

FEDERAL DEMOCRATIC OF ETHIOPIA THIRD UNIVERSAL PERIODIC REVIEW
CIVIL SOCIETY SUBMISSION
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1. Introduction

1.1 The report is a joint submission of Transparency Ethiopia and the Consortium of Ethiopian Rights Organisations (CERO).¹ The Consortium of Ethiopian Rights Organisations (CERO) is a coalition of five Ethiopian charities working on advocacy of human rights and democratic governance in Ethiopia. Transparency Ethiopia is a non-governmental organization based in Ethiopia working on ethics, anti- corruption and good governance issues in Ethiopia.

1.2 In this joint submission the authors examine the Government of Ethiopia's progress in enhancing the role of democratic institutions/mechanisms and courts which is key to the promotion and protection of human rights in the Ethiopia.

2. Ethiopian Human Rights Commission: independence and effectiveness

2.1 One of the most frequently emphasized second cycle Universal Periodic Review (UPR2) recommendations on Ethiopia relates to the Ethiopian Human Rights Commission (herein after Commission). The recommendations highlighted on two important points. The first relates to the need to strengthen the mandate and function of the Ethiopian Human Rights Commission while the second issue is ensuring the compliance of the Commission with the Paris Principles.²

¹ Consortium of Ethiopian Rights Organization , Email: cero2010@gmail.com, Tel: +251-941-552-515;
Transparency Ethiopia,Email:biruck.girma36@gmail.com,Tel: +251-118-279746, <http://transparencyethiopia.org/>

² See relevant recommendations 155.19 – 155.25; 158.17.

2.2 The mandate and powers of the Commission are regulated under proclamation 210/2000.³

The proclamation sets out the mandate, institutional structure and the powers of the Commission in relation to the protection and promotion of human rights in Ethiopia. Accordingly, the commission has been granted power to ensure that the human rights and freedoms under the FDRE Constitution are respected by all concerned; ensure that laws as well as government acts do not contravene the constitutional rights; educate the public about human rights; undertake investigation, up on complaint or its own initiation, in respect of human rights violations; make recommendations for the revision or enactment/formulation of laws and policies; provide consultancy services on matters of human rights; forward its opinion on human rights reports to be submitted to international organs; to translate, into local vernaculars, and disseminate international human rights instruments adopted by Ethiopia; and participate in international human rights forums.

2.3 Broadly speaking it has wide powers of investigation, and flexible standing requirements where victims can complain to the commission in person, or by post, email or any other means. In principle it is expected to be powerful and accessible.

2.4 During the period under review, the Commission has been following up on the implementation of the UPR recommendations both at the federal and all the 9 regional states in the country. In particular the regional offices of the Commission have been assigned to implement the recommendation at local level and report to the Commission.⁴

2.5 One of the major activities of the Commission over the past two years has been the investigation of extra-judicial killings committed in the wake of the large scale political protests that started since 2015. The Commission has investigated various forms of human rights violations including extra-judicial killings, torture and ill treatment, and many other forms of abuses. In particular the Commission's investigations principally focused on the

³ See Proclamation No. 210/2000, A Proclamation to Provide for the Establishment of the Human Rights Commission, Negarit Gazete No. 40, 4 July 2000.

⁴ Interview with Chief Commissioner of the Ethiopian Human Rights Commission.

political protests in Amhara and Oromiya regions, two regions that saw some of the most serious political protests in the more recent period of the country's political history. The findings and recommendation of the Commission were submitted to the House of Peoples Representatives and the Office of the Prime Minister.

2.6 Despite the growing exercise of its investigation power, the Commission still lacks enforceability of its findings. Upon disclosing serious violations of human rights, the Commission has exercised very limited power to follow and enforce its findings. For example despite numerous findings of human rights violation in the recent measures of security forces of Ethiopia in Oromiya and Amhara regions, the Commission has failed to bring any concrete accountability for abuses and extra-judicial killings that occurred over the past two years.

2.7 In the same vein, despite repeated findings of extrajudicial killings, torture, and ill-treatments in prison, there were no effective follow-up of its recommendations that ensures accountability for human rights. This has been one of the Achilles Heel of the Commission's human rights monitoring mandate. Even if it has been able to investigate a wide range of human rights violations, its follow up and implementation of its recommendations has been very weak.

