

Challenges to the Ethiopian Human Right Commission in Promoting and Protecting Human Rights

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Abstract

In Ethiopia, Human right commission is one of the NHRI which is voted by the Parliament through Proclamation No 210/2000 and was established in July 2000 as amended by procl. No 1224/2020 with the mandate of promoting, protecting and enforcing the human and democratic rights of citizens and peoples of Ethiopia as enshrined in the Constitution and other laws of the land, as well as the international human rights conventions and instruments adopted by Ethiopia, and ensure that citizens and peoples can claim these rights. It has great mandate of promoting and protecting human rights recognized by National constitution, Laws, International human rights instruments and Regional Human right instruments. However, different Ethiopian scholars and human right organizations argue that, Ethiopian Human Right is challenged to protect and promote Human rights due to different reason. The government has been severely criticized by the political opposition located inside and abroad, and by international human rights, in particular, the Ethiopian Human Rights Council (EHRCO), Amnesty International, UN Human rights commission and organs of private press. The reality practically seen in the country is also that, Ethiopian Human Right commission has not discharging its responsibility as aimed because of different challenges. So, in this Article, different criticism brought against EHRC and the challenges to Ethiopian Human Rights commission will be assessed.

Keywords: Human rights, Commission, Ethiopia, Promoting, Protecting, Government

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Introduction

Universal human rights standards and norms have been included in the domestic laws of most countries in which the central responsibility for protecting human rights rests with Governments. In recent decades, most countries have become parties to the major human rights treaties¹. Each instrument imposes legal obligations to implement nationally, the human rights standards contained in those treaties. To realize these rights, there is need for the formation of implementation machinery which in turn necessitates formation of NHRIs to fulfill this function.² It is believed that the national character of such institutions enables them to de-mystify universal principles and translate them into practical measures at the level where it most matters.

The NHRC spread the culture of human rights that, directly under the parliament, enjoying institutional and financial freedom and acting as a torch bearer of the spread of culture of human rights and not as a fault finding mechanism³. As such, in Ethiopia, Human right commission is one of the NHRI which is voted by the Parliament through Proclamation No 210/2000 and was established in July 2000⁴ as amended by procl. No 1224/2020 with the mandate of promoting, protecting and enforcing the human and democratic rights of citizens and peoples

of Ethiopia as enshrined in the Constitution and other laws of the land, as well as the international human rights conventions and instruments adopted by Ethiopia⁵, and ensure that citizens and peoples can claim these rights.

However, different Ethiopian scholars and human right organizations argue that, Ethiopian Human Right is challenged to protect and promote Human rights due to different reason, including political influence which negatively affects its independence, financial problem, problem of accessibility , the government has been severely criticized by the political opposition located inside and abroad, and by international human rights, in particular, the Ethiopian Human Rights Council (EHRCO), Amnesty International, UN Human rights commission and organs of private press.

¹National Human Rights Institutions History, Principles, Roles and Responsibilities, Professional Training Series No.4, Rev.1(2010),pp.5, UN new york.

²Cardenas Sonia, Adaptive States: *The Proliferation of National Human Rights Institutions* , Carr Centre for Human Rights Policy Working Paper T-01-04, p.17

³Joint Committee on Human Rights –Sixth Report’ available at <http://www.parliament.the-stationery-office.co.uk/pa/jt200203/jtselect/jtrights/67/6702.htm> last visited at 20/11/2021

⁴ Its first Chief Commissioner was nominated in 2004, followed by Deputy Chief Commissioner and Commissioner for Children’s and Women’s Rights in July 2005.

⁵ According to Article 9(4) of FDRE Constitutions, all agreement ratified by Ethiopia is the part and parcel of the law of the land.

So, in this Article, different criticism brought against EHRC and challenges will be assessed and lastly I will put the concluding remarks.

