointment and removal of officials of NHRIs. Section B (1) state that the composition of NHRIs should be diversified and the commissioners must be appointed for a fixed term of office. The requirement here is that the process of appointment and removal of officials and composition of NHRIs should follow procedures which promote pluralism or variety in membership. But the Paris principles are silent about the detailed conditions of procedures for composition, appointment and removal. According to the UN Handbook, the enabling legislations of NHRIs should address method and criteria for appointment, duration of appointment, whether members may be reappointed, who

⁵⁷ Haasz (n 52)

⁵⁸ *ibid*

⁵⁹ UN Hand Book (n 1) para.38

⁶⁰ The Paris principles (n 6)

⁶¹ UN Hand Book (n 1) par.86-90, 95-96

⁶² *ibid* par. 2

may dismiss members and for what reasons and immunities.⁶³ In addition, the method of appointing officials should be open, transparent and democratic.⁶⁴

Thirdly, Section B (2) provides that NHRIs shall have institutional and financial independence and adequate resources. But this principle is not clear as to what institutional and financial independence and adequate resources means. According to UN Handbook, NHRIs is said to be independent if it is capable of acting independently of government, of party politics and of all other entities and situations which may be in a position to affect its work.⁶⁵ And the budget of the NHRIs should not be linked with the budget of the government department/ministry nor should the action or decision of other institution affect the budget allocation to the NHRIs and NHRIs should be granted adequate continuing funding.⁶⁶

The other conditions provided by section C and D of the Paris principles are that the NHRIs should adopt an effective mode of operation and be given adequate power of investigation.

The Paris principle, in addition to the above conditions, also provides various responsibilities of the NHRIs. According to section A (3), the NHRIs shall conduct supervision and make recommendation or advise in relation to any issues of human rights violations , ensure the conformity of national legislations with the principles of international human rights standards and encourage the ratification and the implementation of the international human rights instruments, assist the state in preparation of periodic report which the states are required to submit to the UN bodies, make education and awareness creation in relation to issues of human rights and cooperate with other institutions.

2.3.2. The Status of Paris Principles

The Paris principles, though laid a fundamental grounds and guidelines for the effective functioning of NHRIs, are not free from problems and have been subject to criticisms. The first point of debate that has been raised in relation to the Paris principles is the issue of its legal status. Although endorsed by the resolutions of UN human rights commission and the UN General Assembly, the principles and recommendations under the Paris principles have been criticized as non-binding on the NHRIs since the Paris Principles do not have treaty status.

⁶³ ibid par.77-80

⁶⁴ ibid

⁶⁵ ibid para.68

⁶⁶ ibid para.73-76

The other problem in relation to the Paris principle is that the principles and recommendations provided under the Paris Principles are very general and vague. For instance, as provided above, the Paris principles require that the process of appointment and removal of the officials of the NHRIs should be conducted in line with some procedures. But the Paris principles failed to provide detailed and specific conditions about the methods of appointment and removal which may lead to external influence during appointment and removal of the officials of NHRIs and affect its independence. Although UN Hand book has made a detailed discussion on standards provided under the Paris principles, it would be better if the Paris principles provide the details of the effectiveness criteria. Otherwise, NHRIs may use these gaps as an excuse for their non performance.

Generally, despite the existence of the above problems, the position of this study is that it is appropriate for the NHRIs to be established and function in line with the principles and recommendations provided under the Paris principles. This position is taken because, as depicted above, the Paris principles are recognized within the UN system through different resolutions and recognized by different conventions. The binding international human rights instruments like Convention on Elimination of Racial Discrimination, Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention against Torture recognize the NHRIs as means of human rights protection under the UN system by obliging state parties to establish these institutions in line with the Paris principle.

State practice also shows that many NHRIs in the world have been following the principles and recommendations under the Paris principles as an authoritative statement. For example, out of over 100 NHRIs within the Network of ICC form around the world, 72 are accredited with A status as fully in compliance with Paris principle.⁶⁷ This shows that NHRIs which is established and functioning in line with these principles can be effective in the promotion and protection of human rights. The SAHRC, an A status accredited NHRI in Africa,⁶⁸ can be taken as an example with this regard which has been functioning independently and effectively in line with the Paris principles and scored a modest achievement in the protection and promotion of human rights in south Africa. It has played great role in the protection of human rights through

⁶⁷ ICC Position Paper on NHRIs Participation in the UN Human Rights System (n 53)

promoting culture of respect for the rule of law and good governance and by making the South African government accountable, transparent, and responsive to the needs of the people.⁶⁹

2.4. Regional Normative Foundation of NHRIs

The international (the UN) system of human rights protection may not be sufficient by themselves to ensure the effective implementation of international human rights standards unless supplemented by the regional human rights systems. Regional human rights systems operating in Africa, America and Europe have played an important complementary role in reinforcing international standards and providing the means by which human rights concerns can be addressed within the particular social, historical and political context of the region concerned.⁷⁰ With regard to the NHRIs, these regional human rights system have adopted different measures in relation with the establishment and functioning of NHRIs. The discussion in this study focuses on the African human rights system.

Under African human rights system, binding and non-binding instruments have been adopted with regard to the status and functioning of the NHRIs operating in Africa.

2.4.1. The African Charter on Humans and Peoples Rights

The African Charter on Humans and Peoples Rights (ACHPR), by recognizing the roles the NHRIs could play in the protection and promotion of human rights and fundamental freedoms in Africa, provides binding normative standards in relation to the NHRIs. It obliges state parties to establish NHRIs in order to ensure the proper implementation of the rights and freedoms enshrined under the charter.⁷¹ Furthermore, the African commission on humans and people's rights is under obligation to cooperate with NHRIs in the promotion and protection of human rights.⁷²

⁶⁸ SAHRC Annual Report 2017 (n 16) 9

⁶⁹ Thipanyane (n 8) 130-32

⁷⁰ UN Hand Book (n 1) para.14

⁷¹ African Charter on Human and Peoples Rights 1981, Article 26

⁷² *ibid* Article 45

2.4.2. Resolution on Granting Observer Status to NHRIs in Africa

Resolution adopted by the African commission also provides conditions that the NHRIs operating Africa should follow.⁷³ According to this resolution, NHRIs should be established either by the constitution or by law/decreed and shall be a national institution of a state party to the African Charter. After establishment, the NHRIs must make an application to the African commission for such status and they should operate in line with the Paris principle. The condition requiring the NHRIs to follow the Paris principle is quite appropriate. But, it is not proper to allow the establishment of NHRIs by decree that may be issued by a single individual of the dictatorial regime. For instance, if we look at the National Human Rights Commission of Nigeria, it was established by military decree (the National Human Rights Commission Decree 1995) under which there is no legal, operational and financial autonomy and members do not enjoy security of tenure and can be removed by the Head of State if he is satisfied that it is not in the interest of the public that the member should remain in office.⁷⁴ The criteria requiring membership to the African Charter also raise question whether non-member African state may not establish NHRIs.

2.4.3. Harare Commonwealth Declaration and Yaoundé Declaration

There are also some non-binding instruments adopted in the region in relation with NHRIs. The 1991 Harare Commonwealth Declaration and the 1996 Yaoundé Declaration can be example.⁷⁵ In the conferences establishing these declarations, detailed discussions and debates have been made about the issues of the protection and promotion of human rights in the region and the roles the NHRIs could play in these regard were also among the main points of discussion.

2.5. National Normative Foundation of NHRIs

Majority of countries in the world have ratified the major international and regional human rights instruments there by incurring legal obligation to respect, protect and fulfill the human rights and

⁷³ African Commission on Humans and Peoples Rights, Resolution on Granting Observer Status to National Human Rights Institutions in Africa, available at http://www.chr.up.ac.za/chr_old/hr_docs/african/docs/achpr/achpr20.doc (accessed on April 14, 2018)

⁷⁴ Okafor, Obiora Chinedu, and Shedrack C. Agbakwa, 'On Legalism, Popular Agency and Voices of Suffering: The Nigerian National Human Rights Commission in Context' (2002) 24 (3) HRQ 701-702

⁷⁵ The Harare Commonwealth Declaration, available at <http://thecommonwealth.org/history-of-the-commonwealth/harare-commonwealth-declaration> (accessed on April 14, 2018); The Yaoundé Declaration available at <http://nhri.ohchr.org/EN/Regional/Africa/Documents/THE%20YAOUNDE%20DECLARATION.pdf> (accessed on April 14, 2018)

fundamental freedoms enshrined under these instruments. In order to discharge these obligations, the states have been adopting different legislative and institutional measures. Many countries also adopted NHRIs as an additional means of implementing the international human rights standards at the national level. Taking such measures at national level is very crucial for the implementation of international human rights standard at national level. Indeed the existence of the international and regional human rights standards could be insufficient in the protection and promotion of human rights unless the national human rights system acts as the primary machinery.

According to the UN Hand book, the practical task of the protection and promotion of human rights and the development of a human rights culture should be the primary responsibilities of the national human rights system.⁷⁶ The Vienna Declaration and Program of Action adopted by the 1993 World Conference on Human Rights specifically recognized the right of each State to choose the framework for a national human rights institution which is best suited to its needs.⁷⁷ So it is the right of the concerned state to stipulate standards to be followed by the NHRIs it establishes for the protection and promotion of human rights. This right is given on the assumption that the protection and promotion of human rights is primarily the role of the concerned state. This part discusses the standards provided under the enabling documents of three selected human rights commissions: EHRC, SAHRC and KHRC.

2.5.1. The Normative Standard of EHRC

The concept of NHRIs is recent in Ethiopia which came in to existence when the current government adopts NHRIs as a mechanism of protection and promotion of human rights.⁷⁸ One of these NHRIs adopted in Ethiopia is the EHRC which is established through the FDRE constitution and operating in line with the standard provided under the Ethiopian human rights commission establishment proclamation.⁷⁹

⁷⁶ UN Hand Book (n 1) para.16

⁷⁷ VDPA (n 43); UN Hand Book (n 1) para.63

⁷⁸ Abdo, The Ethiopian Human Rights Commission and Its Contribution in the Protection Human Rights and Building Good Governance (n 14) 2-3

⁷⁹ FDRE Constitution (n 9); EHRC Establishment Proclamation (n 9)

The FDRE constitution provides for the human rights and fundamental freedoms which covers one-third of its content.⁸⁰ It also provides for the establishment and functioning of the national human rights commission the primary purpose of which is the protection and promotion of these rights.⁸¹ In accordance with the call of the FDRE constitution, the EHRC was established as an independent national institution with the mandate of protection and promotion of human rights in Ethiopia. The Ethiopian human rights commission establishment proclamation provides the details about the roles and responsibilities of the EHRC. According to this proclamation, the EHRC is mandated to promote the protection of human rights through public education and awareness creation about human rights, providing consultancy service on human rights, providing opinion on Government reports submitted to international human rights bodies, investigating human rights violations, proposing the revision, enactment of laws and formulation of policies relating to human rights, ensuring that laws, decisions and practices of the government are in harmony with human rights enshrined under the constitution and making sure that human rights are respected by government and other entities.⁸² It also empowers the EHRC to investigate complaints of human rights violation committed by government authorities or by private sector, upon individual complaints or by its own motion.⁸³ The proclamation provides the conditions for the appointment, removal and variety of the composition of the officials of the EHRC and requires the commission to function independently.⁸⁴

However, as provided above, there are problems in the normative and institutional frame works of the EHRC if seen in line with the Paris principles and compared with selected human rights commissions. The practical challenges such as lack of independence, accessibility, adequate resources, low level of cooperation with the relevant human rights institutions, lack of accountability and transparency aggravated the problems there by limiting the effective functioning of the EHRC. These challenges hindered the commissions overall human rights protection and promotion role and affected its credibility in the eyes of public and other human rights institutions. Currently, the EHRC is not fully compliant with Paris principle and as such accredited with B status.

⁸⁰ FDRE Constitution (n 9) Articles 13-44

⁸¹ *ibid* Art 55(14)

⁸² EHRC Establishment Proclamation (n 9) Articles 6 (1) (2) (3) (4) (5) (6) (7), 19 (2) (d)

⁸³ *ibid* Articles 6 and 24

⁸⁴ *ibid* Articles 3, 10-19

2.5.2. The Normative Standard of SAHRC

The SAHRC was established as a mechanism of ensuring the protection and promotion of human rights in South Africa through strengthening democracy and good governance.⁸⁵ It was established and operating in line with the standards provided by the constitution of republic of South Africa and the South African Human Rights Commission Establishment Act.⁸⁶

The South African constitution guarantees the human rights and fundamental freedom of South African people and provides for the establishment of NHRIs in South Africa including the SAHRC.⁸⁷ It explicitly provides that socio-economic rights are justiciable and gave an explicit constitutional mandate to SAHRC over socio-economic rights.⁸⁸ According to section 184(3) of the constitution, the commission can require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realization of socio-economic rights such as housing, health care, food, water, social security and education.

The details about the roles and responsibilities of the SAHRC are provided by the SAHRC establishment rights Act.⁸⁹ According to this Act, the SAHRC is mandated to promote respect for human rights in South Africa through different mechanisms such as public education and awareness creation on human rights, research and advice on human rights related areas, handling human rights violation related cases and making decision/recommendation over the cases etc.⁹⁰ The Act also provides conditions about the independence, composition, appointment, term of office and removal of the commissioners of the commission and require for the diversity of the composition.⁹¹ Beyond its power to order concerned bodies for evidence, section 10 of the Act empowers the SAHRC to search premises and attach and remove articles relevant to an investigation. Because of its broad mandate, the SAHRC has adopted a holistic approach.⁹² Practically, the SAHRC has scored modest achievements in the protection of human rights

⁸⁵ Thipanyane (n 8) 126

⁸⁶ South African Constitution (n 35) Section 181(2) (3), 184; South African Human Rights Commission establishment Act No. 54/1994 (SAHRC Establishment Act)

⁸⁷ South African Constitution (n 35) Section 7-39, 181, 184

⁸⁸ *ibid* Section 7 (2), 26, 27, 29, 184

⁸⁹ SAHRC Establishment Act (n 86)

⁹⁰ *ibid* Section 7-10

⁹¹ *ibid* Section 3-5

⁹² Jonathan Klaaren 'A Second Look at the South African Human Rights Commission, Access to Information, and the Promotion of Socioeconomic Rights'(2005) 27 (2) HRQ 539

through promoting culture of respect for the rule of law and good governance and by making the South African government accountable, transparent, and responsive to the needs of the people.⁹³ The outstanding performance it made in relation to human rights protection and promotion enabled the SAHRC to build national and international reputation.⁹⁴ According to Francis, “There has been progress in South Africa in making the right a reality for many as the result of the effort of South African Human Rights Commission.”⁹⁵ Because of its independent and effective functioning the SAHRC is recognized as NHRIs fully compliant with the Paris principles and accredited with ‘‘A’’ status.⁹⁶

2.5.3. The Normative Standard of KHRC

Kenyans have been in a challenging human rights environment and an important step towards the protection and promotion of human rights in Kenya was taken when the KHRC was established.⁹⁷ The KHRC was established and operating in line with the standards provided by the constitution of Kenya and the KHRC establishment Act.⁹⁸ At the very beginning, the KHRC was a statutory body established under the KHRC establishment Act. But, with the adoption of new constitution, the KHRC was recognized under article 59 (4) of the constitution and enjoys constitutional protection as a constitutional commission. The Kenyan constitution contains an expanded bill of rights and also recognized and guaranteed the justiciability of economic and social rights.⁹⁹

The details about the roles and responsibilities of the KHRC are provided by the KHRC establishment Act. The KHRC is mandated to protect and promote human rights through investigation of complaints of human right violations, visiting and inspecting the conditions of prisons and detention places, providing human rights education to the public through symposia and other suitable methods and raising awareness of the public of their civic rights and responsibilities, ensuring government compliance with international human rights obligations

⁹³ Thipanyane (n 8) 130-132

⁹⁴ *ibid* 132

⁹⁵ Khayundi (n 15) 228-240

⁹⁶ SAHRC Annual Report 2017 (n 16) 9

⁹⁷ Idike (n 7) 51; See also Kindiki (n 13) 120

⁹⁸ Constitution of Republic of Kenya 2010 (Kenyan Constitution); Kenyan Human Rights Commission Establishment Act 2003 (KHRC Establishment Act)

⁹⁹ Kenyan Constitution (n 98) Section 43

and fostering cooperation with other actors.¹⁰⁰ It is empowered to issue summonses, order the production of documents, question any person in respect of any matter under its investigation and require the disclosure of relevant information, to order release of illegally detained persons, the payment of compensation or any other remedy and the power to investigate human rights violations.¹⁰¹ The act provides conditions about the independence, composition, appointment, term of office and removal of the commissioners of the commission and require for the diversity of the composition.¹⁰² Generally, the mandate of KHRC is quite broad as stipulated in the UN standards and its establishment complies with the UN standards.¹⁰³

The KHRC has been discharging its human rights protection and promotion mandate in an independent and effective manner and has built popular credibility for its independent practical operation and considered as champion of democracy and human rights protection in the country.¹⁰⁴ Because of its independent and effective functioning the KHRC is recognized as NHRIs fully compliant with the Paris principles and accredited with ‘A’ status.¹⁰⁵

2.6. Conclusion

In this chapter discussion has been made about the definition, types and normative standards of NHRIs. Although efforts have been made by the UN and different writers, there is no precise and comprehensive definition for the term NHRIs. NHRIs are broadly classified as national human rights commission, national ombudsman institution, hybrid institution and other specialized national institution with the mandate of protection and promotion of human rights. Having different types of NHRIs is quite important for the effective implementation human rights standards at national level. But, in case where they co-exist, it is necessary to differentiate each of them in terms of their juridical content in order to avoid overlap of jurisdiction.