2.8 It is vital to ensure that the Commission's work is tied to human rights accountability of both the state and individuals. This means perpetrators of human rights violations are prosecuted and held to account for the wrongs committed, and victims are redressed for the harm suffered. In view of this, the Commission needs to strengthen its enforceability and implementation and follow up mechanism. More efforts should be made in terms of integrating the findings and recommendations of the Commission into the formal judicial and law enforcement organs. This would help to combat a culture of impunity among state actors including security forces, and ensure a culture of accountability for serious human rights violations in the country.

2.9 The institutional independence of national human rights institutions is critical to ensure their functional autonomy and impartiality. The Paris Principles which have a broader acceptance in setting out the guiding principles for the independence of national human rights institutions prescribes that one of the key elements for the effective functioning of these institutions is maintaining their institutional independence. This institutional independence is deeply entrenched in the level of financial and operational autonomy the institutions enjoy and equally in the appointment of impartial officers.

2.10 Though the Ethiopian Human Rights Commission was established as an independent institution for the protection and promotion of human rights in Ethiopia, concerns have been raised on its independence and impartiality. Sometimes, its reports are not made public awaiting the ‘green light’ of the Parliament. As an independent institution, its operational autonomy should not be subjected to the approval of any state organ. Similarly, the appointment of commissioners who are considered partisan or had previously held political appointment has brought its impartiality and independence into question. The lack of its independence continues to create lack of credibility of its reports.⁵ The Commission has a “B” rating and does not fully comply with the Paris Principles regarding the independence of NHRIs.

2.11 The state should make every effort to ensure that operational autonomy of the Commission is fully respected and the appointment of the Commissioners and other senior officials is made on non-partisan basis. Efforts should also be made to ensure that adequate consultation made among the public and all stakeholders in the appointment of the Chief Commissioner and Commissioners of the Commissioner of Human Rights.

⁵ See Human Rights Watch World Report 2018, <https://www.hrw.org/world-report/2018/country-chapters/ethiopia> (accessed 5 September 2018).

3. Implementation of the National Human Rights Action Plan⁶

3.1 One of the most important mechanisms devised in ensuring the promotion and protection of human rights in Ethiopia is the adoption of the National Human Rights Action Plan (NHRAP). The National Action Plan was introduced to help create a national framework for the implementation of human rights.

3.2 With respect to the follow up and implementation of the NAHRAP, the Federal Attorney General's office has been working with the different concerned government institutions and departments both at the federal and state levels. It has regularly engaged with these institutions to follow-up their progress in implementation, and identified those that are lagging behind and attempted to devise remedial measures in consultation with these institutions.⁷

3.3 A positive aspect of the implementation of the second National Human Rights Action Plan was the relatively growing engagement with civil society compared to the first National Human Rights Action Plan. Moreover, all relevant government institutions both at the federal and state level, a total of which involves 63 public institutions, have been identified in the implementation of the National Human Rights Action Plan. These are coordinated by four lead institutions- the Federal Attorney General, the Ministry of Finance and Economic Cooperation, the Ministry of Education and the Ministry of Labour and Social Affairs that coordinate the activities of the various agencies and bureaus of the government.⁸

3.4 At regional level, the vice president's of the regional states have served as focal persons in the 9 regional states of the country. This is a positive step that shows greater commitment

⁶ A range UPR2 recommendations dealt with strengthening or accelerating implementation of the NHRAP (See for example Rec. No. 155.11– 155.14;155.37).

⁷ Interview with Head of the National Human Rights Action Plan Office, Federal Attorney General, 15 August 2018.

⁸ Ibid.

to implement the NHRAP at the regional and lower levels of the administrative stature in the country.⁹

3.5 Better coordination was also made in terms of providing support to the merging regional states of Afar, Gambella, Benishangula, Gambella and Somali. The national coordination provided trainings, a dialogue forum for experience sharing, and material support.

3.6 Although improvements were made, the participation of civil society in the implementation of the NHRAP is still weak. The participation of civil society, in particular at lower levels of state administration remains very low.¹⁰

3.7 Moreover, emerging regions that have less socio-economic services and institutional structures do not have the capacity to implement the Action Plan due to resource constraints and lack of technical capacity. More efforts should be made to ensure greater participation of the civil society in the implementation of the Action Plan. Financial and technical assistance should also be provided in making sure that emerging regions have better capacity to implement the national action plan.