1. An overview of Ethiopian Human right commission

Throughout the history of Ethiopia, many scholars remark that, there has been no satisfactory human rights protection record. Rather, Ethiopia has been disgracefully known for abuses and violations of fundamental human rights and freedoms under nearly all successive regimes taking the state power. The natural domestic political culture about human rights dignity and worth in the country has remained markedly poor for centuries. It is found necessary to establish a Human Rights Commission, as one of the organs that play a major role in enforcing such rights and freedoms though its effectiveness is still under quotations.

Hence, the Ethiopian government aims to overcome such problems of human right violation and proclaimed the establishment of human rights commission, its role, mandate, power and the like in accordance with sub-Article (1) and (14) of Article 55 of the Constitution, of Federal Democratic Republic of Ethiopia. As we infer from enabling proclamation¹ EHRC is an autonomous organ of the Federal Government having its own juridical personality and has a mandates of protecting fundamental rights and freedoms recognized under the Constitution of the Federal Democratic Republic of Ethiopia and those enshrined in the international agreement ratified by the country.²

1.1. The need for having National Human right commission

The evolution of the discourse on democracy, human rights, and democratic institutions in the country took place at a time of significant legal and political change especially after the demise of the military regime. Appreciating that the existing courts or other institutions, such as the House of Federation cannot alone shoulder the protection of human rights, the framers of the Constitution agreed on the need for democratic institutions that would advance democratic governance.³ The other point is that, the foundational principle that underscores the normative structure of human rights in Ethiopia is the principle of sanctity of human rights enshrined under Article 10 of the FDRE Constitution⁴.

In other hand, It is clearly demonstrable that the goal to jointly build one political Community founded on the rule of law has been achieved by guaranteeing respect for the fundamental rights and freedoms of the individual and of nations/nationalities and peoples of Ethiopia⁵ which necessitates the establishment of strong NHRIs. The Commission was thus created as one of the rights-protective mechanisms as a response to a history of authoritarian rule in general and a notorious military dictatorship in particular that caused immense carnage.

But, the opposition parties and different human rights activists argued that, the government establishes the EHRC only to rebuff criticism of international community. They substantiate their arguments by invoking the Background records of human rights violations that suggests the Ethiopian government was not serious about establishing this Commission. It set up this commission to improve the country's reputation and as an answer to the critics. Governments have used national commissions largely to enhance their national images and primarily to rebuff international pressure, criticism and scrutiny over violations of human rights by the governmental forces and agencies.

However, it is very important to find out whether government was seeking merely to appease an international audience or whether the EHRC has had an aim of independent impact at the very beginning of its establishment. The point is clear. Because, the establishment of EHRC is aimed to redress the past violations of human rights by past successive dictatorial government regimes by ensuring the protections of fundamental human rights and freedom enshrined in the FDRE constitutions and international human right instruments ratified by the country. But undeniably it is arguably possible to say that things were not goes as expected, through the time the commission deviates from its original purpose due to different challenges which we will going to discuss in the subsequent topics.

1.2. The structures and organization of Ethiopian Human rights commission

Both a statutory and constitutional body, at least, the Commission is an independent autonomous Institution accountable to Parliament. Compared to NHRIs elsewhere, it is a relatively small institution, composed of a Chief Commissioner, a Deputy Chief Commissioner and a Commissioner for Children and

¹ Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000, Federal Negarit Gazeta - No. 40(4 July, 2000), pp. 1357

² Ibid at Article 2&3

³ Sub-articles 14 and 15 of Article 55 of the FDRE Constitution stipulate the establishment of the Human Rights Commission and the Ombudsman Institute respectively. The setting up of the Auditor General and the National Election Board are envisaged under Articles 101 and 102 of the Constitution respectively

⁴ which reads as follows: (1) "Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable. (2) Human and democratic rights of citizens and peoples shall be respected.