The other issue raised under this chapter is the international, regional and national standards of NHRIs. In addition to the national standards set by the national enabling documents, the Paris

¹⁰⁰ KHRC Establishment Act (n 98) Section 16

¹⁰¹ *ibid* Section 19-20

¹⁰² *ibid* Section 5, 6, 9, 10, 11, 26

¹⁰³ Idike (n 7) 50

¹⁰⁴ KHRC Annual Report 2016/2017 (n 17) 1, 30-31; See also Idike (n 7) 51

¹⁰⁵ KHRC Annual Report 2013/2014 (n 18) 19, 55; See also KHRC 12th Annual Report 2015/2016 (n 18) 15

principles and the ACHPR are the major and fundamental standards that must be complied by NHRIs operating Africa so as to effectively discharge its role of protection and promotion of human rights. It is also quite important for these institutions to comply with those other international and regional documents dealing with the NHRIs. However, it must be noted that compliance with the conditions provided under the international, regional and national human rights instruments may not guarantee the effective functioning of the NHRIs. There are external (practical) factors that also determine the effectiveness of NHRIs. The political willingness of the concerned government for the protection and promotion of human rights, the proper functioning of the NHRIs and developing the culture of democracy are among the factors.

CHAPTER THREE

THE NORMATIVE AND INSTITUTIONAL FRAME WORKS OF ETHIOPIAN HUMAN RIGHTS COMMISSION: A COMPARATIVE ANALYSIS

3.1. Introduction

The previous chapter has discussed standards under international and regional human rights instruments that must be complied by the NHRIs during their establishment and functioning so that they can play effective role in the promotion and protection of human rights. The EHRC establishment proclamation No 210/2000 also provides standards that must be fulfilled by the EHRC during its establishment and functioning. This chapter examines whether the standards provided under the normative and institutional frame works of the EHRC are in line with the standards provided under the Paris principles. To do so, it adopts some effectiveness criteria as provided by the Paris principles such as independence, adequate resource and broad mandate and assesses whether the normative and institutional frameworks of the EHRC are in line with these effectiveness criteria. This chapter also makes comparison or raises the experiences of the selected human rights commissions on the areas where the EHRC have problems in its normative and institutional frame work which affects its effectiveness.

3.2. Independence of the EHRC

Section B of Paris principles provide independence as an important condition for the effective functioning of the NHRIs. However, it failed to provide the details about what independence of NHRIs means and how it can be ensured. Independence does not mean complete separation of the NHRIs from the government. The NHRIs are required to submit performance report to the government as they are established and funded by it. In this way the government monitors whether the NHRIs are operating in line with the law establishing them. The principle of independence, however, provides that such monitoring by the government should not entail unnecessary interference in to the independent functioning of the NHRIs.

According to the UN hand book, the independence of NHRIs has four components: independence through legal and operational autonomy, independence through financial autonomy, independence through appointment and removal procedure and independence through

composition.¹⁰⁶ The following subsections use these components of independence to assess the independence of the EHRC under its enabling law and in practice.

3.2.1. Legal and operational Independence of the EHRC

As it has been noted earlier, Section B (2) of Paris principles put independence as crucial condition for the effectiveness of NHRIs. But this principle is not clear as to what institutional independence means. According to UN Handbook, NHRIs is said to be operationally independent if it is capable of performing its activities without interference by government, party politics or other entities and situations which may be in a position to affect its work.¹⁰⁷ The enabling document may give distinct legal personality to NHRIs to permit it to exercise independent decision-making power.¹⁰⁸

In this regard, the EHRC was established as an autonomous independent organ having its own juridical personality.¹⁰⁹ The proclamation also guarantee the operational independence of the Commission by authorizing it to recruit and employ staff, adopt its working rules and procedures and giving immunity to its officials.¹¹⁰ The commission also has the authority to order those complained against appear for questioning or that they submit their defense, witness appear and give their testimony and any person in possession of evidence, relevant to the case, produce the same.¹¹¹ Failure to appear or produce evidence or document in accordance with the call of the commission is punishable with imprisonment from one month to six months or with a fine from two hundred to one thousand Birr or with both save for good cause.¹¹² Moreover, it is the obligation of any person to provide the necessary assistance, with a view to helping the Commission exercise its powers and duties.¹¹³ All these powers are very essential for full operational autonomy of the EHRC. With regard to the legal and operational autonomy, it can be said that the EHRC establishment proclamation is in line with the Paris principles.

However, the reality on the ground is different. There are some practical realities in which the commission refrained from entertaining complaints that allege violation of human rights by

¹⁰⁶ UN Hand Book (n 1) par. 70-85

¹⁰⁷ *ibid* 68-72

¹⁰⁸ *ibid*

¹⁰⁹ EHRC Establishment Proclamation (n 9) Article 3(1)

¹¹⁰ *ibid* Articles 19, 35

¹¹¹ *ibid* Article 25

¹¹² *ibid* Article 41

¹¹³ *ibid* Article 38

government. For instance, many cases brought against government for the eviction from home and land without notice and compensation were rejected by the commission though they constitute human rights violation because the case contains public authorities as party to the case.¹¹⁴ I have conducted interview with some individuals who I think are able to provide me information about the reality on the ground on this issue. For instance, Ato Taddess Wolde has conducted study on the title ‘Large Scale Agricultural Development in Gambela Regional State and its Impact on Human Rights: Law and Practice,’ which mainly focuses on human rights violation through forest destruction and eviction by the authorized investors.¹¹⁵ According to him, the eviction was without prior notice and compensation and although some of the victim applied the situation to the EHRC, the commission failed to provide remedy for the human rights violation. He further provided that the EHRC is not free from the influence of the government and the commission focuses on less relevant and non-politically sensitive issues of human rights protection and promotion.

The commission also failed to advice the government on some human rights related matters. It has failed to advice the government about the revision of the contents of some legislation such as the antiterrorism proclamation and the charities proclamation which have been claimed inconsistent with human rights standard (the details about this issue are provided in the next chapter).

Generally, the realities on the ground show that there is some level of influence on the independent functioning of the commission. The commission itself admitted that the environment with in which it has been functioning is full of deeply rooted socio-economic, political and cultural challenges.¹¹⁶ Although the EHRC is mandated to check whether the government is respecting and protecting human rights and hold the government accountable in case of violation, the reality on the ground indicate that the EHRC is not meeting its mandate over public authorities. The challenges in relation to practical operational autonomy or

¹¹⁴ Abdo, The Human Rights Commission of Ethiopia and Issues of Forced Evictions (n 11)

¹¹⁵ Interview with Ato Tadesse Wolde, Former Lecturer and Dean School of Law at Mizan Teppi University, PhD candidate at Andhra University Bisahatnam Dr. B. Rambekar College of Law-India (Addis Ababa 30/08/010 EC) (Interview with Ato Tadesse)

¹¹⁶ Ethiopian Human Rights Commission Inaugural Report 2011 (EHRC Inaugural Report), 6

independent functioning of the EHRC are discussed in detail in the next chapter in comparison with the experiences of the selected human rights commissions.

3.2.2. Financial Autonomy of EHRC

Section B (2) of the Paris principles put financial independence and adequate resource as criteria for the effective functioning of NHRIs. However, no further clarification is made by the Paris principles about what financial independence and adequate resource means there by leaving the principle too general and vague. According to the UN Handbook, financial autonomy means that the source and nature of funding for NHRIs should be specified in its founding legislation so that the institution exercise control over its finances without interference from government department or ministry.¹¹⁷ In addition, the NHRIs should be given authority to draft its own annual budget and directly submit it to parliament for approval.¹¹⁸ The role of the parliament in financial issues of NHRIs is only limited to review and evaluation of financial reports. And the budget of NHRIs should not be linked with the budget of the government department/ministry and the action or decisions of other institution should not affect the budget allocation to the NHRIs. Furthermore, NHRIs should be granted adequate continuing funding.¹¹⁹

In this regard, the chief commissioner of the EHRC is authorized to prepare and submit to the House of Peoples representative the budget of the Commission dealt upon by the Council of Commissioners and implement same upon approval.¹²⁰ The EHRC is also allowed to generate fund from different sources in addition to the budget it gets form the government.¹²¹ As can be inferred from these provisions, the EHRC is authorized to draft its own budget and submit it directly to the parliament. The sources of its fund are also clearly provided and the financial affair of the commission has no connection with other government departments' or ministries. Generally, the proclamation is in line with the requirement of the Paris principles regarding the independence of the EHRC to control its finance.

¹¹⁷ UN Hand Book (n 1) para.73-76

¹¹⁸ *ibid*

¹¹⁹ *ibid*

¹²⁰ EHRC Establishment Proclamation (n 9) Article 19 (2) (b)

¹²¹ *ibid* Article 36

But, the problem is that, the EHRC has been facing shortage of resource. The annual budget of the commission is inadequate when compared with the tasks the commission is expected to perform. For example, the total annual budget of commission in the year 2015/16 was 47,382,196.13 out of which 32,078,193.95 birr was from government and the rest from donors and other sources.¹²² The total annual budget of commission in the year 2016/17 was 60,355,074.51 out of which 43,527,125.11 birr was from the government and 13,642, 78.55 birr from donors and other sources.¹²³ The total annual budget of commission in the year 2017/18 was 78, 615,858. 77 out of which 61,345, 940.34 birr was from the government and 269, 918.43 from other source and donors.¹²⁴ Although these data shows some increase in the annual budget allocation to the commission over years, the annual reports of the commission and the officials claim that the amount is inadequate. The inadequacy of the resource capacity of the commission has been challenging its effectiveness in many ways. For instance, the commission has not been able to recruit sufficiently competent staff members and the existing employees leave because of low salary scale approved to it.¹²⁵ Some of the planned projects such as researches on areas of human rights and plan to provide advice and input on the existing and new legislation in the country remained un-performed because of lack of fund and human resource.¹²⁶ Lack of fund is also the main challenge making the commission un-able to conduct its awareness creation works and to increase its visibility.¹²⁷

More over the commission has not been able to generate adequate amount of fund from donors and other sources because the commission does not have technical strategy as to how to reach the potential donors and acquire assistance or generate funds from the donor, how to use it to implement its projects and to follow and monitor for what purpose the fund acquired is incurred.¹²⁸

The newly adopted charities and civil society's proclamation (Proclamation No 621/2009) is contributing to these challenges by preventing the establishment of strong human rights

¹²² Ethiopian Human Rights Commission Annual Report 2015/2016 (EHRC Annual Report 2015/2016), 35-36

¹²³ Ethiopian Human Rights Commission Annual Report 2016/2017 (EHRC Annual Report 2016/2017), 62

¹²⁴ Ethiopian Human Rights Commission Annual Report 2017/2018 (EHRC Annual Report 2017/2018), 59-61

¹²⁵ EHRC Inaugural Report (n 116) 111-116; EHRC Annual Report 2017/2018 (n 124) 65

¹²⁶ *ibid*

¹²⁷ EHRC Annual Report 2015/2016 (n 122) 40

¹²⁸ EHRC Annual Report 2016/2017 (n 123) 16

institution and causing the closure of some CSOs which could support the EHRC. According to this proclamation, only Ethiopian Charities and Civil Societies can work on human rights issues and these charities can generate only 10% of its fund from foreign sources. This restriction has prevented strong human rights institutions from being emerged which will assist the commission financially or technically which in turn hinders the protection and promotion of human rights in Ethiopia. Some CSOs has stopped working in Ethiopia as the result of this proclamation while the others reduced. For instance, Equality Now, a foreign CSO, has stopped working in Ethiopia because the proclamation prohibits the foreign CSOs from operating on human rights issues in Ethiopia.¹²⁹ The Ethiopian Women's Lawyers Association has also reduced its operation on human rights issues as the result of the restriction on generating fund imposed by the proclamation.¹³⁰

Because of these cumulative factors the EHRC remained institution without adequate resource and assistance which in turn affected its operational capacity and efficiency.¹³¹

The financial independence of the selected human rights commissions are better guaranteed by adequate funding. For instance, the financial independence of KHRC is safeguarded by funding.¹³² The following data shows the annual budget of the KHRC in the year 2012/2013, 2015/2016 and 2016/2017:¹³³

- 2012/13 322,701,809 Kenyan Shilling
- 2015/16 354.53 million Kenyan Shilling
- 2016/17 360,407,356 Kenyan Shilling

The KHRC enjoy great financial and technical support from its development partner's mainly foreign governments, international organizations and NGOs.¹³⁴ It has its own strategy adopted with the aim of diversifying its sources of funding by which it reached out to more donors

¹²⁹ Zelalem Shiferaw Woldemichael, 'Scrutinizing Funding Restrictions of the Charities and Societies Proclamation of Ethiopia in Light of International Human Rights Standards' (2016) 8 *JUJL* 1- 25

¹³⁰ *ibid*

¹³¹ EHRC Inaugural Report (n 116) 111-116; EHRC Annual Report 2015/2016 (n 122) 40; EHRC Annual Report 2017/2018 (n 124) 8-9, 64

¹³² Idike (n 7) 51

¹³³ Kenya National Commission on Human Rights Annual Report (KHRC Annual Report) 2012/2013, 55 available at <www.knchr.org/Portals/0/AnnualReports/Annual%20Report%202012-2013.pdf> (accessed on May 23, 2018); KHRC Annual Report 2016/2017 (n 17) 30,31

¹³⁴ KHRC Annual Report 2016/2017 (n 17) 48

resulting in increased funding from different sources.¹³⁵ The strategy was adopted by the board of director of KHRC the so called institutional and financial sustainability strategy which has been effectively implemented by the executive manager of the commission.¹³⁶ This strategy aims to do acts of diversifying resource mobilization through reaching out to potential donors, prospecting and engaging existing and lapsed donors and enhancing institutional investments to acquisition of premises.¹³⁷ This strategy has ensured the programmatic and systematic fund generation and allocation system in the KHRC. There is a quarterly programmed meeting during which progress reports were presented, critiqued and strategies and priorities clarified. This has continued to enhance programmatic and financial effectiveness and accountability in the KHRC.¹³⁸ So, one of the factors for the modest achievements scored by the KHRC, an A status accredited NHRIs, is adequate resource it acquires from the government and by its own effort.

The SAHRC is another adequately funded NHRIs in Africa.¹³⁹ The following data shows the annual budget allocated to the SAHRC form the year 2011-2013:¹⁴⁰

- 2011/12 100 000000 Rup
- 2012/13 100 736 000 Rup

The SAHRC has also been able to receive sufficient funds from donors to support its projects.¹⁴¹ Like the KHRC, the SAHRC has adopted systematic strategy as to how to diversify its source of fund.¹⁴² One of the factors for the effective contribution made by the SAHRC, an A status

¹³⁵ ibid 30

¹³⁶ ibid

¹³⁷ ibid

¹³⁸ ibid

¹³⁹ Maina C.Peter, *Human Rights Commissions in Africa – Lessons and challenges* (Namibia Publication 2009) 354; J. C Mubangizi, 'A Comparative Discussion of the South African and Ugandan Human Rights Commissions' (2015) 48(1) CILJA 133

¹⁴⁰ The South African Human Rights Commissions Presentation of the 2011/2012 Annual Report and 2012/2013 Performance Report to the Portfolio Committee on Justice and Constitutional Development (SAHRC Presentation of the 2011/2012 Annual Report and 2012/2013 Performance Report to the Portfolio Committee), available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/121010sahrc_0.pdf> (accessed on May 23, 2018); The South African Human Rights Commission Responses to OHCHR Questionnaire on National Human Rights Institutions and Human Rights Defenders 2012 (SAHRC Responses to OHCHR), 14 available at <<http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/SouthAfrica.pdf>> (accessed on February 7 2018)

¹⁴¹ SAHRC Responses to OHCHR (n 140) 14; See also Catherine Musuva, *Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: South Africa's Public Protector and Human Rights Commission* (EISA2009) 26

¹⁴² ibid

accredited NHRIs, in the protection and promotion of human rights in South Africa is the fund allocated to it by the government and the fund it generates by its own form different sources and donors.

The lesson we can learn from the experience of the KHRC and SAHRC is that NHRIs should not wait only for the fund from the government and should develop systematic strategy which can be used to create smooth relation with potential partners, both local and international, to work together and to get assistance. The experience also shows the attention given by the respective governments, in terms of fund allocation, to the effective functioning of NHRIs. Especially in poor country like Ethiopia the budget grant from the government may not cover the overall expenses of the EHRC. And it is a must for the EHRC to have systematic strategy by which it will reach potential donors and get sustainable financial and technical support. The government should also show its commitment for the protection and promotion of human rights in Ethiopia by increasing the fund allocated to the commission.

3.2.3. Independence of EHRC through Appointment and Dismissal Procedures

The method by which the members of NHRIs are appointed or dismissed contributes significantly to the independence of the institution because it is not possible to ensure institutional independence without ensuring independence of individuals working there. Regarding this, Section B (1) of the Paris principles states that the commissioners of NHRIs shall be appointed in accordance with the established procedures and for a fixed term of office. The requirement here is that the process of appointment and removal of officials and composition of NHRIs should follow procedures which promote pluralism or variety in membership. But the Paris principles are silent about the detailed conditions of procedures for composition, appointment and removal. According to the UN Handbook, the enabling legislations of NHRIs should address method and criteria for appointment, duration of appointment, whether members may be reappointed, who may dismiss members and for what reasons and immunities.¹⁴³ In addition, the method of appointing officials should be open, democratic and transparent.¹⁴⁴

In this regard, the EHRC establishment proclamation provides conditions for the appointment, term of office and removal of the officials.¹⁴⁵ The commissioners are appointed by the house of

¹⁴³ UN Hand Book (n 1) par.77-80

¹⁴⁴ *ibid*

¹⁴⁵ EHRC Establishment Proclamation (n 9) Articles 10-16

people's representative for fixed term of 5 years up on the nomination by the committee and they may be reappointed.¹⁴⁶ The nominating committees are composed of the speakers of House of peoples representative and House of federation, seven members to be elected from the members of House of federation, two members of the House of peoples representative to be elected by joint agreement of opposition parties having seats in the house, the president of the federal supreme court and representatives from the Ethiopian orthodox church, Islamic council, evangelical church and catholic church.¹⁴⁷

Any Ethiopian may be nominated and appointed as a commissioner if he/she: ¹⁴⁸

- is loyal to the constitution
- upholds respect for human rights
- is trained in law or other relevant discipline or has acquired extensive knowledge through experience
- is reputed for his diligence, honest and good conduct
- has not been convicted for a criminal offence
- is of enough good health to assume the post and
- is above thirty-five years of age

Generally, it is quite appropriate to make the procedure of appointment on the basis of qualifications such as good conduct, expertise and knowledge on human rights. The proclamation also did well by allowing the opposition parties to have a say on the fate of the nominating committee for this could contribute in the appointment of independent officials to some degree.