3.8 Change in leadership at different levels of public administration has been a challenge to effectively implement the NHRAP. It was also pointed out that the political instability in the country has negatively impacted on the implementation of the NHRAP. Sustainability of the mechanism should be ensured by taking all appropriate institutional, budget and administrative measures at federal and regional level.

⁹ Ibid.

¹⁰ Ibid.

4. Electoral Board and election management

4.1 Free, fair and credible elections are the hallmarks of a democratic society. To undertake free, fair and credible elections, appropriate institutional mechanism should be devised. The Electoral Board of Ethiopia was established as “as an independent and autonomous organ” to monitor elections. The Board is accountable to the House of Peoples Representatives. Although it is true that the many international and national institutions may participate in election observation and election monitoring, it is the sole national organ that ensures and validates whether elections are fair, free and reliable. Because of this, ensuring its institutional and functional independence is a critical aspect of that process.

4.2 The appointment of the members of the Board has not been insulated from partisan politics. Often individuals appointed as Board members have served in positions considered as political appointments. According to the Constitution, members of the Electoral Board are nominated by the Prime Minister and approved by the parliament. Moreover the Amended Electoral Law of Ethiopia provides that there has to be sufficient consultation forum for political organizations represented in the parliament to ensure that the nominees are impartial and independent. The law also requires that the members of the Board, among others, should be non-partisan. However, it has been very difficult to ensure the impartiality and independence of the members of the Electoral Board. This is particularly troubling in a country where all seats of the legislator are dominated by the ruling party; appointing individuals who are members of the governing party will be counterproductive to ensure the independence of the Board.

4.3 Often dispute on the registration and cancellation of political parties lacks a reasonable, transparent procedure. Although there is a possibility of judicial review of the decision of the Board on these matters, the initial decision of the Board has significant influence in the outcome of the decisions of the regular courts.

4.4 A more significant challenge of the Amended Electoral Law of Ethiopia is regarding voter education and elections observation. The Board has the exclusive right to decide on these matters. Decisions on these matters lack transparency and fairness. In view of making the election free fair and credible, restrictions on voter education and awareness creation should be eased. The State should also allow national and international election observers to monitor and observe the next cycle of the election in 2020. Even though similar issues were raised in the recommendations of the second UPR of Ethiopia,¹¹ the concern has not been addressed. Allowing and facilitating open and inclusive electoral debate, civic and voter education, election monitoring and the active engagement of civil society organisations and independent media remains indispensable and should be given priority by the government in preparation for the upcoming election.

4.5 Recent reforms of the electoral system from the first past the post to the representative electoral system also promises to improve the fairness of the electoral system and increased participation of different political parties and their representation in the national parliament. Currently the agreement between the ruling party (EPRDF) and opposition political parties is that 80 % of the election should be through first past the post and the remaining 20 percent through representative system. Although the current reform process envisages 80 to 20 percent of share, efforts should be made to make the process more fair and representative. This is particularly important given the increasing number of political parties that have returned to the country very recently, after a generous invitation of the government for all political parties and armed groups to participate in the next national election.

4.6 Almost all exiled political parties have been invited to peacefully participate in the democratic process and participate in the next round of elections which will be held in 2020. This is a positive step in the right direction that needs to be strengthened. In view of such an influx of political groups in the aftermath of the recent opening of the political

¹¹ See for example, recommendations 155.115,157.14, 155.48.

space in the country and the great promises made towards a democratic reform; the envisaged policy, legal and institutional measures would go a long way in ensuring public confidence on election process and outcomes.

5. Courts and human rights adjudication

5.1 The role of courts in ensuring the protection of human rights cannot be overemphasized. As one of the key institutions that help to ensure the protection of human rights, they are uniquely placed to redress the human rights violations of individuals. The Constitution of Ethiopia establishes for independent judicial institutions both at the federal and state levels. The Constitution also provides that every public institution at all levels including courts have the responsibility of ensuring the protection of human rights. However, there are a number of factors that impede the role of courts in redressing human rights violations and enforcing the human rights and fundamental freedoms enshrined in the constitution. There are legal, institutional and cultural factors that have significantly limited the role of courts in protecting the human rights of individuals in Ethiopia.