⁵ Supra notes 6 at preamble

Women, and other commissioners as may be deemed necessary, and the necessary personnel¹. At the very beginning the commission operating was confined to its head office, located in the capital, Addis Ababa. But later it set up branch offices in different parts of the country, with most of them in the Capital cities of different regional States.²

Regarding the appointment procedures of members the commission, the chief commissioner, the deputy commissioner and other commissioners are appointed by the Parliament for the terms of five years. The appointees first recruited by the 'Nomination committee' and receive the support of a two-thirds votes of the members of the committee and after presented the nominees to the house, the one who receive two-thirds votes of the house will be appointed as a commissioner. To be a member of the commission, the candidate shall be loyal to the constitution of FDRE, uphold and respect for HRs, has to be an Ethiopian national, has to be free from criminal offence, need to have honesty and good conduct, and has to be above thirty five years of age. According to article 11 of the proclamation No. 210/2000 and Article 5 of amended proclamation No 1224/2020 the Ethiopian human rights commission nomination committee is comprised of: the speaker of the House who act as a chairperson the speaker of the House of Federation, seven members from among members of the HoF, the president of the Federal Supreme Court, a representative of from the Ethiopian inter-Religious, from civil society acts as members of the commission. As far as check and balance principle is concerned, the chief commissioner is directly accountable to the house; whereas the deputy chief commissioner and other commissioners are immediately responsible to the chief commissioner.

2. The roles and function of Ethiopian human rights commission

The different endorsement and normative frame work was initiated by UN Human rights commission which articulate the status and responsibilities of NHRIs and lay down some baseline for NHRIs through Paris work shop held in 1991. These norms have been further elaborated and now constitute a broad and constructive platform, where each society can make the necessary adoptions without compromising on the main principles. And also it explores ways of increasing the effectiveness of national institutions.

Bearing this in mind when we come to the Ethiopian Human Rights commission, the mandates, roles, functions and power of the commission is clearly provided under the enabling proclamation. According to Article 6 of Proclamation No.210/200 and Article 2 of Amended proclamation No 1224/2020 the Ethiopian Human Rights Commission has the powers and duties to: ensures the human rights and freedoms provided under the FDRE Constitution are whether respected by all citizens, organs of state, political organizations and other associations as well as by their respective officials; ensures that laws, regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the constitution.

Educates the public, undertakes investigation upon complaint or its own initiation in respect to human rights violations and makes necessary recommendations for the revision of existing laws, enactment of new laws and formulation of policies. It also provides consultancy services on matters of human rights; participates in international human rights meeting, conferences or symposia; and to translate into local vernaculars, international human rights instruments adopted by Ethiopia and disperse same.³ In the subsequent sub-topics I will try to discuss some of the role of the commission.

2.1. Awareness creation/Educating public

As we have discussed so far, one of the commission's mandates is educating the public by using different mechanism of medium of exchange. The core of this activity revolves around creating public awareness on human rights or on specific rights through face to face contacts or via the media, publications; supporting awareness raising education and promotion by being a depository for human rights materials as well as through training key professionals.

2.2. Monitoring and supervise role

In addition to awareness creation, the Ethiopian human rights commission has a role of monitoring and supervising the country human rights situations.⁴ Under this category the Commission monitors places of detention; ensures the implementation of recommendations; monitors the general human rights situation of the country; as well as undertakes event monitoring. The Commission has an obligation to carrying out nation-wide monitoring of prisons and detention centers to assess the human rights conditions of prisoners and detainees and to ensure that the conditions therein meet minimum international standards.⁵ The amendment proclamation No

¹ Supra note 6 at Article 8

² Ethiopian Human Rights Commission, Bulletin, Vol. 1, No. 05,2(2011)

³Supra note 6 at Article 6

⁴ IbidMohammed Abdo, *The Ethiopian Human Rights Commission: Challenges Confronting Its Effective Functioning*, Chinese Year Book of Human Rights, Vol. 4, 2006, pp. 27-28

⁵Ibid

1224/2020 under Article 6(13) highly empowers the commission to visit and monitor any detention center even without any prior notice to the concerned organ/Institution. It is evident that, Ethiopia has six federal prison and 120 regional prison center which needs to regular monitoring to assess the human rights of detainees as to comply with international minimum human rights standards.