An appointee may be removed from office or discharged from responsibility if he resigns or become incapable of properly discharging his duties, due to illness or incompetence or where he is found to have committed an act of human rights violation or other illegal act or upon termination of his term of office.¹⁴⁹ The appointee may be removed only after conducting inquiry, by special tribunal, about the commission of crime or illegal act and up on the consent by the house of peoples representatives on the same. The proclamation can be said innovative with regard to the procedures it has adopted on the removal of appointee.

¹⁴⁶ ibid articles 10, 11, 14

¹⁴⁷ ibid Article 11

¹⁴⁸ ibid Article 12

¹⁴⁹ ibid Articles 15-16

According to Dr. Addisu and Mr. Demisew, the practice is in line with the conditions provided under the proclamation in relation to the appointment, removal and term of office of the commissioners.¹⁵⁰ According to them, the practical process of appointment is open and made through the announcement by media.

However, there are problems in the proclamation and in practice that might have undermined the appointment process of the commissioners and thereby affected the independence of the institution. Article 11 of the proclamation, as depicted above, excludes the CSOs or NGOs from the nominating committee thereby excluding them from the nomination and appointment process. The process of appointment which excludes the CSOs or NGOs may not guarantee the appointment of independent officials. The participation by or the involvement of the CSOs or NGOs in the affairs of the NHRIs not only guarantee the independence of the institution but also enhance its visibility, credibility and legitimacy.¹⁵¹

According to Ato Taddess, the process of appointing the commissioners of EHRC is a mere government process or it is a result of a closed door negotiation between politicians and bureaucrats which is not the true representative of the interest of Ethiopian people.¹⁵² According to him, in practice, the committees do not allow the public and social forces to participate and comment on the nomination of the commissioners which makes the process of appointment non-open and non-participatory with even no interview conducted with the candidate commissioner. He further provides that most of the current officials of the commission including the chief commissioner were formerly running the agenda of the government and how could they independently function without the interference from the government. Although being the former government official cannot be a bar to become an appointee, an appointee who has been an active participant in party politics may not be a human rights activist which may in turn undermine the independence of the institution.

The selected human rights commissions have good trends with regard to the process of appointing officials or commissioners. The KHRC establishment act requires the parliament to invite applications for positions of commissioners through advertisement in the Kenya gazette, the official weekly government publication, as well as in at least three daily newspapers of

¹⁵⁰ Interview with Dr. Addisu G/Igzabher, the Chief Commissioner of the EHRC and Mr. Demisew Banti, the Directorate Director of the Information Communication of the EHRC (Addis Ababa 11/08/010 EC) (Interview with Dr. Addisu and Ato Demisew)

¹⁵¹ UN Hand Book (n 1) para.82-85

¹⁵² Interview with Ato Taddess (n 115)

national circulation.¹⁵³ Then the parliamentary committee nominates the candidates and the house approves the nomination.¹⁵⁴ The nomination is conducted on the basis of relevant factors including proven integrity, knowledge and experience in human rights matters.¹⁵⁵ The CSOs can participate in the nomination and appointment process and even they can propose for the appointment of person who they think qualifies the post.¹⁵⁶ The majority of the members of the KHRC are drawn from human rights groups and they are human rights activists.¹⁵⁷ For instance, the current chairman of the KHRC is a former executive director of active human rights NGO that has been in the forefront in struggles for human rights protection in Kenya.¹⁵⁸ Generally, the independence of KHRC is safeguarded by its open and democratic mode of appointment which ensures its independent and effective functioning and increase the confidence of the public over the commission.¹⁵⁹

The commissioners of the SAHRC are elected by majority members of the national assembly and the president confirms the appointment.¹⁶⁰ There is a multi-party ad hoc parliamentary committee which makes nation-wide announcements of the vacancies through media, select and interview the candidates and then recommends the candidate commissioners to the parliament and the parliament approves.¹⁶¹ The process of interview and election is taken place in public held in parliament, transparently by taking in to account the issue of diversity.¹⁶² The CSOs can participate in the nomination and interview process of the candidates.¹⁶³

The experience of the KHRC and SAHRC clearly shows that in order ensure the independent and effective functioning of NHRIs and to avoid doubt of the public, the appointment of the commissioners of NHRIs should be made in the way that is open, transparent and participatory. This can be ensured more if CSOs are allowed to participate in the nominating and appointing process. Letting the CSOs to participate in the process of nomination and appointment has many advantages: First this will enable the commission to have smooth cooperation with the CSOs. It

¹⁵³ KHRC Establishment Act (n 98) Section 6 (1)

¹⁵⁴ Kindiki (n 13) 24

¹⁵⁵ Idike (n 7) 50

¹⁵⁶ Kindiki (n 13) 24

¹⁵⁷ Idike (n 7) 49

¹⁵⁸ *ibid*

¹⁵⁹ *ibid* 51

¹⁶⁰ SAHRC Establishment Act (n 86) Section 3, 5

¹⁶¹ SAHRC Response to OHCHR (n 140) 15

¹⁶² *ibid*

¹⁶³ *ibid*

will also increase the confidence of the people towards the effective and independent functioning of the commission. Their participation will also strengthen the independence and enhance the visibility of the commission.

In addition it is better if the EHRC establishment proclamation expressly provides for the announcement of vacancies or requires the parliament to invite applications for positions of commissioners through advertisement by Medias like the case in the KHRC. The open and democratic method appointment can be ensured in this way.

3.2.4. The Composition of EHRC

According to section B (1) of the Paris principles, NHRIs shall be established in a way that guarantees the pluralistic representation of the social forces, NGOs, trade unions, professional organizations and trends in philosophical and religious thought. The composition of NHRIs should also include gender representatives, person with disabilities, minorities, human rights scholars, practitioners, parliamentary and government officials in an observer or advisory capacity.¹⁶⁴

In this regard, the EHRC establishment proclamation requires the commission to have Chief Commissioner, deputy Chief Commissioner, Commissioner for Children and Women and other necessary personnel.¹⁶⁵ Currently, there are chief commissioner (Dr Addissu G/ Igzabher), deputy commissioner (Ato Eshete Gebriel) and Commissioner for Children and Women (W/ro Kebah Mohamed). The chairperson of the commission is the chief commissioner and the executive head of the commission next to whom ranks the deputy chief commissioner. The chief commissioner is accountable to the house while the deputy commissioner is accountable to the chief commissioner. Commissioner for vulnerable group heads an operational organ responsible for discharging operational activities side by side with other activities but focusing up on human rights matters related to women, children and person with disabilities. The commissioners create council of commissioners which is the main policy and decision making body of the commission with the chief commissioner and deputy chief commissioner of the commission acting as its chairperson and deputy chairperson respectively. There are also other staffs necessary for the accomplishment of the task of the commission: the commission has total of 156 staffs (68 of

¹⁶⁴ UN Hand Book (n 1) par. 82-85

¹⁶⁵ EHRC Establishment Proclamation (n 9) Article 8

them are men and 88 are women). So, the commission is representative in terms of gender composition.

The proclamation does not expressly require for the consideration of ethnic, geographical, cultural, political and social diversity in the composition of the EHRC. According to Dr. Addisu and Mr. Demisew, since the staffs are appointed from different parts of the country, they represent the ethnicity, language and identity of the Ethiopian people and the practical composition of the EHRC is representative of the interest of the Ethiopian people.¹⁶⁶

However, there are still concerns in the composition of the commission. The EHRC only has three commissioners which makes it a small institution and affects pluralism in the composition of the commission which operates in the country having large geographical area and diversified ethnic and religious groups. Moreover, there are no representatives from CSOs, media and person with disabilities. Attaching these social forces to the NHRIs, as required by the Paris principles, at least in their advisory capacity is important to ensure the independence of the institution and to secure the community support to the institution.¹⁶⁷

The selected human rights commissions have better achievements with regard to representative composition and pluralism. The KHRC establishment Act expressly requires that in nominating the commissioners of the KHRC, Kenya's ethnic, geographical, cultural, political, social and economic diversity and the principle of gender equity shall be taken in to consideration.¹⁶⁸ It authorizes the National Assembly to nominate twelve persons for appointment as commissioners to the president and the president has powers to appoint nine commissioners from the National Assembly nominees.¹⁶⁹ Practically there are the chair, the human right commissioner, the people's protector, the gender commissioner, children's commissioner, commissioner of person with disabilities and commissioner which will deal with issues relating to basic needs and enforcement of socio-economic rights.¹⁷⁰ The commission is also representative in terms of women, person with disabilities and social force like media and CSOs, geographical representation, ethnic and language diversity.¹⁷¹

¹⁶⁶ Interview with Dr. Addisu and Mr. Demisew (n 150)

¹⁶⁷ UN Hand Book (n 1) par.108

¹⁶⁸ KHRC Establishment Act (n 98) Section 5, 6 (8) (a) (b)

¹⁶⁹ *ibid* Section 5, 6 (6) (7) (8) (a) (b), 288 (1) (a) - (e), 288 (2) (a), 288 (2) (b), 288 (2) (c)

¹⁷⁰ *ibid*; See also Idike (n 7) 50; Kindiki (n 13) 127

¹⁷¹ Idike (n 7) 51; Kindiki (n 13) 127

According to the SAHRC establishment Act, the SAHRC may have at least 5 commissioners.¹⁷² But in practice there are about seven commissioners such as chairperson with special commissioner role on migration and equality, deputy Chairperson with special commissioner role on basic service and health care, commissioner on person with disabilities and older person, commissioner on children's rights and rights to basic education, commissioner on human rights, law enforcement and prevention of torture, commissioner on right to access to justice and right to access to house and commissioner on environment, rural development and natural resources.¹⁷³ The social set-up of South Africa, a candidate's color, language, ethnic origin and professional background etc are taken in to consideration in the process of appointing the commissioners.¹⁷⁴ The composition of SAHRC is also diversified in terms of gender, person with disabilities and social forces.¹⁷⁵

The trend of KHRC and the SAHRC shows that, having many commissioners enhances an opportunity to promote diversity in the composition of the commissions and the effective protection and promotion of human rights. As depicted above, the commissioners of KHRC and SAHRC have given with different mandates over priority areas by considering different generations of rights and different group of the society with special focus on the vulnerable. So, having many commissioners, beyond increasing pluralism, has been enabling these commissions to focus on burning human rights issues and to react on it. The trends of these commissions also show that pluralism can be promoted by attaching person with disabilities and different social forces in the staff of the institution. The EHRC should look at these good trends to enhance pluralism in its composition and promote independent and effective functioning.

3.3. The Mandate and Jurisdiction of EHRC

Section A (2) of the Paris principles provides that NHRIs shall be given broad mandate which is clearly set in the constitution or the enabling Act. But it is silent about what broad mandate means and how broad it should be. According to the UN Handbook, mandate relates to the

¹⁷² SAHRC Establishment Act (n 86) Section 3

¹⁷³ South African Human Rights Commission Annual Report (SAHRC Annual Report) 2015/2016, 6, 48 available at <<https://www.sahrc.org.za/.../SAHRC%20Annual%20Report%202016%20full%20report>> (accessed on May 30, 2018); SAHRC Annual Report 2017 (n 16) 6

¹⁷⁴ Peter (n 139) 355

¹⁷⁵ Chenwi (n 33) 23

purpose the NHRIs are going to serve and adequacy of power which enables the NHRIs to effectively address human rights related matters.¹⁷⁶ The actual or potential strength and effectiveness of NHRIs are directly related to the legal mandate and sufficiently defined jurisdiction of the institution.¹⁷⁷

The EHRC is mandated to promote the protection of human rights through public education and awareness creation, providing consultancy service on human rights, providing opinion on government reports submitted to international human rights bodies, proposing the revision and enactment of laws and formulation of policies relating to human rights, ensuring that laws, decisions and practices of the government are in harmony with human rights enshrined under the constitution and making sure that human rights are respected by government and other entities, translating international human rights instruments in to local language and disseminating the same and fostering cooperation with other organizations working around human rights issues.¹⁷⁸ It is also empowered to investigate complaints of human rights violation committed by government authorities or by private sector, upon individual complaints or by its own motion.¹⁷⁹

It has the authority to order those complained against appear for questioning or that they submit their defense, witness appear and give their testimony and any person in possession of evidence, relevant to the case, produce the same.¹⁸⁰ The commission is also empowered to make public and regular reports as it deems necessary and none of the commission's report to the house regarding the finding of any investigations it has undertaken shall form the basis for any suit of defamation against it.¹⁸¹ Unless otherwise ordered by the house or the chief commissioner, no appointee or investigator of the commission may be arrested or detained save for series flagrant offences.¹⁸² In addition any person is under duty to cooperate with the commission if asked so and failure to do so without good cause is punishable by law.¹⁸³

¹⁷⁶ UN Hand Book(n 1) par.86-90, 95-96

¹⁷⁷ *ibid* par. 2

¹⁷⁸ EHRC Establishment Proclamation (n 9) Articles 6 (1) (2) (3) (4) (5) (6) (7), 19 (2) (d)

¹⁷⁹ *ibid* Articles 6, 24

¹⁸⁰ *ibid* Article 25

¹⁸¹ *ibid* Articles 39, 40

¹⁸² *ibid* Article 35

¹⁸³ *ibid* Articles 38,40

Generally, it can be said that, the EHRC has a broad mandate of human rights protection and promotion. The only exception to the mandate of EHRC is that it has no jurisdiction over issues that are already brought to the attention of the house, the house of federation, any of the nation's regional council or any of regular court of law.¹⁸⁴

However, I have concern in relation to the mandate of the EHRC over the protection and promotion of socio-economic rights in Ethiopia. The Paris principles are silent about the mandate of NHRIs over socio-economic rights. It simply provides that the NHRIs should be given broad and explicit mandate. The enabling documents of the EHRC also failed to explicitly mention socio-economic rights under the mandate of EHRC. Without explicit provision in the constitution or proclamation, the EHRC may not fully and confidently engage itself in trying issues in relation to socio-economic rights. This is because the issue of socio-economic rights is controversial by its own and there is no detailed law in Ethiopia dealing with such rights. The FDRE constitution itself is not clear with regard to the justiciability of these rights. The constitution considers these rights as policy matters and objectives but not as justiciable rights.¹⁸⁵ Moreover, the institutions in Ethiopia have no culture of implementing human rights by citing the provisions of ratified human rights instruments. In the existence of these problems, it is not proper to expect the commission to do its protection and promotional mandate over socio economic rights without explicit provision.

Practically only few socio-economic rights related cases are handle and solved by the commission. Even the commission has refrained from handling so many socio-economic rights related cases (as provided in the next chapter). Giving express mandate to the commission to monitor the realization of these rights would enhance the justiciabilty and effective realization of these rights in Ethiopia. According to Kjaerum, NHRIs can play a great role in the protection and promotion of socio- economic rights if they have express mandate.¹⁸⁶ The UN committee on ESCR provided that the mandate accorded to the NHRIs should take in to consideration the issues of ESCR.¹⁸⁷ Since Ethiopia is party to the international convention on Economic, Social

¹⁸⁴ *ibid* Article 7

¹⁸⁵ FDRE Constitution (n 9) Article 90

¹⁸⁶ Kjaerum (n 5) 13

¹⁸⁷ Committee on Economic, Social and Cultural Rights, General Comment No 10/1998

and Cultural rights, the country and the commission are expected to act in line with this recommendation.

The selected human rights commissions have scored better achievements with regard to the realization of socio-economic rights. Under the South African constitution socio-economic rights are justiciable and the SAHRC is given explicit constitutional mandate to monitor the realization of these rights.¹⁸⁸ The commission can require relevant organs of state to provide information on the measures they have taken towards the realization of the rights of housing, health care, food, water, social security, education and the environment.¹⁸⁹ In line with this power the SAHRC has received reports from the concerned organ of government about the effective realization of socio-economic rights, made recommendation in line with the information it acquired and publicized series of reports in relation to the issue of socio-economic rights.¹⁹⁰ This domestic reporting procedure also enabled the government of South Africa to properly respond towards the needs of socio-economic rights in the country by assessing the performance of the country with regard to these rights, the need of the citizens and the available resources.¹⁹¹ The SAHRC has also addressed many socio-economic rights related complaints there by making the South African government accountable for its failure to fulfill its obligations.¹⁹² Generally, the involvement SAHRC in the issues of socio- economic right is a new methodology of enforcing socio-economic rights in South Africa through assisting the effort of courts and government.¹⁹³

Under the Kenyan constitution socio-economic rights are justiciable.¹⁹⁴ And the KHRC is empowered to monitor the realization of these rights.¹⁹⁵ The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 8 of 2015) which establish frameworks for monitoring and enforcement of economic and social rights explicitly authorizes

¹⁸⁸ South African Constitution (n 35) Section 7 (2), 26, 27, 29, 184

¹⁸⁹ *ibid* Section 184(3)

¹⁹⁰ D Horsten, 'The Role Played by the South African Human Rights Commission's Economic and Social Rights Reports in Good Governance in South Africa' (2006) 9 (1) PELJ 4ff ; See also Klaaren (n 92) 547

¹⁹¹ Horsten (n 190) 4; Christof Heyns, 'Taking Socio-Economic Rights Seriously: The Domestic Reporting Procedure and the Role of the South African Human Rights Commission in Terms of the New Constitution' (1999) 32 DJ 208

¹⁹² C Murray, 'The Human Rights Commission et al: What is the Role of South Africa's Chapter 9 Institutions?' (2006) 2 PER 12

¹⁹³ Mitra Ebadolahi, 'Using Structural Interdicts and the South African Human Rights Commission to Achieve Judicial Enforcement of Economic and Social Rights in South Africa' (2008) 83 NYULR 1568

¹⁹⁴ Kenyan Constitution (n 98) Article 43; Jotham Okome Arwa, 'Litigating Socio-Economic Rights in Domestic Courts: The Kenyan Experience' (2013) 17 LDD 419 ff

¹⁹⁵ KHRC Establishment Act (n 98) Section 16

the KHRC to monitor the realization of socio-economic rights in Kenya. This bill requires the Kenyan government to adopt action plans for the effective realization of these rights and make report about the progresses made.