5.2 This report highlights one of the legal challenges Ethiopian courts face when it comes to direct adjudication of human rights or constitutional issues. One of the most significant legal issues that is usually raised as an important factor in constraining the implementation and application of human rights is the power of constitutional interpretation. The Ethiopian Constitution provides that the House of Federation “has the power to interpret the Constitution”. This provision together with other provisions of the Constitution seem to suggest that the inherent power of Constitutional interpretation and adjudication is reserved to the House of Federation, which is the upper house of parliament and a political organ of the State. “one of the major problems of enforcing and implementing the human rights provisions of the constitution is because there is a general 'conception' that the courts do not have power to 'interpret' the Constitution; such power is vested in the House

of Federation."¹² . This has seriously undermined the review power of courts, in particular on human rights issue

5.3 Notwithstanding that courts generally have an inherent power of adjudicating and reviewing constitutional issues related with human rights, the lack of legal clarity on the matter has significantly limited the role of courts in adjudicating application of fundamental human rights in the Constitution and the normative boundaries of these rights.

5.4 Assessments done for the preparation of this report also revealed that judges consider that they do not have power to interpret the constitution and the bill of rights in the Constitution as the House of Federation is mandated to interpret constitutional issues. Interviews with judges and experts disclosed that the main reason for the lack of application and enforcement of the constitutionally protected human rights was the understanding that courts do not have the power to do so under the constitution.¹³ Lawyers and individual complainants could not also make much use of the courts for human rights complaints unless integrated in the regular criminal or civil suits.

5.5 This practice has for long hindered access to justice and appropriate remedy in case of human rights violation by state authorities and non-state entities. It has undermined the role of the judiciary as a guardian of fundamental rights, diminished the space for human rights accountability and reinforced a culture of impunity.

¹² See Simeneh Kiros, in Wondwossen Demissie (ed.) Human Rights in Criminal Proceedings, Ethiopian Constitutional Law Series Vol III (2010).

¹³ Key informant interviews with judges and experts.

6. Recommendations to the Government of Ethiopia

6.1 Regarding the Ethiopian Human Rights Commission :

- Ensure the appointment no-partisan and independent commissioners and senior officials;
- Allow the Commission to exercise operational autonomy;
- Provide the Commission with adequate resources;¹⁴
- Remove any legal or procedural barriers to independence and effectiveness and improve its performance to fully comply with the Paris Principles;¹⁵
- Put in place a mechanism for the enforceability of the Commission's recommendations through appropriate legal, administrative and institutional measures.

6.2 Regarding the implementation of the NHRAP

- Increase institutional capacity at the coordination level and throughout the country for effective implementation;
- Allocate adequate resources for the implementation, follow-up and coordination;
- Ensure appropriate focus on implementation at lower level administration and less developed regions through appropriate budgetary and administrative measures;
- Enhance meaningful participation of civil society in planning, implementation, and monitoring at federal and regional level, including lower administration structures.¹⁶

6.2 Regarding Electoral Board and Elections

- Amend the Electoral Law in a manner to facilitate free and fair elections in accordance with constitutional and international standards

¹⁴ See also UPR2 Rec. No. 155.27.

¹⁵ See also related recommendations from UPR2 (Rec. No.155.23,155.24 & 155.25)

¹⁶ See similar recommendations from UPR2 155.15 & 155.37.

- Appoint officials on a non-partisan and independent manner through a transparent participatory and accountable process;
- Put in place mechanisms for accountability and review of Board decisions;
- Take all appropriate legal, administrative and institutional measures to ensure autonomy and effectiveness of the Board;
- Open the space for the participation of civil society and independent media in election process by lifting all undue restrictions.¹⁷

6.4 Regarding the role of courts

- Remove legal, procedural and institutional barriers to human rights adjudication by courts;
- Strengthen the capacity of courts, judges, and lawyers on the application of the constitutional right and relevant human rights law;
- Support the role of lawyers associations in providing legal services on human rights issues.

¹⁷ This resonates with similar UPR2 recommendations for Ethiopia (See Rec. No.115.115 & 158.49).