2.3. Receiving complaint and investigation

The Commission is empowered to deal with claims of human rights abuses perpetrated by the government authorities and its agents (vertical application of human rights) as well as allegation of violations in the private sector (horizontal application of human rights)¹ at principle level. It includes activities dealing with inherited backlogs, filed complaints, sensitive or priority cases, systemic or group issues; ensuring the application of remedies, attempting amicable resolution of cases as well as ensuring the implementation of settlements.

2.4. Legislative review

The Commission is authorized to provide recommendation to the government on existing and proposed legislation, and formulation of policies as well as advice on government reports to international human rights monitoring bodies². Such tasks could contribute to attempts to build democratic governance if it were implemented as enacted on paper. This program involves the Commission's provision of advice on existing legislation, policy and practices; provision of advice on proposed legislation, policy and practices as well as provision of advice on Treaty Bodies Reporting to the Government. They have also duty to conduct research into human rights issues; support the development of guidelines, policies, procedures, support program delivery; encourages academic research.

3. Does EHRC promoting and protecting human rights as Mandated?

As we have discussed so far, HRC has entrusted a great role of promoting fundamental freedom and basic human rights included in the FDRE Constitutions and international conventions ratified by Ethiopia. However, when we see the human right situations and the activities of the commission on the ground the duties entrusted to the commission are seems to be bent from its aim due to different reason.

It is evident that, their reports, appeals and petitions on human rights abuses, particularly in view of mass arrest, violation in detention center and extra-judicial killing on peaceful protester in many parts of Ethiopia met with deafening silence and no clear impartial investigation has been seen on human rights violation by EHRC. It did not done anything regarding with 2016/17 crackdown, especially the then human rights violation throughout the countries during Amhara & Oromo protest and death of detainees at *Kilinto*³ prison as well as death at '*Irrechaa*'⁴ religious festivity.

However, recently we have seen different report of human right violation briefed by the commissioner even if the report is not full coverage, selective on the bases of ethnic profile. For instance the human rights violation during TPLF and Federal Government war has not been much said by the commission. In addition, on the recent ongoing war in Oromia by the name of dismantling the OLA (Oromo Liberation army), the commission fails to address the human right violation occurred. It seems as they favor government side by their investigation and criticized by different none governmental Organizations.

On other hand, The Commission has not done much work in the area of advising the government on legislation and polices on human rights issues. Because, many argued that, the government uses legislation to stifle dissent while others allege that they contradict the human rights norms of the Constitution and international human rights instruments ratified by the country⁵. It is demonstrable that, Most of the time EHRC rejects different complains brought to it.

Though, the cause of rejections are different, as Mohammed Abdo pinpoint, the reasons for the rejection of the bulk of complaints are varied, but the very crucial issue is that, the Commission seems to avoid politically sensitive issues, such as the ones relating to forced eviction⁶ and political matter. I myself also strongly agree with this assertion. Because as we understand in different cases the commission has no interest to interfere in government matter or even disclaim jurisdiction unconditionally from deviating from their mandates. For

¹ Supra notes 14 at pp.7

²Supra note 6 at Articles 5, 6, 7, and 19(2)

³Ethiopian Human Rights Project confirmed that 67 people were killed. Out of them 22 died due to the fire itself while others were shot to death by detention center guards- claiming that those shot were trying to 'escape'. Available at (Ethiopia Human Rights Project (EHRP) Special Report October 31st 2016 <http://ehrp.org/qilinto-fire-67-died/> last visited at Dec.2/2021

⁴ The prime minister report 51 death toll of peoples at the this religious festival (through government TV windows, EBC), while opposition party confirms the death of 600 people (through interviewing with of VOA Afaan oromo programme) but EHRC did not say anything.

⁵ Supra notes 14 at pp.21

⁶Mohammed Abdo, *The Human Rights Commission of Ethiopia and Issues of Forced Evictions- A Case-oriented Study of its Practice*, pp. 1

instance in the *Gambella case* and the *Gura Farda case*¹, the commission disclaim jurisdiction and reject the cases.