The KHRC has been working with a deliberate focus for the realization of economic and social rights as one of its strategic priorities and scored a great achievement.¹⁹⁶ There were two main challenges affecting the proper realization of these rights:¹⁹⁷ First, there was lack of knowhow among state organs as how to bring these rights in to reality. Second, there was no mechanism to ensure that the obligations are fulfilled by the government. This challenge was the result of lack of comprehensive legal framework by which the government may be compelled to ensure the realization of these rights. The government was using this gap as a cover to avoid the claim of non-enjoyment or violation of these rights by raising resource constraint as justification. These challenges prevented individuals from bringing claim against the government in relation to the realization of right to food, housing, health and education. The KHRC responded to these challenges by providing awareness creations and developing a broad framework the so called Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 8 of 2015) aimed at guiding the implementation of socio-economic rights.¹⁹⁸ As noted above this bill require the government to realize these rights by adopting different measures and to makes report on the progress achieved and it empowers the KHRC to monitor the proper implementation of these rights.

The KHRC has also been conducting budget monitoring for delivery of socio economic rights such as water, health, education, housing to know whether the government is fulfilling its obligation to respect, protect and fulfill these rights.¹⁹⁹ For instance, it has conducted monitoring on status of the right to safe drinking water and sanitation through which it identified violations of these rights and recommended for urgent measures to be taken for the realization of these rights.²⁰⁰ The KHRC has also been receiving and addressing large numbers of socio-economic

¹⁹⁶ KHRC Annual Report 2013/2014 (n 18) 22

¹⁹⁷ *ibid* 51

¹⁹⁸ *ibid* 51

¹⁹⁹ *ibid* 53; KHRC Annual Report 2016/2017 (n 17) 12

²⁰⁰ Kenya National Commission on Human Rights, The status on the Rights of Safe Drinking Water and Sanitation in Kenya, Submission on the Special Reporter on the Right to Safe Drinking Water and Sanitation (KHRC Submission on the Special Reporter on the Right to Safe Drinking Water and Sanitation) 2014 available at <<http://www.ohchr.org/Documents/Issues/Water/HRViolations/KenyaNCHR.doc>>(accessed on May 23, 2018)

right cases every year (as discussed in the next chapter). Generally, the effort of the KHRC has led to the improved access to economic and socio-cultural rights in the country.²⁰¹

The trend of SAHRC and KHRC shows that NHRIs can play important role in the protection and promotion of socio-economic rights. Despite the political nature of these rights, these two institutions have been confronting the government for the realization of these rights. In line with their explicit mandate, they have been making great contribution for the realization of these rights. Since all rights are equal, interdependent and interrelated the EHRC should give attention to the proper realization of these rights like the case in KHRC and SAHRC. This can be achieved more by giving explicit mandate to the EHRC over these rights. In addition the government is expected to make the environments conducive for the proper realization of these rights, for instance, by amending the constitution and making these rights justiciable.

3.4. Conclusion

This chapter has analyzed the normative and institutional frame works of EHRC in terms of its independence and mandate. The purpose of the analysis is to know whether the normative and institutional from works adopted by the EHRC are in line with the standards provided under the international and regional human rights documents and whether they are conducive for the effective functioning of EHRC in terms of promoting and protecting human rights in Ethiopia. The analysis reveals that the normative and institutional frame works of EHRC are in line with the standards under international and regional human rights instruments in many aspects. For instance, the commission was established as an independent institution with broad mandate and with the power to recruit and employ staff, adopt its working rules and procedure, to order others to appear or submit evidence etc. The proclamation also ensured the financial autonomy of the commission in terms of controlling its budget and also provided various conditions in terms of composition, method of appointment and removal of the officials of the commission.

The analysis also reveal that the normative and institutional frame works adopted by the EHRC is not fully compliant with the standards provided under the Paris principles which, in the opinion of the author of this study, is the main factor for the non-effectiveness of EHRC. For

²⁰¹ KHRC Annual Report 2016/2017 (n 17) 10

instance, factor such as the non-open and non-transparent appointment procedure, absence of representatives from CSOs, media and disable people, lack of sufficient resource compromise the independent and efficient functioning of the commission. The commissions mandate is also limited in terms giving explicit mandate over the socio-economic rights. These challenges need to be reconsidered if the EHRC has to function effectively in its human rights protection and promotion. The good experiences of the selected human rights commissions raised above can be taken as a role model in solving all these problems.

CHAPTER FOUR

THE PRACTICAL WORKS OF THE ETHIOPIAN HUMAN RIGHTS COMMISSION: A COMPARATIVE ANALYSIS

4.1. Introduction

The international, regional and national human rights laws, in addition to prohibiting violation of human rights and fundamental freedoms, requires that the victims of human rights violations be remedied for the harm they suffer as the result of the human rights violations. One of the mechanisms by which human rights can be respected and remedied is through the work of the NHRIs. NHRIs can play important role in the implementation of international and regional human rights norms at national level by promoting the respect for human rights through awareness creation and by assisting, recommending and guiding their respective government to act in line with the international and regional human rights standards. The roles of NHRIs in the protection of human rights through handling human rights violation related complaints and resolving dispute cannot be under-estimated although their decisions are not binding.

As provided in the previous chapters, the EHRC is mandated to promote the respect for human rights through awareness creation and by assisting, recommending and guiding the government to act in line with the international and regional human rights standards, to handle human rights violation related complaints and to do other works in relation to the protection and promotion of human rights. This chapter examines whether the EHRC have been effectively addressing the human rights concern that led to its creation. It assesses the practical works of EHRC in line with Paris principles and in comparison with selected human rights commissions with the aim of knowing the achievement of the EHRC in terms of promoting the respect for human rights. Criteria such as practical independence, accessibility, level of cooperation with relevant bodies, accountability and transparency are used as standard to determine the effectiveness of the EHRC and its operational efficiency. This chapter will show us whether the problems identified under the previous chapter in the normative and institutional frame-works of EHRC are really affecting its practical operation or not.

The chapter first discusses the tasks performed and achievements made by the commission in relation to the protection and promotion of human rights in Ethiopia starting from the time it started operation. Emphasis is paid on the roles played by EHRC in terms of awareness creation, making itself accessible to the community, assisting and advising the government, supervision and monitoring, working in cooperation with the relevant bodies and compliant handling and conflict resolution. And then the chapter addresses some challenges and draw backs of the commission. The chapter makes comparison or raises the experiences of the selected human rights commissions on the areas where the performance of EHRC have problems which affect its effectiveness.

4.2. The EHRC at Work: The Major Achievements

As of the time it went operational the EHRC has founded all of its operational activities on its strategic plans. The first action plan covers the strategies that are followed by the commission form 2013-2015.²⁰² And then the EHRC adopted another strategic plan for the year 2016-2018.²⁰³ The action plans contain the major objectives to be achieved, the priority areas and the strategies to achieve the objectives. According to Dr. Addisu and Mr Demisew, these action plans were adopted and developed by team of qualified experts who first conducted a back ground study and then went on to prepare the strategic plans.²⁰⁴ According to them, the decision by the commission to be led by the strategic plan is quite important step because the strategic plan guides the commission as a road map in performing its activities and second it serve as a base for securing assistance it needs to implement its programs. Since the time it started operation the EHRC has been performing the following tasks in relation to the protection and promotion of human rights in line with its strategic plans.

4.2.1. Awareness Creation

The NHRIs can be effective in the protection and promotion of human rights only if it is accessible to the people who are the beneficiaries of the service rendered by the institution.²⁰⁵

²⁰² The Ethiopian Human Rights Commission, Human Right Action Plan 2013-2015

²⁰³ The Ethiopian Human Rights Commission, Human Right Action Plan 2016-2018

²⁰⁴ Interview with Dr. Addisu and Mr. Demisew (n 150)

²⁰⁵ UN Hand Book (n 1) par.98

The NHRI can be made accessible to the community through awareness creation about the institution and its works.²⁰⁶

In this regard, the EHRC has been performing awareness creation works through different mechanisms. Giving human rights related trainings to the duty bearer (those responsible for human rights protection and promotion) has been the major mechanism used by the commission. The human rights related awareness creation works and training mainly targets the law makers, members of the judiciary and executive and other government officials at the federal and regional states. For example, the commission, in cooperation with other relevant bodies, has been giving human rights related trainings to federal parliament and regional council members, members of police and prison administrations, officers of national defense forces, members of children's rights committee, professionals of labor and social affair agency, leaders of youth and women's associations, peace and democratic development leaders, special police force of regions, personnel's from justice offices, city council members and judges in different parts of the country.²⁰⁷ The commission has also been conducting consultative conferences, symposium, workshops, seminars and human right forums as a means of awareness creation and promotion of respect for human rights.²⁰⁸ The trainings, capacity building and other promotional works conducted by all these systems targets the duty bearers.²⁰⁹ Human rights forums were established in different parts of the country with the aim of promoting the protection of human right and the commission has been monitoring, assisting and strengthening the performances of these human rights forums.²¹⁰

The EHRC has been using electronic and print media as another means of promotion and awareness creation about the commission, its works and human right in general.²¹¹ In

²⁰⁶ *ibid* par.100-105

²⁰⁷ Ethiopian Human Rights Commission Annual Report 2010/2011(EHRC Annual Report 2010/2011), 23-26; EHRC Inaugural Report (n 116) 59-63; EHRC Annual Report 2015/2016 (n 122) 7; EHRC Annual Report 2016/2017 (n 123) 17, 19-31; EHRC Annual Report 2017/2018 (n 124) 10-18

²⁰⁸ EHRC Annual Report 2010/2011 (n 207) 29-33; EHRC Inaugural Report (n 116) 57, 77; EHRC Annual Report 2015/2016 (n 122) 11-18; EHRC Annual Report 2016/2017 (n 123) 43-49; EHRC Annual Report 2017/2018 (n 124) 40-48

²⁰⁹ *ibid*

²¹⁰ EHRC Annual Report 2015/2016 (n 122) 4-6; EHRC Annual Report 2016/2017 (n 123) 47-49; EHRC Annual Report 2017/2018 (n 124) 10-18, 48-50

²¹¹ EHRC Annual Report 2010/2011 (n 207) 22, 27-28; EHRC Inaugural Report (n 116) 72-75; EHRC Annual Report 2017/2018 (n 124) 10-18, 20-24

cooperation with medias, other concerned bodies and the branch offices, the EHRC has been celebrating recognized international, regional and national human rights days with the aim of enhancing awareness on human rights.²¹² Generally the effort of the commission with regard to awareness creation is encouraging.

However, the works are still limited and much more is required from the commission in relation to making itself accessible the community. The above promotional works are limited in terms of area and language. The promotional works only targets the duty bearers and the majority of the communities in Ethiopia, especially those of rural populations, are un- aware of even the existence of the commission. The commission has not been able to reach the public through new information technology system and it does not have digital library. The commission does not even regularly update its web site and its works are not available online which affects its visibility and credibility.

The selected human rights omissions have scored modest achievements with regard to enhancing their visibility through awareness creation. The KHRC is successful in increasing its visibility through raising the awareness of the community by using different mechanisms. The KHRC has been raising the awareness of the duty bearers through giving human rights related trainings, conducting human rights forums and conference, establishing human rights clubs, celebrating recognized human rights days, using Media etc.²¹³ The Commission has also been doing awareness creation works which targets the community at the grass root level like training rights holders throughout the country so as to increase their knowledge of human rights and enable them claim rights. For example, the KHRC has been undertaking awareness creations, capacity building trainings, workshops and forums targeting members of community at the grassroots level, the youth, farmers, traders, local administrations, members of community policing etc.²¹⁴ It has also been conducting rotating human rights clinics in various parts of the country by which the commission discusses with the community at the grass root level and receives complaints of human rights violations.²¹⁵

²¹² EHRC Inaugural Report (n 116) 67-72; EHRC Annual Report 2015/2016 (n 122) 9; EHRC Annual Report 2016/2017 (n 123) 19-31, 49-53; EHRC Annual Report 2017/2018 (n 124) 18-20, 40-48

²¹³ KHRC Annual Report 2013/2014 (n 18) 34-38; KHRC Annual Report 2016/2017 (n 17) 21

²¹⁴ KHRC Annual Report 2013/2014 (n 18) 34-37

²¹⁵ *ibid* 38

The KHRC is also well known for its utilization of new technologies and social Medias with the aim of reaching at the grass root level and increasing its visibility. For instance, it has been actively utilizing social media such as face book and twitter.²¹⁶ The use of these social Medias has enhanced the visibility of the KHRC at high level by increasing its followers and making community to be familiar with the activities and mandates of the commission.²¹⁷ HURINETs blog has been incorporated into the KHRC website which enables the commission to connect to local, regional and international partners.²¹⁸ In addition, the KHRC has been employing SMS system which allows the public to report cases of human rights violation.²¹⁹ Annual reports and other works of the KHRC are available online which also enhances its visibility to the public. The better provision of information about the commission and its activities in these ways increased understanding by the public of the work and mandate of the Commission and enhanced the general public engagement on human rights concerns in the country.²²⁰

The SAHRC has also scored success in creating awareness about human rights and itself and reaching at the grass root level. The SAHRC utilizes different strategies of awareness creation and promotion like the key stakeholder (duty bearers) based awareness creation and the public outreach engagements.²²¹ In cooperation with different institution, government, CSOs and media the SAHRC has been conducting human rights trainings, conferences and access to justice campaign, round table discussions on human rights related issues which targets the key stake holders from legislative, executive and judicial bodies.²²² The SAHRC has also been conducting effective advocacy of people-based capacity building, education and awareness-raising through public outreach engagements at community levels and public conversations on human rights-related matters to empower people to effectively realize their rights.²²³

The strategy of public outreach engagements and capacity building was introduced by the SAHRC on the bases of research. The research conducted by the commission showed that the rural community was not able to access information and justice due to the geographical location

²¹⁶ *ibid* 55; KHRC Annual Report 2016/2017 (n 17) 21

²¹⁷ KHRC Annual Report 2013/2014 (n 18) 55

²¹⁸ KHRC Annual Report 2016/2017 (n 17) 22

²¹⁹ *ibid* 22

²²⁰ KHRC Annual Report 2013/2014 (n 18) 55

²²¹ SAHRC Annual Report 2017 (n 16) 15; Mubangizi (n 139) 131

²²² *ibid*; See also SAHRC Annual Report 2015/2016 (n 173) 39-41

²²³ SAHRC Annual Report 2017 (n 16) 44, 57; Mubangizi (n 139) 131

of the Commission's provincial offices, poor road infrastructure and the high cost of transport. To alleviate this problem, the commission introduced the public outreach engagements strategy so as to enable the people to access the service of the commission. This awareness raising strategy is undertaken over a defined period throughout the country and the community is mobilized to attend and participate in the activities. The strategy is a combination of various activities such as door to door campaigns, focus group discussions, public information sessions, site inspections, exhibitions, and distribution of educational material, capacity building workshops, training the community and establishing and enhancing sustainable working relationships with community structure.²²⁴ According to the SAHRC, the public outreach engagements have served multiple purposes which include creating awareness on human rights, promotion of democracy, expanding the Commission's visibility across the country and bring the Commission's services directly to communities.²²⁵ It also enables the communities to lodge complaints of human rights violations to the commission which the commission may solve immediately or refer to the other concerned bodies. The strategy also enabled the commission get trust from the communities who considers it as an independent and impartial body which hears and remedies voices of sufferings.

Like the KHRC, the SAHRC also uses social media like face book, twitter to increase its reach and visibility at the grass root level.²²⁶ The annual reports and other works of the SAHRC are available online which also enhances its visibility to the public. Generally, SAHRC has improved institutional visibility at high level and widen its reach.²²⁷ It is the most widely known NHRIs in South Africa.²²⁸

The experiences of KHRC and SAHRC show that it needs commitment if NHRIs has to reach the public and to increase its visibility. These two institutions have achieved their visibility to the public by targeting not only the duty bearers but also the public at the grass root level, by improving their system of information technology, using social Medias, promoting transparency and making their works easily available to the community and promoting good relation and cooperation with other human rights institution.

²²⁴ SAHRC Annual Report 2017 (n 16) 57-59

²²⁵ *ibid* 57-59

²²⁶ *ibid* 57

²²⁷ *ibid* 15

²²⁸ Mubangizi (n 139) 130

4.2.2. Opening Branch Offices

Awareness creation about the existence and functions of the NHRIs is not sufficient to promote its accessibility unless the institution is made physically accessible to the community.²²⁹ In this regard, the EHRC is mandated to have its head office in Addis Ababa and to open branch offices at any place as may be determined by the House of people representatives.²³⁰ Accordingly, up on the request by the commission the house has opened eight branch offices at regional states such as Mekele, Bahirdar, Jimma, Gambela, Hawasa, Jigjiga, Assosa and Samara.²³¹ These branch offices have become operational after training the professional staffs and furnishing the offices with necessary equipments and they have been supporting the human rights protection and promotion efforts of main office.²³² While opening these branch offices at the regional states can be considered as an encouraging steps, still much remains in relation to making the commission more physically accessible to the people in the country with the large geographic area and diversified ethnic, religious etc groups. The branch offices are established at the capital cities of the regions and the majority of the communities in Ethiopia, especially those of rural populations, are un- aware of even the existence of the commission. Lack of adequate financial capacity has been the major factor limiting the accessibility of the EHRC.²³³

With regard to opening branch offices there is no huge difference between the SAHRC and KHRC vis-à-vis the EHRC. The SAHRC has head office in Johannesburg and nine branch offices.²³⁴ According to Peter, these regional offices of the Commission have well covered South Africa so that there is no problem of accessibility.²³⁵ The KHRC has its head office in Nairobi and four regional offices.²³⁶ But, unlike the EHRC, the SAHRC and KHRC has made themselves more visible to their community because of their impressive awareness creation works as discussed above.

²²⁹ UN Hand Book (n 1) par.102-104

²³⁰ EHRC Establishment Proclamation (n 9) Article 9

²³¹ Interview with Dr. Addisu and Mr. Demisew (n 150); See also EHRC Annual Report 2010/2011(n 207) 14-15; EHRC Inaugural Report (n 116) 53

²³² *ibid*

²³³ Interview with Dr. Addisu and Mr. Demisew (n 150); EHRC Annual Report 2015/2016 (n 122) 40

²³⁴ SAHRC Annual Report 2017 (n 16) 24

²³⁵ Peter (n 139) 251-374

²³⁶ KHRC 12th Annual Report 2015/2016 (n 18) 13

In relation to making NHRIs physically accessible to the people, CHRAJ can be a good role model to the EHRC. Article 220 of the constitution of Ghana requires the enabling legislation of CHRAJ to provide for the creation of regional and district branches of the commission. Accordingly, the CHRAJ has established about 120 offices outside its headquarters office and many of these branch offices are established at the local level.²³⁷ Its sufficient geographical accessibility has enabled the CHRAJ to handle and resolve large amount of complaints and to build reputation and public confidence.²³⁸ The following data shows the annual compliant handling capacity of CHRAJ: ²³⁹

- 13,931 cases in 2006
- 13,455 cases in 2007
- 12,919 cases in 2008
- 12,443 cases in 2009
- 12,900 cases in 2010

According to Anyidoho, the increase in complaints handling capacity of CHRAJ is an indicator of sufficient accessibility and growth in public awareness of the institution as well as an expression of confidence in the institution.²⁴⁰

Looking at the experiences of the CHRAJ one can easily understand that having more branch offices can enable NHRIs to increase its visibility to the community and to effectively address human rights matters. It also enhances the compliant handling capacity of the institution there by increasing its credibility and trust by the community.

4.2.3. Providing Free Legal Aid Service

²³⁷ The Commission on Human Rights & Administrative Justice Seventeenth Annual Report (CHRAJ 17th Annual Report) 2010, 19 available at <www.theioi.org/downloads/1i6fp/Ghana_CHRAJ_Annual%20Report_2010_EN.pdf> (accessed on June 13, 2018); See also Michelle Parlevliet et al, *National Human Rights Institutions in Africa: Defenders of Human Rights, Managers of Conflict, Builders of Peace?* (University of Cape Town 2005) 68; Richard C. Crook et al, *Popular Concepts of Justice and Fairness in Ghana: Testing the Legitimacy of New or Hybrid Forms of State Justice* (African Power and Politics 2010)

²³⁸ Nana Akua Anyidoho, *Ghana: Review of Rights Discourse* (Norwegian Human Rights Center, 2011) 15; See also Crook (n 237) ; Boadi (n 38) 7

²³⁹ CHRAJ 17th Annual Report 2010 (n 237) 51-56

²⁴⁰ Anyidoho (n 238) 45

Neither the Paris principles nor the enabling legislation of the EHRC expressly mandate the EHRC to provide free legal aid service. Despite lack of explicit power, the EHRC has been providing free legal aid service to the community.²⁴¹ In deed this power of the commission can be implied from article 6(11) of the EHRC establishment proclamation which authorize the commission to perform any activity which is necessary to achieve its objective.

The commission has established about 102 free legal aid centers in collaboration with different universities and other concerned bodies and has been monitoring and supporting these free legal aid service centers so as to strengthen their roles.²⁴² It has signed memorandum of understanding with Ethiopian universities by which the commission provide them financial support and the universities committed to provide free legal aid service to the community.²⁴³ These free legal aid centers have been serving the societies in different parts of the country through offering legal advice and representing the beneficiaries in the court.²⁴⁴ The following data shows the free legal aid service rendered by the free legal aid centers operating the nine universities in the first three months since the initiation of operation:²⁴⁵

Universities	Total beneficiaries of the service
• Bahir Dar University	2533
• Gondar University	1085
• Jimma University	928
• Mekele University	1403
• Diredawa University	48
• Hawassa University	196
• Jigjiga University	60
• Dilla University	63
• Haramay University	100

The main beneficiaries of these services are the poor and vulnerable groups of society such as women, children, person with disabilities, the elderly and HIV positive people.²⁴⁶ The numbers

²⁴¹ EHRC Annual Report 2010/2011 (n 207) 15-16; EHRC Annual Report 2016/2017 (n 123) 15

²⁴² *ibid*; Annual Report 2017/2018 (n 124) 30, 37-38

²⁴³ EHRC Inaugural Report (n 116) XII, 10, 106-110; EHRC Annual Report 2010/2011(n 207) 63-67

²⁴⁴ EHRC Annual Report 2010/2011 (n 207) 15-17

²⁴⁵ *ibid* 17

²⁴⁶ *ibid* 15

depicted above shows that the legal aid centers have a potential of serving the disadvantaged groups of the society.

With the aim of knowing the current reality on the ground, I have visited the Jimma university free legal aid center which is one of the centers operating through the support of the EHRC. According to Ato Mohammed Kebe, the Jimma University free legal aid center was established in 2000 EC and started operation in 2002 EC and has been providing legal counsel and representing the beneficiaries especially the poor's, women, children and person with disabilities in the court.²⁴⁷ The center has been providing the legal aid service to an average of 1250 beneficiaries per a year and the students of the university has been the main actors in providing these services. The center has been promoting itself through mass media and there is an initiative to establish branch centers at the rural areas. According to Ato Mohammed, the center gets financial and technical support from the EHRC for the proper accomplishment of its tasks.

This role of the commission is in line with the constitutional right of access to justice.²⁴⁸ It enables the ignorant, disadvantaged and poor people to have access to justice through the aid provide by these centers. In addition, the center has been serving as means of building the capacity of law students who are serving in the center and who will be the future legal practitioners. The centers will also increase the visibility of the commission. Facilitating the provision of free legal aid service is one of the area in which the commission scored good achievements.

4.2.4. Human Rights Oversight and Monitoring

There is no provision in the EHRC establishment proclamation that expressly authorizes the commission to supervise the conditions and performances of institutions. But, the EHRC has been supervising the condition and performances of some institutions in different parts of the country. This role of the commission can be implied from its broad human rights protection mandate.²⁴⁹ In cooperation with the relevant bodies and the branch offices, the commission has been supervising the condition of prison institutions in different parts of the country with the aim of knowing whether the conditions of the treatments of prisoners are in line with the FDRE

²⁴⁷ Interview with Ato Mohammed Kebe, Director of Jimma University FreeLegal Aid Service (Jimma 10/09/010 EC)

²⁴⁸ FDRE constitution (n 9) Article 37

²⁴⁹ EHRC Establishment Proclamation (n 9) Article 6 (11)

constitution and international standards.²⁵⁰ Through conducting monitoring and collecting data, the commission identified problems in federal and regional prison administration institutions and made reports to the concerned bodies recommending them to take urgent action to improve the treatment of person in custody and condition of place of detention.

The monitoring was conducted based on the guidelines and check lists prepared in accordance with the internationally recognized criteria's pertaining to the manners in which human rights of detainees are handled. The monitoring focused on the living conditions of the detainees, the food and medical facilities made available, the extent to which they are allowed to contact with their attorney, family and friends. Then, the commission's representatives made discussion with the concerned officials about the shortcomings discovered during the visit and gave trainings and recommended them about the measures to be taken and have been following up the implementation of the recommendations. The monitored prison institutions have improved the financial allocation to food facilities and the conditions of person in custody by accepting and implementing the report and recommendation of the commission.²⁵¹ This is one of the area in which the commission has scored better achievement in the protection and promotion of human rights in Ethiopia. This achievement is in line with the FDRE constitution which guarantees the rights of prisoners and person under detention to proper and human treatment.²⁵²

4.2.5. Assisting and Advising the Government on Human Rights Related Issues

Providing advisory service and assistance to the government in relation to preparation of periodic human rights report and monitoring the compatibility of national laws with the international human rights standards are one of the mandates of the EHRC. With the aim of discharging the former mandate, the commission, by developing project program, has assisted the government in preparing periodic reports and enabled the government to fully meet its reporting obligation under varies human rights instruments ratified by Ethiopia.²⁵³ Before the commencement of the project, the commission conducted conference and training involving varies ministries, heads,

²⁵⁰ EHRC Annual Report 2010/2011 (n 207) 18-20; EHRC Inaugural Report (n 116) 96-99; EHRC Annual Report 2015/2016 (n 122) 7-9; EHRC Annual Report 2016/2017 (n 123) 19-31; EHRC Annual Report 20017/2018 (n 124) 30, 34-36

²⁵¹ Interview with Dr. Addisuand Mr. Demisew (n 150); See also Abdo, *The Ethiopian Human Rights Commission and Its Contribution in the Protection of Human Rights and Building Good Governance*(n 14) 10

²⁵² FDRE Constitution (n 9) Articles 17, 18, 21

²⁵³ EHRC Inaugural Report (n 116) X, 10, 102-105

CSOs and international organization through which it generated inputs for the project and set up committee responsible for providing overall guidance to the project.²⁵⁴ The commission also covered necessary funds for the accomplishment of the project. Ethiopia does not have good record in meeting its reporting obligation until the commission started the assistance.²⁵⁵ So, the commission's contribution with this regard is impressive and should be appreciated.

However, the commission refrained from recommending the government about the revision of some controversial national laws such as the civil societies and charities establishment proclamation and the anti-terrorism proclamation. According to the inaugural report of the commission, the duty to provide advice and input on the existing and new legislation in the country remained unaddressed because of lack of adequate resource.²⁵⁶ But, the reason provided by Addisu is different from the reason under the inaugural report. According to him, there has not been concrete fact on the ground that makes the commission to believe that these laws violate human rights.²⁵⁷ However, these laws have been the subjects of hot debates and criticisms by the international organizations and some writers on the ground that these laws are not in line with the human rights standards. For instance, Human Rights Watch releases publications every year condemning these laws as instruments of human rights violation in Ethiopia.²⁵⁸ The Amnesty International also releases report condemning the laws as instruments hindering the enjoyment of human rights in Ethiopia.²⁵⁹ The African commission on Humans and Peoples Rights also expressed its concern about the effect of these laws.²⁶⁰

²⁵⁴ EHRC Inaugural Report (n 116) 102-105

²⁵⁵ *ibid* 103; See also Abdo, The Ethiopian Human Rights Commission and Its Contribution in the Protection of Human Rights and Building Good Governance (n 14) 16

²⁵⁶ EHRC Inaugural Report (n 116) 111-116

²⁵⁷ Interview with Dr. Addisu (n 150)

²⁵⁸ Ethiopia: World Report 2018: Ethiopia/Human Rights Watch available at <<https://www.hrw.org/world-report/2018/country-chapters/ethiopia>> (accessed on May 25, 2018); World Report 2017: Ethiopia/ Human Rights Watch available at <<https://www.hrw.org/world-report/2017/country-chapters/ethiopia>> (accessed on May 25, 2018)

²⁵⁹ Amnesty International Report 2017/18: The State of the Worlds Human Rights, 19 ff available at <<https://www.amnestyusa.org/wp-content/uploads/2018/.../POL1067002018ENGLISH.pdf>> (accessed on June 14, 2018)

²⁶⁰ Ethiopia's Anti-Terrorism Proclamation and the right to freedom of expression available at <<https://africlaw.com/2013/08/30/ethiopias-anti-terrorism-proclamation-and-the-right-to-freedom-of-expression/>> (accessed no June 13, 2018)

According to Addisu, it is not only Ethiopia which adopted such laws and other developed countries known for their good human rights records also have similar laws. However, although it is the sovereign power of the government to enact laws and to regulate the behavior of its citizen, the laws to be enacted should meet the criteria of clarity and it should be in line with the international human rights standards. Some authority alleges that the Ethiopian anti terrorism law is exceptionally expansive and vague which caused the violation of human rights of peoples.²⁶¹ The charities proclamation also affects the protection and promotion of human rights in Ethiopia by preventing the operation of foreign charities institution in Ethiopia and limiting the fund generation capacity of Ethiopian CSOs.²⁶² According to Human Rights Watch, the Ethiopian Women's Lawyers Association and the Ethiopian Human Rights Council has significantly reduced their budget, staff and operation because the government arbitrarily frozen their bank account on the bases of the charities proclamation.²⁶³

The trend in the SAHRC and KHRC is that if certain national laws are incompatible with the international human rights standards, these commissions provide feed backs and contributes for the revision of such laws. For instance, several CSOs and other institutions have been claiming that the prevention and combating of hate crimes and hate speech bill and the protection of state information bill of South Africa is negatively affecting the right to freedom of expression and speech in South Africa.²⁶⁴ Taking this constitutional concern in to consideration the SAHRC has submitted comments to the concerned bodies calling for a revision of the contents of these bills.²⁶⁵ The SAHRC has also made recommendation and advice in relation to law relating to torture, protection of information and traditional courts and in accordance with this call by the

²⁶¹ Ethiopia's Anti-Terrorism Proclamation and the right to freedom of expression (n 260)

²⁶² Shiferaw (n 129)

²⁶³ Human Rights Watch, World Report-Ethiopia 2012 available at <<https://www.hrw.org/world-report/2012/country-chapters/ethiopia>> (accessed in May 23, 2018)

²⁶⁴ The South African Human Rights Commissions National Human Rights Institution Report to the United Nations Committee on the Economic, Social and Cultural Rights: For consideration during the 61st pre-sessional working group adoption of a List of Issues regarding the South African Government's Initial State Report under the International Covenant on Economic, Social and Cultural Rights (SAHRCs NHRI Report to ECOSOC) 2017, 4 available at <http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ZAF/INT_CESCR_IFL_ZAF_28910_E.pdf> (accessed on May 30, 2018)

²⁶⁵ SAHRCs NHRI Report to ECOSOC (n 264)

SAHRC, the South African government has made new legislations on these areas which confirms with the international and regional human rights standards.²⁶⁶

The KHRC also have good trend with regard to recommending the government for the revision of laws which are incompatible with human rights standards. For instance, the KHRC has been taking measures for the revision of penal laws; prisons act etc to bring them into conformity with the constitution of Kenya and international human rights instruments.²⁶⁷ The advisory group issued by the KHRC also recommends and gives input to the parliamentary committee with regard to laws to be enacted by the latter and the majority of proposals submitted by the group were accepted by the parliamentary committee and incorporated in ensuing legislation.²⁶⁸

The commitment and independent functioning of the SAHRC and the KHRC can be a role model for other NHRIs including the EHRC. Confronting the government on such human rights issues not only enhance the protection and promotion of human rights but also is the indicator of independently and effectively functioning NHRIs. It also increase confidence of the public towards the institution and avoid criticism.

4.2.6. Handling, Investigating and Addressing Human Rights Violation Related Complaints and Conflicts

Section D of the Paris Principles authorizes NHRIs to hear complaints and petitions with regard to human rights violation and make decision and recommendations in relation to those situations. Similarly, the EHRC is mandated to investigate complaints of human rights violation committed by government authorities or by private sector, upon individual complaints or by its own motion.²⁶⁹ Article 22 of the proclamation adopted a broad standing by which the commission can receive complaints from the victim, spouse, the family member or even 3rd parties who have no vested interest which is the strong side of the proclamation. The proclamation also provides more encouraging system of complaint lodging which allows the victims to lodge their compliant

²⁶⁶ SAHRC Responses to OHCHR (n 140) 2-3; See also Tebogo Titose Mapodisi, 'Towards the Establishment of a National Human Rights Institution in Botswana: Lessons from South Africa and Zimbabwe' (Master's Thesis, University of Cape Town 2014) 26-27

²⁶⁷ KHRC Annual Report 2013/2014 (n 18) 12

²⁶⁸ *ibid* 14, 39-40

²⁶⁹ EHRC Establishment Proclamation (n 9) Articles 6, 24

orally, in writing or in any other means in Amharic or other language free of charge.²⁷⁰ Up on receiving the complaint the commission may solve the case amicably or may conduct investigation.²⁷¹ The commission also has the authority to order those complained against appear for questioning or that they submit their defense, witness appear and give their testimony and any person in possession of evidence, relevant to the case, produce same.²⁷² In order to effectively discharge its complaint handling mandate the commission has adopted the manual for the investigation procedure.²⁷³ In accordance with this manual, the commission has been investigating complaints and providing remedies over different human rights violation cases.

Because of lack of access to the annual performance reports of the commission, the author was not able to know the exact numbers of complaints handled by the commission from the time it started operation till the writing of this research. The following data shows the complaints received by the commission in the year 2010/11, 2012/13, 2015/16, 2016/17 and 2017/18:²⁷⁴

➤ 2010/2011	1448
➤ 2012/2013	1427
➤ 2015/2016	1277
➤ 2016/2017	1394
➤ 2017/2018	1571

Some of these cases have been resolved through conducting investigation and some others are resolved in amicable way. Issues of employment-related matters, property and security of person, freedom of movement, equality and non-discrimination, inter-ethnic conflicts, election related issues, border disputes in different parts of the country are the major one.

The cases depicted above shows the effort of the commission in addressing human right violation cases which should be appreciated. However, in the opinion of the author of this study this is not sufficient and the commission should have received more complaints given the large size of the country and its poor human rights records. In addition, only little has been done by the

²⁷⁰ *ibid* Articles 22, 23

²⁷¹ *ibid* Articles 26

²⁷² *ibid* Article 25

²⁷³ The Ethiopian Human Rights Commission Investigation Procedure Manual 2014

²⁷⁴ Ethiopian Human Rights Commission Annual Report 2011/2012, 70; Ethiopian Human Rights Commission Annual Report 2012/2013; EHRC Annual Report 2015/2016 (n 122) 25-27; EHRC Annual Report 2016/2017 (n 123) 32-37; EHRC Annual Report 2017/2018 (n 124) 24-32

commission in relation to the protection and promotion of socio-economic rights. The commission exceptionally resolved only few socio-economic rights related cases. For instance, it worked with the concerned government organ and solved the problem of about 42 residents of Addis Ababa Lafto sub city whose rights has been violated by eviction from their home because of the government development policy (road construction project).²⁷⁵ Residents form the Gamo Gofa also brought complaints to the commission regarding eviction they have faced because of the government development policies (farm development) and the commission enabled them to get exchange land to build home.²⁷⁶

The government development policy and ethnic conflicts in different parts of the country are among the factors for the eviction of peoples form their home and land. The commission's performance has been better with regard to solving eviction complaints arising out of conflicts.²⁷⁷ But, many cases brought against government for the eviction without notice and compensation were rejected by the commission though they constitute human rights violation.²⁷⁸ According to Abdo, although the commission provides different reasons such as lack of jurisdiction for the rejection of bulk of socio-economic rights related cases, the political nature of these rights is the main reason.²⁷⁹

Although it is mandated to check whether the government is respecting and protecting human rights and hold the government accountable in case of violation, these practical cases indicate that the EHRC is not meeting its mandate over public authorities. Generally, challenges such as lack of accessibility of the commission to the community, lack of awareness because of inadequate promotion, lack of independence and interest in commission, lack of fund and lack of explicit mandate over socio economic rights may be the potential cause that hindered the commission from handling more human rights violation complaints.