These all clearly shows that, the EHRC has not fully complied to its mandates of protecting and promoting basic human rights and freedoms. As such the record of human right violation has been continued in the country. These failures of the commission in turn manifest the existence of some challenges or obstacle. So in subsequent sub-topics, we will see some hindrances or challenges to the effectiveness of EHRC.

4. The challenges to The Commission

The Ethiopian Human Rights Commission is the sole national authority specifically mandated to protect human rights in Ethiopia. However, it has been faces many critical challenges due to the political influence which negatively affects its independence, little experience, legal gabs and limited staff capacity². There are different challenges to the functioning of human rights commission in promotion of human rights amongst; lack of independency, about problems of accessibility, absence of legal and operational autonomy, accountability and the like.

4.1. The problem of Independence

According to different international principles, Human rights institutions shall enjoy important degree of independence from government and other organ. They should be able to carry out their duties autonomously without any interference and obstruction from other entities. Different scholar suggests that independence has an essential contribution in maintaining the credibility of national institution. Before the amendment of the founding proclamation with the new, 1224/2020 the financial autonomy was under question. But that provision is currently amended with Article 36(3) and permit full financial autonomy. However, regarding the appointment and dismissal, it still needs amendment.

The founding legislative should specifically incorporate conditions that deal with method of appointment, criteria for appointment, duration of appointment, issue of re-appointment, dismissal procedures, members, privileges and immunity. It should be transparent and politically neutral. However, in Ethiopian human right commission, the members of the committee have strong affiliation with the leading political party. The criteria to the appointment in Ethiopia are loyalty to the constitution, nationality, healthy condition, educational qualification, previous criminal report, age and other various values. Which most of the criteria provided are vague and susceptible to abused. High affiliation of the nominating committee to the government challenges the appointment of politically neutral officials of the commission. In most countries, National institution can attain their independence through pluralism which refers to recognition of differences such as languages, races, religions and cultures³.

But in Ethiopia languages and races are not recognized in the committee. Regarding to the dismissal, the power is given to special inquiry tribunal that has high affiliation to the government and they might not give correct decision when the official under investigation have high connection with politics. In other hand, a person who discharged from responsibility or removed from office shall not assume a position in legislative, executive and judicial organs for about six months.⁴ Such restrictions not only violate the independence, even, it violates the constitutional rights of the officials of the commission. For instance, In Canada, to ensure that the Commission and its Commissioners remain independent of political influence, the Chief and Deputy Chief Commissioners are appointed for terms of up to seven years and Commissioners may only be removed by Cabinet pursuant to a Parliamentary vote. But in Ethiopia it is term of five years. Even though the removal is by parliamentary votes, it is not trusted since the parliamentary seat is filled with one party domination.

4.2. Problems of Accessibility to the public

The accessibility to the public is a crucial point for any NHRC. It has been seen in two angels; that is familiarity to the public and physical accessibility. It is particularly critical to find out whether poor people and groups who are socially vulnerable to abuse are being protected by the institution in Ethiopia. In many countries, the crucial measure of the effectiveness of the institution, is resides in its capacity to respond to the needs of those sections of society who are at risk of human rights violations⁵. For this purpose, in Ethiopia, it is important to see the

¹ The Gambella case was about deforestation of lands for the reason of tea plantation by foreign investor. The case 1st brought to the president of FDRE and president refers to the EHRC. Then the commission disclaim jurisdiction and refer it to Ombudsman. Latter ombudsman refers back to the commission and the case lastly rejected. But in case of Gura Fard, it was about ethnic eviction as the government's report they were the illegal settlers. However, the commission dismiss even without initiating the investigation.

² Manuela Marin, *Project on Enhancing the Functional Protection of Human Rights in Ethiopia*, (UDF-ETH-08-227) May 2011, pp.4

³ Paris principles, General Assembly resolution 48/134 of 20 December 1993

⁴Supra note 6 at Article 14(3)

⁵Lindsnaes Birgit, et al (edit.), *'National Human Rights Institutions- Articles and Working Papers'*, The Danish Centre for Human Rights, (2001), p.50

working of the NHRC in this area and see how far it has responded to the needs of the excluded vulnerable millions of Ethiopian residing in remote rural areas.