The role of EHRC has not been limited to handling complaints of human rights violations depicted above. It has investigated the allegation of human rights violation because conflict in

²⁷⁵ EHRC Annual Report 2015/2016 (n 122) 7

²⁷⁶ EHRC Annual Report 2016/2017 (n 123) 36

²⁷⁷ Abdo, The Human Rights Commission of Ethiopia and Issues of Forced Evictions (n 11)

²⁷⁸ *ibid*

²⁷⁹ *ibid*

Ethiopian especially in parts of Oromia and Amhara regional states that occurred in December 2015-May 2016. There were public demonstrations and conflicts which resulted in loss of lives and damage to properties in these regions. In response to such situations, the Ethiopian government has declared state of emergency and took other measures so as to ensure peace and security in the country.²⁸⁰

But, such measures taken by the government was criticized by different international organizations as act of technical abuse to human rights. For instance, the publication released by Human Rights Watch entitled “Ethiopia: New State of Emergency Risks Renewed Abuse” claimed that the measures taken and state of emergency declared by the Ethiopian government was a systematic mechanism adopted by the government to silence the protest groups who have been subject of human rights violation.²⁸¹ The Amnesty International and the US state of department also released publication which condemns Ethiopia for violating human rights under the guise of emergency.²⁸² According to these publications, the prolonged state of emergency was full of security force abuse and human rights violation such as mass arrests, mistreatment in detention, and unreasonable limitations on freedom of assembly, expression, and association, arbitrary killing etc of the protest groups.

As it has been noted earlier, it is one of the mandates of the EHRC to undertake investigations in to the allegations of human rights violations, such as the above, and to ensure that the violations are properly addressed. And the commission has conducted investigation on the alleged human rights violations.²⁸³ The problem of good governance, failure to implement the special interest of

²⁸⁰ Commentary on the Ethiopian State of Emergency, available at <https://www.amnesty.org/download/Documents/AFR2579822018ENGLISH.PDF> (accessed on June 14, 2018)

²⁸¹ Human Rights Watch-Ethiopia: New State of Emergency Risks Renewed Abuse, available at <https://www.hrw.org/news/2018/02/23/ethiopia-new-state-emergency-risks-renewed-abuses> (accessed on April 27, 2018); See also Ethiopia-World Report 2018: Ethiopia/Human Rights Watch (n 258)

²⁸² Amnesty International Report 2016/17: The State of the Worlds Human Rights, 16 available at https://www.amnesty.ch/de/laender/.../usa/.../amnesty-international-report-2016_17.pdf (accessed on June 14, 2018; Amnesty International Report 2017/18: The State of the Worlds Human Rights (n 259); Ethiopia 2017 Human Rights Report-US Department of State, 1ff available at <https://www.state.gov/documents/organization/277243.pdf> (accessed on June 14, 2018)

²⁸³ The Ethiopian Human Rights Commission Report on the Findings of the Investigations in to the Human Rights Situations During the Disturbance in the Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self Administration Raised by the Qimant Nationality in the Amhara Regional States 2016; See also EHRC Annual Report 2016/2017 (n 123) 32-34 and EHRC Annual Report 2017/18 (n 124) 29ff

Oromia in Addis Ababa as per the Constitution, the Addis Ababa Master Plan, non participatory government policies and strategies etc were identified by the commission as the main causes for unrest in Oromia regional state.²⁸⁴ Seeking answer for these problems, the community exercised its constitutional right to demonstration. But this was changed to conflict and attacks causing loss of lives, injury and damage to properties when the terrorist like Oromo Liberation Front and other lawfully registered political parties in the region join the situation.²⁸⁵ The commission found that the questions of the community were constitutional and recommended the government to ensure good governance in the region by making its every act, decision or policy transparent and participatory.²⁸⁶ The commission further provided that the measures taken by the government security force aimed to stop the suffering, death and destruction of property and to secure the constitutional order was necessary and proportional. The commission underlined that those who, by using the question of the community as a cover, aggravated the situation and human rights violation should be made accountable.²⁸⁷

The unrest in the Amhara regional state was related to the question of identity and self-determination of Qimant nationality who claimed for separate identity but not want to be subsumed under other nationalities.²⁸⁸ But, the concerned regional government rejected the question on the ground that the Qimant does not have language of their own which is one of the constitutional requirements for acquiring the status of nation nationality. The Qimants appealed to the House of Federation claiming that they have their own identity and distinct community some of them speaking their own language.²⁸⁹ They further alleged that their language failed to develop because of the suppression of the language for a long and the house send the case back to the region for reconsideration. In this case the commission found that, although the question of Qimants has constitutional ground, failure to give quick response by the region and the house caused conflict in the region and led to loss of lives, injury, damage to property and displacement.²⁹⁰ The commission further provided that, although most of the measures taken by security officers were legal and proportionate; there were many instances in which the security

²⁸⁴ *ibid*
²⁸⁵ *ibid*
²⁸⁶ *ibid*
²⁸⁷ *ibid*
²⁸⁸ *ibid*
²⁸⁹ *ibid*
²⁹⁰ *ibid*

officers used unnecessary force against the protest and demonstration which caused illegal killings and injury on civilians. It has made recommendation for ensuring good governance, rehabilitating the victims and bringing responsible security forces to justice.

These findings and recommendations of the commission were reported to and endorsed by the House of People Representative and the house ordered the relevant government body to implement the commission's findings and recommendations.²⁹¹

According to Addisu, prior to engaging in the investigation process they did a systematic preparation and trained the investigating groups about the procedures and ethics they have to follow while conducting the investigation.²⁹² The report of the commission also shows that they have used systematic and scientific ways in identifying the place of investigation, relevant bodies to participate in the investigation, the human right violations occurred, the cause and the perpetrators of the violation etc. In general, the role played by the commission for the protection and promotion of human rights in the context of the current conflict in Ethiopia should be appreciated as a good trend.

However, some international organizations such as Human Rights Watch claims lack of independent investigation by the EHRC. This international human rights NGO has alleged that the government-affiliated Human Rights Commission is not sufficiently independent and its investigations consistently lack credibility.²⁹³ The researcher also has concern on some aspects of the measures taken by the commission which might have affected the achievements of the commission. The way preferred by the commission in preparing its findings and report cannot promote deterrence effect for the future because the report is not blaming and shaming for human rights violation. For instance, in the report the commission has found that the Amhara special police force has taken disproportionate measures and violated human rights and recommended measures to be taken against those superior leaders of the force.²⁹⁴ But, at the same time the commission stated that the Amhara regional government cannot be blamed for the

²⁹¹ *ibid*

²⁹² Interview With Dr. Addisu (n 150)

²⁹³ Ethiopia-World Report 2018: Ethiopia/Human Rights Watch (n 258)

²⁹⁴ The Ethiopian Human Rights Commission Report on the Findings of the Investigations in to the Human Rights Situations During the Disturbance in the Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self Administration Raised by the Qimant Nationality in the Amhara Regional States 2016, 94-104

human rights violations committed by the force.²⁹⁵ According to Adisu, the regional government was not made accountable because there was no evidence that shows any nexus between the concerned regional government and the order given to the police force.²⁹⁶ But, in the opinion of the author of this study, it is not logical to free the regional government from the responsibility for the human rights violation while making its special police force responsible which is accountable to the regional cabinets.

Moreover, the findings and the report of the commission is not yet made accessible to the public and not accessible on line. I have asked Addisu why the commission is not publicizing online not only its finding in relation to the current situations but also all of the works it has conducted in relation to the human rights protection and promotion in Ethiopia. And his response is that the commission is seriously considering this issue for the future.²⁹⁷ Making its work open and accessible to the community will have many advantages for the commission itself. For instance, it will serve as one way of awareness creation about the human rights of the people as well as the existence and the function of the commission. It will also serve as the sign of effectively and independently functioning institution thereby increasing the confidence of public towards the commission.

Generally, the commission needs to work more with regard to taking proactive measures in the protection and promotion of human rights especially in relation to investigating the allegation of human rights violation by the government.

The SAHRC and the KHRC have good jurisprudence with regard to effectively hearing at voice of suffering. Section 184 (1) of the South African constitution and Section 9 of the human rights commission act empower the SAHRC to handle human rights violation related complaints. In line with this power, the SAHRC has entertained large number of cases in an effective manner irrespective of the nature of the case and the parties involved without any fear.²⁹⁸ The SAHRC

²⁹⁵ *ibid*

²⁹⁶ Interview with Dr Addisu (n 150)

²⁹⁷ *ibid*

²⁹⁸ Meda Couzens, 'An Analysis of the Contribution of the South African Human Rights Commission to Protecting and Promoting the Rights of Children' (2012) 28 SAJHR 581

have most active tribunals which effectively handle human rights cases and make substantial decisions.²⁹⁹ The following data shows the annual case handling capacity of the SAHRC.³⁰⁰

➤ 2008/09	10,000
➤ 2009/10	10785
➤ 2010/11	10370
➤ 2011/12	11363
➤ 2012/13	8919
➤ 2013/14	9217
➤ 2014/15	8179
➤ 2015/16	9238
➤ 2016/17	9730

Cases in relation to freedom and security of the person, housing, property, health care, food, water and social security, education, access to information, human dignity, equality, labor relation, rights of arrested, detained and accused person and administrative fairness are the major. The large numbers of complaints among these are about the government's failure to fulfill its obligations and in all these cases, the decisions of the SAHRC have been quite instructive of the government, institutions and authorities dealing with human rights issues.³⁰¹

Socio-economic rights related complaints also constitutes substantial number; for instance, 18 percent of complaints received by the Commission in 2017 were socio-economic rights related.³⁰² As provided in the previous chapter the SAHRC has also scored great achievements with regard to the effective realization of socio-economic rights through receiving reports from concerned bodies in line with its constitutional mandate. It has made many economic and social rights reports there by making the South African government accountable for failure to fulfill socio-economic rights.³⁰³ Its intervention in many socio-economic rights cases pending before the South African constitutional courts are another achievement. For instance, in *Grootboom vs*

²⁹⁹ Peter (n 139) 354

³⁰⁰ SAHRC Annual Report 2015/2016 (n 173) 16; SAHRC Annual Report 2017 (n 16) 15, 23; SAHRC Presentation of the 2011/12 Annual Report and 2012/13 Performance Report to the Portfolio Committee (n 140); Musuva (n 141) 25; Thipanyane (n 8) 131

³⁰¹ Murray (n 192) 1, 7; Peter (n 139) 356-357

³⁰² SAHRC Annual Report 2017 (n 16) 66ff

³⁰³ Mubangizi (n 139) 131; Murray (n 192) 12

Oostenberg municipality case the SAHRC has intervened and has acted as *amicus curiae* and assisted the South African Constitutional Court by supervising and reporting the compliance of the government with the court's decision.³⁰⁴ The Grootboom case was related with the eviction of the plaintiffs (children and their parents who were living in poor conditions in an informal settlement) for alleged illegal occupation of farm land. The victims of eviction brought the case to the High Court and the court decided the case in favor of the victims. According to the court, the victims are entitled to shelter according to the constitution of South Africa and it ordered the municipality to provide them with tents, water supply and proper sanitation. The municipality appealed against the decision to the Constitutional Court which affirmed the decision of high court and authorized the SAHRC to monitor the implementation of the decision. The intervention and participation of the commission on this and other cases has made an essential contribution in the effective implementation and protection of socio-economic rights in South Africa.³⁰⁵ And the involvement SAHRC in the issues of socio- economic right is a new methodology of enforcing socio-economic rights in South Africa through assisting the effort of courts and government.³⁰⁶

Generally, these achievements has enabled the SAHRC in promoting culture of respect for the rule of law and human rights and in making the South African government and its officials accountable, transparent, and responsive to the needs of the people.³⁰⁷ It also helped in building public confidence, promoting good governance and effective protection of human rights.³⁰⁸ Because of its independent functioning and outstanding performance in relation to human rights protection and promotion, the commission has built national and international reputation as being independent NHRIs which effectively defends human rights.³⁰⁹ The commitment of the commission and its officials and the role played by the South African government is great for the effective and independent practical functioning of the commission. The good and democratic leadership of the South African government and the ruling party has contributed to the effective performance of the commission.³¹⁰ According to Thipanyane, the effective performance of the

³⁰⁴ Government of the Republic of South Africa v Grootboom (Gootboomcase) 2001 (1) SA 46 (CC); See also Klaaren (n 92) 539

³⁰⁵ Thipanyane (n 8) 131

³⁰⁶ Ebadolahi (n 193) 1568

³⁰⁷ Thipanyane (n 8) 130

³⁰⁸ *ibid* 131

³⁰⁹ *ibid* 132; Mubangizi (n 139) 130

³¹⁰ Thipanyane (n 8) 132, 138

SAHRC is the impact good leadership.³¹¹ If the leadership fears something behind, unwilling or unable, it cannot be effective protection and promotion of human rights.

According to section 16 (1) (a) of Act No.2003, the KHRC has powers to investigate, on its own initiative or upon a complaint, the violation of any human rights. In line with this power, it has scored good achievements with regard to hearing at voices of suffering, especially in relation to the protection, promotion and the realization of economic and social rights.³¹² For example, the commission has received a total of 1,658 complaints in the year 2012/2013 and socio-economic rights violation cases constitutes the largest category of complaints accounting for 1,019 (61.5%).³¹³ The KHRC received a total of 1,797 complaints in the 2013/2014 and socio-economic rights violation cases constitute the largest category of complaints accounting for 1163 (64%).³¹⁴ The Commission received and processed a total of 1,797 and 4, 667 complaints in the year 2014/15 and 2015/16 respectively ³¹⁵ and Still the socio-economic rights violation case constitutes the highest percent; for instance out of 4, 667 complaints received by the commission in the year 2015/16, the socio-economic rights violation case constitute the highest recording 2,749 (58.9%).³¹⁶

Most of these socio-economic rights violations complaints relate to rights to housing or land vis-à-vis eviction as a result of government development policy.³¹⁷ An eviction from Embobut forest case was one of the outstanding eviction cases handled by the KHRC in which the KHRC confronted the government for human rights violations during the eviction of the indigenous people from their land.³¹⁸ In this case, the KHRC conducted investigations on alleged unlawful evictions by Government officers against forest dwellers in Embobut without prior notice and compensation. The commission identified human rights violations such as infringements on the right to property, food, water, security, education and health. The commission further established that the evictions were conducted by violating a court order barring the said

³¹¹ *ibid* 132

³¹² KHRC Annual Report 2013/2014 (n 18) 22

³¹³ KHRC Annual Report 2012/2013 (n 133) 16

³¹⁴ KHRC Annual Report 2013/2014 (n 18) 14, 22

³¹⁵ KHRC 12th Annual Report 2015/2016 (n 18) 29

³¹⁶ *ibid* 30

³¹⁷ KHRC Annual Report 2016/2017 (n 17) 38

³¹⁸ KHRC Annual Report 2013/2014 (n 18) 25-26

evictions. Finally, in cooperation with concerned bodies, the commission prepared and presented a memorandum to the National Land Commission with recommendations on the way forward regarding the Embobut and other evictions of minority communities. The commission has developed frame works and hand books which provides the minimum procedural protection available during evictions such as issuance of adequate notice, genuine consultations with affected individuals, access to adequate information, the need to explore alternatives, discouraging the use of force, ensuring protection of property and possession, legal redress before carrying out evictions etc.³¹⁹

The KHRC monitors budget delivery for socio economic rights such as water, health, education and housing with the aim of knowing whether the government is fulfilling its obligation to respect, protect and fulfill these rights.³²⁰ For example, the monitoring conducted by KHRC on status on the right to safe drinking water and sanitation revealed problems and violations of these rights and the KHRC recommended for urgent measures to be taken for the realization of these rights.³²¹

As noted under the previous chapter, the KHRC has been contributing a lot for the realization of economic and social rights in Kenya by creating awareness to the concerned stake holders and by adopting comprehensive legal frame works the so called Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 8 of 2015) which establish frameworks for monitoring and enforcement of economic and social rights.³²² This bill requires Kenyan governments to prepare strategic plans and periodically report on progress made in the realization of economic and social rights and authorize the KCHR to monitor the implementation. The deliberate effort of the KHRC for the realization of economic and social rights has led to the improved access to economic and socio-cultural rights in the country.³²³

Generally, the KHRC has been confronting and putting pressure on the Kenyan government with regard to human rights issues without any fear.³²⁴ It's practical operational independence has enabled the commission to efficiently and effectively promote and protect human rights in

³¹⁹ KHRC 12th Annual Report 2015/2016 (n 18) 50

³²⁰ KHRC Annual Report 2013/2014 (n 18) 53; KHRC Annual Report 2016/2017 (n 17) 12

³²¹ KHRC Submission on the Special Reporter on the Right to Safe Drinking Water and Sanitation (n 200)

³²² KHRC 12th Annual Report 2015/2016 (n 18) 48

³²³ KHRC Annual Report 2016/2017 (n 17) 10

³²⁴ *ibid* 4-9

Kenya.³²⁵ And the commission has built popular credibility for its independent practical operation and considered as champion of democracy and human rights protection in the country.³²⁶

The deep looking at the experiences of these two commissions' shows that their modest achievement is the result of two things: the first one is their commitment towards hearing voices sufferings and providing immediate solution to the potential violation of human rights. This can be inferred from the achievements they have scored with regard to handling human rights violations complaints, supervising the conduct of the government and adopting different frame works for the effective realization of human rights as depicted above. The second one is that they fear nothing behind while discharging their human rights protection and promotion mandate. As can be inferred from the above discussions these two commissions have been confronting their respective governments and taking proactive measures with regard to the realizations human rights which shows the existence of good and democratic political culture in these countries. In the opinion of this author, these two crucial things are lacking in the trend of the EHRC and the government and the commission needs to take lesson from the above experiences.

4.2.7. Cooperation with Other Relevant Bodies

According to section A (3) (e) of the Paris principles, NHRIs shall foster cooperation with different relevant international, regional and national institutions that are competent in the areas of the promotion and protection of human rights. This condition is meant to enable the overall effectiveness of the NHRIs by establishing and strengthening cooperative relationships with a wide range of other organizations engaged in the protection and promotion of human rights.³²⁷

The mandate of the EHRC to foster cooperation with other relevant bodies can be implied from article 6 (9) and (11) of the EHRC establishment proclamation. The commission has been performing all the tasks discussed in this chapter in cooperation with different international and national institutions. For instance, the commission has worked in cooperation with United Nations Office of High Commissioner for Human Rights, Human Rights Education Associates,

³²⁵ *ibid* 30-31

³²⁶ *ibid* 1; See also Idike (n 7) 51

³²⁷ UN Hand Book (n 1) par. 106

United States Agency for International Development, Multi Donor Democratic Institution Program, International Development Law Organization, United Nations Development Program, United Nations Children's Fund, United Nations Entity for Gender Equality and the Empowerment of Women, IRISH AID, International Labor Organization and World Health Organization in the relation with promoting and protecting human rights in general and the rights of vulnerable groups in particular.³²⁸

The EHRC is member of the African national human rights network operating in Nairobi and has been attending international human rights meetings convened by the international institutions such as UN, ICC.³²⁹ It has been conducting discussion with the representative from different countries and institutions about human rights issue in Ethiopia.³³⁰

The commission has also been working with local NGOs such as Action Professionals Associations for the People, Prison Fellowship Ethiopia, Ethiopian Women Lawyers associations, Network of Ethiopian women's associations, Ethiopian lawyers association, Ethiopian Christian lawyer's fellowship and Forum for democracy.³³¹ It has been performing different task with different government institutions such as ministry of education, universities, justice and legal system research institute and media in relation with awareness creation and researches on human rights.³³²

All these international and national bodies either directly participate in the implementation of the project of the commission or provide financial and technical support. Generally, the effort of the commission in working with all these entities should be appreciated.

However, this does not mean that there are no limitations in this area. The cooperation's are not sustainable, selective of institutions and conducted on limited areas of human rights issue. The commission does not have good relation with some influential international human rights NGOs such as Human Rights Watch and Amnesty International. The Human Rights Watch has been

³²⁸ EHRC Inaugural Report (n 116), XII, 10, 106-110; EHRC Annual Report 2015/2016 (n 122) 22-24; EHRC Annual Report 2016/2017 (n 123) 56-59; EHRC Annual Report 2017/2018 (n 124) 55-56

³²⁹ EHRC Inaugural Report (n 116) XII, 10, 106-110; EHRC Annual Report 2010/2011 (n 207) 72; EHRC Annual Report 2015/2016 (n 122) 30-31; EHRC Annual Report 2017/2018 (n 124) 55-56

³³⁰ EHRC Annual Report 2015/2016 (n 122) 30-31; EHRC Annual Report 2017/2018 (n 124) 55-56

³³¹ EHRC Inaugural Report (n 116) XII, 10, 106-110; EHRC Annual Report 2010/2011(n 207) 63-67

³³² EHRC Annual Report 2010/2011(n 207) 67-69; EHRC Annual Report 2015/2016 (n 122) 22-24;EHRC Annual Report 2016/17 (n 123) 56-59;EHRC Annual Report 2017/2018 (n 124) 55-56

criticizing the EHRC as institution lacking independence and hiding the misconduct of the government.³³³ An Amnesty International delegation to Ethiopia was ordered to leave Ethiopia which is an evidence for the bad relation between this organization and the country.³³⁴ The frequent criticism by these institutions about the failure of the EHRC has been affecting the reputation of the latter which will in turn affect its opportunity to have relation with other institutions and to get assistance.

In response to the 2015-2016 unrest in Ethiopia, the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein and UN Special Procedures called for access to independent observers to assess the human rights situations in the country, but denied.³³⁵ The high commissioner in 2017 renewed his call during a visit to Ethiopia; but his call was rejected by citing the investigation conducted by the EHRC.³³⁶

The other challenge is that the commission does not have technical strategy as to how to approach relevant entities which can support its project.³³⁷ It does not have a system or network through which it can have sustainable relation and cooperation with the international and national human rights institutions. The civil societies and charities establishment proclamation has been contributing to these challenges. As the result of this law some CSOs like Ethiopian Women Lawyers Association have been forced to reduce their offices and operation while the others like Equality Now are driven out of their human rights protection and promotion role.³³⁸ This law has been preventing the emergence and operation of strong human rights institutions in Ethiopia which would have supported the role of the EHRC.

The KHRC and SAHRC have best trends with regard to working with in cooperation with others. The KHRC enjoys high and peaceful cooperation with different international and national

³³³ World Report 2017: Ethiopia/ Human Rights Watch (n 258); Human Rights Watch, World Report-Ethiopia 2012 (n 263)

³³⁴ Human Rights Watch, World Report-Ethiopia 2012 (n 263)

³³⁵ Human Rights Watch: Addressing the Pervasive Human Rights Crisis in Ethiopia available at <<https://www.hrw.org/news/2017/06/.../addressing-pervasive-human-rights-crisis-Ethiopia>> (accessed on May 25, 2018)

³³⁶ *ibid*

³³⁷ EHRC Annual Report 2016/2017 (n 123) 16

³³⁸ Shiferaw (n 129); See also Human Rights Watch, World Report-Ethiopia 2012 (n 263)

organizations, NGOs and CSOs in addition to other governmental institutions.³³⁹ The KHRC has its own strategy adopted with the aim of reaching potential partners and donors which can provide support for the implementation of its project.³⁴⁰ The KHRC has Human Rights Networks (HURINETs) which connects it with states (more than 30), national governmental organizations and NGOs (more than 30), sub-regional, regional and international human rights organizations and networks (more than 50).³⁴¹ The KHRC enjoy great financial and technical support from these development partners'.³⁴²

Like the KHRC, the SAHRC has a technical strategies by which it create relation with national and international partners and all the works of the SAHRC is networked with national and international NGOs and other CSOs which is one factor for its effectiveness.³⁴³ According to the SAHRC, "All the Commission's program interact with the CSOs and the Commission enjoys good working relationships with a variety of international and national NGOs, trade unions, religious organizations and academic institutions."³⁴⁴

The lesson that can be drawn from the experiences of the KHRC and SAHRC is that for the NHRIs to effectively discharge its mandate it is quite necessary to have good relation and cooperation with other institutions engaged with the human rights issues. For the EHRC operating in poor country with variety of socio-economic and political challenges, it could be quite difficult to achieve excellence in the protection and promotion of human rights without having peaceful cooperation with other potential institutions. It needs a system through which it can have sustainable and peaceful cooperation with other potential human rights institutions and donors like the case in the SAHRC and KHRC. By doing so, it will diversify its sources of funding and assistance. The commission should avoid selectiveness in making cooperation. Moreover, the contents of charities proclamation should be revised in a way to enhance the emergence and operation of strong institutions capable of supporting the role of the commission. As has been noted above it is the duty of the EHRC to advise the government for the revision of this law. So, the commission should discharge its mandate with regard to the revision of the

³³⁹ KHRC Annual Report 2016/2017 (n 17) 25-27

³⁴⁰ *ibid* 30

³⁴¹ *ibid* 1, 25-27

³⁴² *ibid* 48

³⁴³ SAHRC Responses to OHCHR (n 140) 12; See also Mapodisi (n 266) 29

³⁴⁴ SAHRC Responses to OHCHR (n 140) 12

contents of this law and contribute for the creation of strong human rights institutions which will support the role of the commission.

4.3. The Challenges and Drawbacks Facing the EHRC

The analysis made above shows that the human rights protection and promotional activities of the EHRC is full of challenges and draw backs. Although these challenges and drawbacks are addressed above while discussing the practical works of the commission, I found it good to have further discussion on the major problems affecting the effectiveness of the commission for this will enable the commission to deeply identify these challenges and drawbacks and set the ways forward. Accordingly, the following sub sections provide detailed discussions on the challenges.

4.3.1. Lack of Independence

Although the EHRC is mandated to supervise the conduct of the government, the trend of the commission shows certain gaps with regard to taking proactive measures against human rights violations by the government. As already provided above, the commission refrained from entertaining many complaints alleging violation of human rights by the government through eviction. It also failed to advise the government for the revision of the contents of anti-terrorism and charities proclamation although these legislations have been effecting the enjoyment of human rights in Ethiopia. The deep looking at the works and the reports of the commission shows that the commission does not prefer to use the naming and shaming system of reporting for human rights violation. This shows the existence of some kind of influence on the independent functioning of the commission and also shows low level of commitment on the part of government in the protection of human rights.

The commission admitted that the environment with in which it has been functioning is full of deeply rooted socio-economic, political and cultural challenges.³⁴⁵ It has not resisted the influences from the government due to its potential affiliation to the government. This can be inferred from its open media campaign towards the good human rights record of the government. The international human right NGOs such as Human rights watch, beyond criticizing the government for human rights violations, has been asking the EHRC to take proactive measures

³⁴⁵ EHRC Inaugural Report (n 116) 6

towards the violations.³⁴⁶ In response to this the commission has defended the government many times focusing on the good human rights record of the government.³⁴⁷ That is why the Human Rights Watch criticized the EHRC as institution which lacks independence, influenced by and hiding the misdeed of the government.³⁴⁸

The problem of independence of the EHRC has its root in the process of appointing the officials (commissioners) of the commission which did not ensure the criteria of independence as discussed under chapter three. The procedures of appointment which is not democratic and which excludes the CSOs/NGOs from the nominating committee may not ensure the appointment of commissioner which will act as independent human rights activist.

The EHRC can be effective in discharging its human rights protection and promotion mandate only if it is independent from the influence of the government. That is why the Paris principle considered independence as one of crucial condition for the effective functioning NHRIs. The independent and effective functioning of NHRIs depends on the extent to which governments are prepared to respect the independence of the institutions and on the willingness and ability of these institutions to confront the government for the realization of human rights.³⁴⁹ So, the commitment of the government in relation to ensuring the institutional, financial and operational independence of the EHRC can have great role towards the independent and effective functioning of the commission. This can be ensured, among others, by letting the social forces to participate in the nomination and appointment process of the officials of the commission and making the appointment procedures open democratic and transparent like the case in SAHRC and KHRC. The officials of the commission should act as human rights activists and ensure the independence of the institution like that of the SAHRC and KHRC so that they can enhance the internal excellence and external credibility of the institution and win trust from the public and other institution.

4.3.2. Lack of Sufficient Resources

³⁴⁶ Human Rights Watch : “ One Hundred Ways of Putting Pressure”, Violations of Freedom of Expression and Association in Ethiopia, available at <<https://reliefweb.int/report/ethiopia/one-hundred-ways-putting-pressure-violations-freedom-expression-and-association>> (accessed on June 18, 2018); Human Rights Watch: Development Without Freedom, How Aid Underwrites Repression in Ethiopia available at <<https://www.hrw.org/sites/default/files/reports/ethiopia1010webwcover.pdf>> (accessed on June 18, 2018)

³⁴⁷ Abdo, The Ethiopian Human Rights Commission and Its Contribution in the Protection of Human Rights and Building Good Governance (n 14) 22

³⁴⁸ Human Rights Watch, World Report-Ethiopia 2012 (n 263) 3

³⁴⁹ James Matshekga, ‘Toothless bulldogs? The Human Rights Commission of Uganda and South Africa: A comparative Study of their Independence’ (2002) 2 AHRLJ 72

The analysis made under chapter three revealed that the budget granted to the commission by the government is inadequate when compared with the tasks the commission is expected to perform. The commission has also been raising lack of resource as one of the major problems challenging its effective functioning.³⁵⁰ The inadequacy of the resource capacity of the commission has been challenging its effectiveness in many ways. For instance, the commission has not been able to recruit sufficiently competent staff members and the existing employees leave because of low salary scale approved to it.³⁵¹ Some of the planned projects such as researches on areas of human rights and plan to provide advice and input on the existing and new legislation in the country remained un-performed because of lack of fund and human resource.³⁵² Lack of fund is also the main challenge making the commission un-able to conduct its awareness creation works and to increase its visibility.³⁵³

Beyond the inadequacy of the government fund granted to the commission, the commission has not been able to adopt systematic strategy by which it may reach potential donor partners, generate funds from diverse sources and use the scarce resources in a wise and systematic way.

Generally, the human rights protection and promotional role of NHRIs is highly dependent on the resource capacity of the institution and without adequate resource the EHRC cannot be effective in the protection and promotion of human rights. In this regard the government needs to show its commitment for the realization of human rights in Ethiopia by increasing the annual budget to the commission. And the EHRC should adopt strategy through which it will reach the potential donors and generate adequate fund like the case in the SAHRC and KHRC.

4.3.3. Lack of Accessibility

Lack of awareness of the institution, its works and physical accessibility is one of the factors affecting the effectiveness of the commission. Although the commission has been doing promotional works discussed above, it is not able to reach the community at the grass root level. The majority of the communities in Ethiopia, especially those of rural populations, are un- aware of even the existence of the commission. The commission's promotional works are limited in

³⁵⁰ EHRC Inaugural Report (n 116) 111-116; EHRC Annual Report 2015/2016 (n 122) 40; EHRC Annual Report 2017/2018 (n 124) 8-9, 64

³⁵¹ EHRC Inaugural Report (n 116) 111-116; EHRC Annual Report 2017/2018 (n 124) 65

³⁵² *ibid*

³⁵³ EHRC Annual Report 2015/2016 (n 122) 40

terms of area and language. The commission's awareness creation works targets the duty bearers and ignores the majority of the community (the rights holders). The commission is still operating in a poor system of information technology and there is no digital library system in the commission which is another factor affecting its effective functioning and visibility.³⁵⁴ Even the commission does not have an effective online internet system by which it can have an effective contact and communication with the branch offices and other relevant bodies.³⁵⁵ The web site of the commission has not been regularly updated. Absence of human resource capable of operating the technology is another problem.³⁵⁶

NHRs can be effective in promoting the respect for human rights only if it is sufficiently accessible to the community. So, like the KHRC and SAHRC, the EHRC should work on awareness creation targeting not only the duty bearer but also the community or right holders at the grass root level. And like the KHRC and SAHRC, the EHRC should enhance its visibility through improving its system of information technology, using social Medias and promoting transparency, accountability and cooperative working. Like the CHRAJ the EHRC needs to increase its physical accessibility by establishing more branches near to the community since the already established branch offices are far from the community especially those rural populations.

4.3.4. Low Level of Cooperation with Relevant Bodies: Even Bad Relation with Some Others

As provided above the role of EHRC is limited in terms of fostering cooperation with other relevant human rights institutions. The commission is selective of institutions while creating cooperation and relation. Those human rights institutions critical of the government has not been preferred by the commission as partners. It does not have good relation with some influential human rights NGOs, like Human Rights Watch and Amnesty international. The commission and the government has also not been willing to cooperate with international human rights institutions such as the UN high commissioner for human rights in relation to observing the human rights situations in the country as provided above. The newly adopted civil societies and charities establishment proclamation is another challenge with this regard because some human

³⁵⁴ EHRC Annual Report 2017/2018 (n 124) 8-9

³⁵⁵ *ibid*

³⁵⁶ *ibid*

rights institutions assisting the function of the commission has been forced to reduce their offices and operation while others have been driven out of their human rights protection and promotion role as the result of this proclamation. In addition the commission does not have technical strategy as to how to approach relevant entities which can support its project.³⁵⁷ In the existence of all these problems the commission may not be able get assistance for the effective accomplishment of its projects.

It could be quite difficult for the EHRC to effectively discharge its mandates without having peaceful cooperation with other potential institutions. It needs a system through which it can have sustainable and peaceful cooperation with other potential human rights institutions and donors like the case in the SAHRC and KHRC. By doing so, it will diversify its sources of funding and assistance. Moreover, the contents of charities proclamation should be revised in a way to enhance the emergence and operation of strong institutions capable of supporting the role of the commission. As has been noted above it is the duty of the EHRC to advise the government for the revision of this law. So, the commission should discharge its mandate with regard to the revision of the contents of this law and contribute for the creation of strong human rights institutions which will support its role.

4.3.5. Lack of Accountability and Transparency

The accountability of the NHRIs can be ensured by putting the institution under duty to make report to the parliament.³⁵⁸ And NHRIs should also be directly accountable to the public which it was established to assist and protect.³⁵⁹ The public accountability and transparency can be achieved if the NHRIs conduct public evaluations of its activities and report and if it makes all its official reports subject to open scrutiny, comment and public debate.³⁶⁰ By promoting accountability and transparency in these ways the NHRIs can enhance its credibility, visibility and win public trust.

³⁵⁷ EHRC Annual Report 2016/2017 (n 123) 16

³⁵⁸ UN Hand Book (n 1) par.136-138

³⁵⁹ *ibid*

³⁶⁰ *ibid*

The EHRC is accountable to the house of people's representative and it is the duty of the commissions to make report to the house about its findings.³⁶¹ It has been making performance report to the house starting from the time it started its function.

But, there is no internal mechanism by which the commission can be made directly accountable to the people. Although the proclamation authorize the aggrieved complainant or accused to appeal to the higher authority,³⁶² the commission does not have procedure by which the internal workers and public may bring grievances to the concerned higher body in case where they face administrative misconducts and human rights violations within the institution.³⁶³ As noted above the commission has failed to hear at many voices of sufferings and to advice the government on some human rights related matters. But, it has not been made accountable for these failures.