For instance, in India, the NHRC has fast track complaints procedure for the most vulnerable sections of society, including children, women and people with disabilities. This procedure also applies to certain categories of complaints, including bonded labour, child prostitution and allegations involving safety of the detained people. But the EHRC is far from accessibility to vulnerable because there is no fast track complaint procedure in especial way for the most vulnerable. It is also physically not accessible to public as its set up is only in certain areas. For instance, The commission has set up only some branches such as Hawassa, Bahr Dar, Mekele, Gambella, Jijiga, Jimma and some another regional town. The working languages of the commission is only Amharic which did not recognize the diversity though the procl.(art.23) Simply refer regional languages as alternative.

4.3. Legal and Operational autonomy

In Canada, the Commission is an autonomous, non-partisan body that operates in the public interest¹. To ensure that the Commission and its Commissioners remain independent of political influence, the Chief and Deputy Chief Commissioners are appointed for terms of up to seven years². A seven-year term ensures that the Commissioner does not become “the mouthpiece of the government of the day³. In India, Wide powers and functions have been given to the Commission under section 12 Of the Act. And also the Commission can intervene in any proceeding involving any allegation of a violation of human rights pending before a Court with the approval of such Court. However, coming to Ethiopian HRC, there is no practical and legal autonomy.

When we see the practice on the ground, the notion of autonomy provided under article 3 of the founding and amended proclamation, it seems land marking law for protection and promotion of Human Rights. However, it is practical application is weak. The Commission is perceived to be weak and not truly independent of the government upon its establishment as well as in its operation⁴.

The commission is not competent and politically-affiliated officials are assuming the office of HRC. In India, The NHRC has the authority to make an intervention in court proceedings relating to violation of human rights with the approval of the court⁵. And also does the follow up of public-spirited judgments of the Supreme Court of India. In Canada, The Commission also has the power to refer complaints to the Canadian Human Rights Tribunal for further inquiry. This quasi-judicial body is separate from and independent of the Commission and its decisions may be enforced by the Federal Court.⁶

However, In Ethiopia, It does not have the power to scrutinize alleged human rights violations pending before the House of People’ Representatives, the House of Federation, or courts of law at any level⁷. The Commission’s recommendations are not legally binding. It is not explicitly authorized to initiate court proceedings either in its own name or on behalf of an aggrieved party either⁸. Not as of Canada, The Commission has no power to refer complaints to the Human Rights Tribunal for further inquiry since there is no human right Tribunal in Ethiopia. However, it is under obligation to notify the concerned organs of the crimes or administrative faults committed, if it believes that such occurred in due course of or after its investigation. Though, the proclamation contain penalty clause⁹, the commission does not entitled to enforce rather lodging accusation to the concerned body as anybody can do.

Conclusion

As we have so far discussed, EHRC has believed to be watcher of Human Rights. Despite of the some endeavor, it has been encountered by practical and legal problems/challenges. As such, it is criticize by many human rights organizations due to its different challenges. Hence it needs remarkable changes both by law and in practice, unless such problems will not be aviated. The government has to empower the commission by ensuring its independence and autonomy by fulfilling the legal gabs exist and reframe from interfering in the activities of the commission.

¹Canadian Human Rights Act, s. 26(1) 1977

²Ibid at 26(2)-(4).

³M.C. MacMillan, “Active Conscience or Administrative Vanguard? The Commissioner of Official Languages as an Agent of Change,” *Canadian Public Administration* 49, no. 2 (Summer 2006), p. 161-179.

⁴Supra note 24 at 8

⁵The Indian Protection of Human Rights Act 1993,12(b)

⁶Annette Nierobisz *et al*, *Human Rights Commissions and Public Policy: The Role of the Canadian Human Rights Commission in Advancing Sexual Orientation Equality Rights in Canada* (2008), pp.20

⁷Supra note 6 at Article 6

⁸Supra note 6 at Article 40

⁹Supra note 6 at Article 41

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