The commission has not conducted any public evaluations of its activities and report; even the commissions official reports has not been made subject to open scrutiny, comment and debate which affects not only its accountability but also transparency. Although commission is empowered to act transparently through making public and regular reports,³⁶⁴ it is still in a series problem of secrecy. The works of the commission are not openly available to the public; its reports are not available online now. The website of the commission is not regularly updated and the commission has been operating in a poor system information technology. It was not an easy task for this researcher to find documents and information about the commission because the principle in the commission is secrecy than transparency. The lack of transparency and accountability are affecting the credibility of the commission before the public and other bodies. The EHRC needs to enhance its accountability by developing internal procedures by which victims can bring their grievances to the higher authority. Letting the public evaluate its performances and making its official reports and other works subject to open scrutiny, comment and debate can be other mechanism of promoting its accountability and transparency.

4.3.6. Lack of Operational Efficiency

³⁶¹ EHRC Establishment Proclamation (n 9) Article 3

³⁶² *ibid* Article 27

³⁶³ EHRC Annual Report 2016/2017 (n 123) 4-5

³⁶⁴ EHRC Establishment Proclamation (n 9) Articles 39, 40

The operational efficiency of NHRIs is the cumulative result of adequate continuing funding, efficient and effective working methods and rules, a competent and diverse staff, an ability to review and evaluate its own work and all other aspects of the institution's procedures.³⁶⁵

As provide in this study the works of the EHRC has been guided by strategic plan. It has also adopted compliant handling procedure and other working rules and procedures by which it has been guided in discharging its mandate. The commission also has been conducting review and evaluation by which it assesses and evaluates its performances.³⁶⁶ Although this can be considered as encouraging steps, the discussions and analysis made in this study reveals that the operational efficiency of the commission has been affected by many factors. Lack of independence and resource have been challenging the effectiveness of the commission in terms of making itself accessible to the community, handling human rights related complaint, hiring competent staffs etc. Lack of commitment, lack of necessary professional knowledge and skill are other factors affecting the operational efficiency of the commission.³⁶⁷ There has been lack of consensus and cooperation between some officials of the commission which has made it difficult to bring in to practical reality the researches and other institutional developmental strategies conducted by the commission.³⁶⁸ Because of lack of commitment and cooperative working tradition from the high and middle level leaders and the officials of the commission to act in line with the strategies and programs adopted by the commission, it was not possible to come up with uniform working procedures.³⁶⁹ There is no procedure adopted by the commission by which the internal workers and the people in general may bring grievances to the concerned higher body in case where they face administrative misconducts and human rights violations within the institution.³⁷⁰ The departments under the commission do not have any nexus with the formerly conducted researches and institutional reform works.³⁷¹ The works planned to be done does not take in to consideration the ability and professional capacity of the personnel's of the

³⁶⁵ UN Hand Book (n 1) par. 121-135

³⁶⁶ EHRC Inaugural Report (n 116) 44; EHRC Annual Report 2015/2016 (n 122) 35; EHRC Annual Report 2016/2017 (n 123) 6

³⁶⁷ EHRC Annual Report 2016/2017 (n 123) 65

³⁶⁸ *ibid* 4-5

³⁶⁹ *ibid*

³⁷⁰ *ibid*

³⁷¹ *ibid*

commission.³⁷² The lack of commitment with regard to the implementation of rules and directives adopted for the furtherance of the works of the commission is also another challenge affecting the efficiency of the commission.³⁷³ There is also gap in relation to the follow up of the branch offices and the human rights forums and the proper implementation of the strategic plan.³⁷⁴

Although all these problems were identified by the review and evaluation of the commission as major challenges, no immediate solutions were taken and the problems still exist. For instance, the commission started its 2016/17 budget year work by undertaking review and evaluation of the former performances, identifying problems and setting the ways to avoid these problems, but at the end of the budget year the commission identified similar problems while reviewing and evaluating its performance.³⁷⁵ Generally, all the problems raised in this sub section reveal lack of strong leadership and management in the commission which caused operational in-efficiencies and seriously affected the credibility of the commission before the public.

As already provided in this study, the selected human rights commissions have good trends in terms of maintain their independence, financial capacity, making themselves accessible to the community, level of cooperation, transparency and accountability which is the result of strong leadership and management and enhanced their operational efficiency. For instance, the modest achievement scored by the SAHRC has been the result of the strong leadership, management and commitment by the officials of the commission.³⁷⁶ Similarly, the effective achievement of the KHRC has been the result of the strong leadership, management and commitment by the staffs of the commission who has been the foremost leaders and activists struggling for human rights and democratic reforms in Kenya.³⁷⁷ So, strong leadership, management and commitment by the officials of the NHRIs matters a lot in promoting operational efficiency and the EHRC needs to carefully reconsider these issues in addition to resolving the challenges discussed in this study.

4.4. Conclusion

³⁷² *ibid*

³⁷³ *ibid*

³⁷⁴ *ibid*

³⁷⁵ *ibid* 4ff, 65

³⁷⁶ Thipanyane (n 8) 38

³⁷⁷ KHRC Annual Report 2016/2017 (n 17) 1

The discussions made so far in this chapter revealed that the EHRC, since it started operation, has been contributing in the protection and promotion human rights in Ethiopia. In cooperation with other relevant bodies the commission has been creating human rights awareness and promotions through using different mechanisms. It has also been making contribution to the protection of human rights through handling and resolving human rights violations related cases, supervising and monitoring institutions and resolving conflicts.

But, these human rights protection and promotional activities of the commission has been full of challenges and draw backs such as lack of independence, lack of adequate fund, lack of accessibility, low level of cooperation with other relevant bodies and lack of accountability and transparency. These challenges have highly affected the operational efficiency of the commission there by undermining the reputation of the commission before the public and other human rights institutions. Generally, the EHRC needs to do more in order to enhance its operational efficiency and to win the trust of the public and other human rights institutions. This can be achieved by giving much emphasis to and solving the challenges identified so far in this study. In addition to complying the standards provided under the Paris principles, contextual looking at the experiences of selected human rights commissions discussed so far can help the EHRC in solving the problems.

CHAPTER FIVE

CONCLUSSION AND RECCOMENDATIONS

5.1. Conclusion

The current proliferation of NHRIs shows that the world community stands in favor of establishing NHRIs in their different forms by recognizing their role in human rights protection and promotion. The effort of the international community resulted in the adoption of Paris principles which provides standards to be followed by the NHRIs and serve as the international normative foundation of NHRIs. Following the foot step of the Paris principles, different international, regional and national instruments have also been adopted which supports the establishment and functioning of NHRIs. And many countries in the world have established National Human Rights commissions as a means of enforcing human rights at national level. The current government of Ethiopia also established the EHRC as one mechanism of redressing human rights violations in Ethiopia. Although much has been expected form this broadly mandated commission, it has not been effective in discharging its human rights promotion and protection mandates.

This thesis has contributed to the issues of effectiveness of EHRC through analyzing its independence and mandate in line with Paris principles and in comparison with the selected human rights commissions there by drawing lessons to Ethiopia. The analysis revealed that, although many aspects of the normative and institutional frame works of EHRC are in line with the standards under Paris principles, they are not fully compliant to these standards. The EHRC is established as an independent institution with broad mandate and with the power to recruit and employ staff, adopt its working rules and procedure, to handle human rights violation related complaints and to provide decision or recommendation, to order others to appear or submit evidence etc. The proclamation also authorized the commission to control its financial aspect and provided various conditions in terms of composition, method of appointment and removal of the officials of the commission. Although these aspects can be taken as strong sides in the normative and institutional frame works of the EHRC, there are areas in which the commission is not compliant with Paris principles which, in the opinion of the author of this study, are among the factors that hindered the effectiveness of the EHRC. For instance, factor such as the non-open

and non-transparent appointment procedure, absence of representatives from CSOs, media and disable people in the composition of the commission, lack of sufficient resource, lack of explicit mandate over socio-economic rights compromise the independent and efficient functioning of the commission.

The study has also made a deep analysis of the practical works of the EHRC in line with the Paris principles and in comparison with the selected human rights commissions there by drawing lesson for Ethiopia. The analysis shows that the EHRC has been contributing in the protection and promotion human rights in Ethiopia through creating human rights awareness and promotions, handling and resolving human rights violations related cases, supervising and monitoring institutions and resolving conflicts. However, these practical human rights protection and promotional activities of the commission has been full of challenges and draw backs such as lack of independence, lack of adequate resource, lack of accessibility, low level of cooperation with other relevant bodies and lack of accountability and transparency which highly affected the operational efficiency of the commission there by undermining its reputation before the public and other human rights institutions.

So, the EHRC needs to do more in order to enhance its effectiveness and operational efficiency and to win the trust of the public. This can be achieved by giving much emphasis to and solving the challenges identified so far in this study. The first thing to be done is making the institutional and normative frame works and the practical work of the EHRC to comply with the standards provided under the Paris principles. In order to do so, there should be an enabling environment like the political willingness of the government, developing the culture of democracy, promoting and encouraging the engagement and participation of civil society in the process of human rights promotion and protection and in appointing committed, experienced and capable personnel who are strong human rights advocates and strong in leading and managing the commission are essential. So, not only the EHRC but also the Ethiopian government should rethink over these issues to ensure the effective functioning of the EHRC.

However, conforming to the standards provided under the Paris principles alone may not guarantee the effectiveness of the EHRC. This is because, as discussed in this study, the Paris principles are too general and vague and relying only on these principles may not provide panacea for problems challenging the effective functioning of the EHRC. So, in addition to

fulfilling such standards, the contextual looking at the good experiences of the selected human rights commissions discussed so far can serve as a role model in solving the challenges in the institutional and legal frame works and practical challenges facing the effective functioning of the EHRC. The process of appointment of commissioners has been open, transparent and democratic in the SAHRC and KHRC and their composition contains sufficient representatives from social forces which have been among the reasons for their independent and effective functioning. The existence of explicit mandate helped the SAHRC and KHRC to play great role in the realization of socio economic rights. These commissions have been successful in getting adequate resource form the government and in generating funds from different sources through systematically enhancing their level cooperation. The SAHRC and the KHRC have done well in increasing their visibility through an enhanced mechanism of awareness creations and promotion and in promoting their accountability and transparency. The trend of CHRAJ of Ghana is impressive in relation to making NHRIs physical accessibility to the community from which lesson can be drawn.

5.2. Recommendations

Taking into account the challenges identified in this thesis the following recommendation are given.

➤ Independence

The independence of the EHRC should be ensured. Article 11 of the Ethiopian human rights commission establishment proclamation should be amended and include CSOs as members of the nominating committee and the CSOs should be allowed to participate in the nomination and appointing the commissioners of EHRC like the case in the SAHRC and KHRC. The appointment process should be undertaken in an open, transparent and participatory manner like the case in KHRC and SAHRC and should be based on proven expertise, knowledge and experience. The government should show its commitment for the protection of human rights by respecting the independence of the commission and the commission should act as an independent institution with officials who are human rights activists confronting the government for the protection and promotion of human rights like the KHRC and SAHRC.

➤ Adequate Financial and Human Resources

The EHRC needs to have adequate financial resources. It is recommended that the government should increase the budget allocated to the commission. Like the KHRC and SAHRC, the EHRC should adopt strategy to diversify its sources of funding by which it will reach out more donors and get financial and other support from different sources. In this way the commission can enhance its financial capacity which will in turn enable it to employ competent and sufficient staffs.

➤ **Accessibility**

It is recommended that the EHRC should work hard to enhance its accessibility to the community in terms of awareness creation and opening branch offices near to the community. Like the KHRC and SAHRC, the EHRC should work on awareness creation targeting not only the duty bearer but also the community or right holders at the grass root level. And like the KHRC and SAHRC, the EHRC should enhance its visibility through improving its system of information technology, using social Medias and promoting transparency, accountability and cooperative working. Like the CHRAJ the EHRC should establish more branch offices near the community so as to enhance its accessibility to the people.

➤ **Level of Cooperation with Other Relevant Institutions**

The EHRC should develop a strong and peaceful relationship with a variety of institutions engaged in the human rights protection by avoiding selectiveness in creating cooperation or relation. Like the KHRC and SAHRC, the EHRC should adopt strategy by which it will reach more partners. In addition the content of charities proclamation which prohibits or limits the involvement of CSOs on the human rights issues should be amended. And EHRC should provide advice to the government about the amendment of this law.

➤ **Economic and Social Rights**

All generation of rights have equal importance. So, it is recommended that the Ethiopian government and EHRC should give attention to the realization of economic and social rights in Ethiopia. Like the constitution of South Africa and Kenya, the Ethiopian constitution should clearly provide for the enforceability of social and economic rights in Ethiopia. There should be comprehensive frame works that will enhance the realization of these rights. Like the KHRC the

EHRC should work hard in facilitating the adoption of such frame works and making the environment conducive for the realization of these rights. Like the SAHRC the EHRC should be given explicit mandate of monitoring the proper realization these rights.

➤ **Composition of Staffs**

The staffs of the EHRC should enhance diversity of membership by including socially representative groups such as CSOs, Medias and person with disability in its composition and by increasing number of the commissioners. The staff should promote commitment and effective leader ship.

➤ **Accountability and transparency**

The EHRC should enhance its accountability by developing internal procedures by which victims can bring their grievances to the higher authority. It should promote accountability and transparency through letting the public evaluate its activities and report and making its official reports and other works subject to open scrutiny, comment and debate. The commission should regularly update its website and release its works online and make information's easily available.

➤ **Operational Efficiency**

The EHRC should focus on resolving the challenges identified in this study and improve its overall working environment so as to improve its operational efficiency. Among others, the commission should develop the trend of independent working, improve its financial capacity, employ competent staffs, enhance good leader ship and management, and improve the working environment within the commission and enhancing the spirit of commitment.

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Interviews

1. Interview with Dr. Addisu G/Igzabher, the Chief Commissioner of the EHRC and Mr. Demisew Banti, the Directorate Director of the Information Communication of the EHRC (Addis Ababa, 11/08/010 EC)
2. Interview with Ato Tadesse Wolde, Former Lecturer and Dean School of Law at Mizan Teppi University, PhD candidate at Andhra University Bisaahatnam Dr. B. Rambedikar College of Law-India (Addis Ababa, 30/08/010 EC)
3. Interview with Ato Mohammed Kebe, Director of Jimma University FreeLegal Aid Service (Jimma, 10/09/010 EC)

Appendixes

Appendix 1: Interview Questions to Representatives of EHRC (Dr Addisu G/Igzabher, the Chief Commissioner of EHRC and Mr. Demisew Banti, the Directorate Director of Information and Communication in the EHRC)

1. What have been done by the commission in relation to the protection and promotion of human rights in Ethiopia? Generally in which of the Commission's area of activities do you think better performance is registered?
2. Is there any challenge affecting the effective functioning of the commission and hindering it not to perform to the expected level?
3. Is the commission functionally and financially independent to carry out its activities without government influence and are the officials in a position to criticize the government for its wrong doing or human rights violation? Have you been using proactive measures against human rights violations? Is the commission adequately funded by the government? Is there any strategy adopted by the commission to reach the potential donors and to generate income than simply waiting for the funds from the government?
4. Is the commission sufficiently accessible to the public in terms of awareness creation of the institution, physical accessibility and through its representative composition? What have you done to increase the public's awareness of the Commission? How do you see the Commission's physical accessibility? Are the branch offices effectively functional currently? Any challenge with these regard?
5. Is the commission independently and effectively handling human rights violation related complaints and conflicts? How do you see the annual compliant handling capacity of the commission? Which list of human rights did you frequently receive complaints on so far? Is there circumstance in which the commission handled socio-economic rights?
6. What seems the situation of human rights protection in the prisons and correctional camps and how frequently do you visit such facilities? What have you done in relation to assisting and advising the government with regard to human rights related matters?
7. What seems the level of cooperation of the commission with other relevant national, regional and international human rights institutions? On what grounds do you work

together with the CSOs and how does the charities proclamation affect the level of your collaboration?

8. Is the process of appointment, composition and removal of officials open, democratic and transparent to the public and do you think you have earned the public trust in this regard? Are CSOs and general public allowed to participate in the process? Is the membership inclusive of men and women, people from CSOs, person with disabilities, practitioners and human rights scholars, media, etc? Are the geographical regions of the country well represented on the governing council of the commission? Please would you mind telling me the processes followed during appointing the current commissioners?
9. Does the country's political and democratic culture allow the Commission to perform its mandates independently and how do you see the Commission's ability to distinguish between human rights concerns and politics?
10. What are done by the commission in relation to the current emergency situation in Ethiopia? Any comment or recommendations made to the government in relation to the frequent declaration of emergency? Are there mechanisms or measures adopted by the commission to solve the conflict in oromia and amhara region peacefully? Especially in relation to police use of force against protest groups? Any investigations conducted in relation to human rights violations?
11. Is the commission accountable and transparent to the public? The works of the commission are not available online, why?
12. Did you recommend the government about controversial legislations like charities and anti-terrorism proclamation?
13. Have you ever tried to look at the national human rights commission of other jurisdiction to share experiences and to solve the problems of the commission?

Appendix 2: Interview Questions to Ato Tadesse Wolde, Former Lecturer and Dean School of Law at Mizan Teppi University, PhD Candidate

1. How do you rate the relevance of EHRC in the protection and promotion of human rights in Ethiopia?
2. What do you think are the factors affecting the commission's performances and preventing it from taking proactive measures against human rights violations?
3. Do you think the process of nomination and appointment of the officials of EHRC is open, democratic and transparent?
4. How do you evaluate the legitimacy of the commission in the perception of other institutions and the public?
5. Is the country's over all political and democratic culture conducive for the Commission to perform its mandates independently and how do you see the ability of the commission distinguish between human rights concerns and political matters?

Appendix 3: Interview Questions to Ato Mohammed Kebe, Director of Jimma University Free Legal Aid Service

1. How do you assess the role of Jimma University free legal aid center in providing justice to the community?
2. What are the mechanisms that have been employed by the center in providing the service?
3. Do you think that the center has contribution in improving the visibility of the EHRC?
4. What are the facilities and supports provided by the EHRC for the accomplishment of the task of the center?