

THE MANDATE AND LIMITATIONS OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ETHIOPIA AND SOUTH AFRICA: COMPARATIVE PERSPECTIVE

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Abstract

International, regional and national human rights documents often entitle human beings certain fundamental rights such as rights to life, liberty, dignity, equality, education and health, in order to help individuals lead a life worthy of living. However, the rights, as enshrined in these various instruments, will amount to mere rhetoric if appropriate enforcement mechanisms have not been designed. In view of this, establishing National Human Rights Institutions (NHRIs) provide states with the necessary equipment in advancing the human rights of their citizens. Although the Paris Principles lays down the standards of NHRIs and the importance of their establishment, it is left to domestic laws to declare the specific functions and powers of these institutions. The Paris Principles stipulate the guidelines or standards of what a fully functioning NHRI needs to have and six main criteria as a minimum condition can be identified: 1) Mandate: a broad mandate need to be given; 2) Independence from Government; 3) Legal autonomy: autonomy guaranteed by statute or constitution; 4) Pluralism, including through membership and/or effective cooperation; 5) Infrastructures: adequate funding; and 6) Operational efficiency: adequate powers. Since choosing on a specific activities and nomenclature is a matter to be determined by the national laws, it is natural to observe a variety of mandates and functions across different states. Even though NHRIs working in South Africa and Ethiopia are established at the constitutional level, there is a greater disparity in the scope of the mandate and powers entrusted to these institutions. This paper compares mandates, adequacy of resources, the nature and levels of independence, and the degree of interrelations with various organs, and the overall activities of NHRIs functioning in Ethiopia and South Africa. It specifically evaluates limitations or successes of these national institutions measured against the six criteria set out in the Paris Principles. Assuming that the South African system and national institutions are far more robust and advanced than the Ethiopian human rights institutions, the article explores to what extent the Ethiopian system could be improved or draw lessons to come closer to the South African system.

Keywords: Paris Principles, NHRIs, Mandate, Human Rights Commissions, Ombudsman

INTRODUCTION

International, regional and national human rights documents often entitle human beings certain fundamental rights such as rights to life, liberty, dignity, non-discrimination, education and health, in order to help individuals lead a life worthy of living. However, the rights, as

enshrined in these various instruments, will amount to mere rhetoric if appropriate enforcement mechanisms have not been designed.

In view of this, establishing NHRIs provide states with the necessary equipment in advancing the human rights of their citizens. As Cardenas rightly put it, historically, the United Nations (UN) has played a crucial role in creating and strengthening NHRIs. The UN first referred to the need for NHRIs in the second session of the United Nations Economic and Social Council (ECOSOC) in 1946 and the institutions received intermittent attention over the next forty years.¹ When the UN first addressed the topic in 1946, the ECOSOC issued a resolution calling for the general creation of NHRIs.² UN's activism has been long standing and essential not just for the appearance but the subsequent proliferation of NHRIs too.

In Africa, NHRIs emerged partly in response to the democratization process that swept many countries of the continent in 1980s and early 1990s. They are also developed in response to the African Charter on Human and Peoples' Rights (the ACHPR or African Charter) that recognized the importance of these institutions.³ National institutions have continued to mushroom on the continent in the wake of a wave of political transformation from various types of authoritarianism to political democracy.⁴ They can be described as a new breed of institutions designed to promote and protect human rights, good governance, accountability and the rule of law.

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¹ Thomas Pegram, *Diffusion across Political Systems: The Global Spread of National Human Rights Institutions*, 32 JOHN.HOPK.UNI.PRE. HUM. RTS. QUAR., 729, 739 Aug., 2010.

² Sonia Cardenas, *Emerging Global Actors: The United Nations and National Human Rights Institutions, Global Governance*, 9 Brill Publication, Jan.–Mar., 2003, at 23, 28.

³ Kanzira H. S., *The Independence of National Human Rights Bodies in Africa: A Comparative Study of The CHRAJ, UHRC and SAHRC*, 8 EAST AFRI. J. OF PEA and HUM. RTS., 174, 2002.

⁴ *Id.* at 174.

The 1991 Paris workshop galvanized a new interest in NHRIs and provided a concrete-if imperfect-structural basis for NHRIs through the Paris Principles.⁵ The Paris Principles stipulate various competences and responsibilities that a certain NHRI needs to be vested with. Accordingly, they vividly provide the following main criteria that these institutions required to meet:⁶ 1) Mandate: a broad mandate need to be given; 2) Independence from government; 3) Legal autonomy: autonomy guaranteed by statute or constitution; 4) Pluralism, including through membership and/or effective cooperation; 5) Infrastructures: adequate funding; and 6) Operational efficiency: adequate powers. While the Paris Principles lay down the standards/guidelines of NHRIs and the importance of their establishment, it seems that the category of functions and powers of these institutions are left to domestic laws. This is due to the fact that choosing on specific activities, strategies to meet the standards and the nomenclature itself is a matter to be determined by the national laws. Hence, it is natural to observe a variety of mandates and functions across different states.

Even though NHRIs working in South Africa and Ethiopia are established at the constitutional level, there is a greater disparity in the scope of the mandate and powers entrusted to these institutions. This article compares mandates, adequacy of resources, the nature and levels of independence, and the degree of interrelations with various organs, and the overall activities of NHRIs functioning in Ethiopia and South Africa. It specifically evaluates limitations or successes of these national institutions measured against the six criteria set out in the Paris Principles. Assuming that the South African system and national institutions are far more robust and advanced than the Ethiopian human rights institutions, the article explores to what extent the Ethiopian system could be improved or draw lessons to come closer to the South African system.

Organizing the contents of this article shouldn't necessarily follow the six criteria. The criteria are rather condensed into 3 issues such as broad mandate, independence and pluralism.

⁵ Thomas, *supra* note 1.

⁶ The Paris Principles, *Principles Relating to the Status of National Institutions*, UN GENERAL ASSEMBLY RESO., 48/134 of 20 December, 1993. See also Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), UNITED NATIONS OHCHR, New York and Geneva, 2010, (Nov., 23, 2019, 10:04AM), <https://www.ohchr.org> > Documents > Publications.

In fact, since the criteria are interwoven to each other, a discussion made on a certain dimension touches at a time two or more criteria. For instance, the issue of appointment can effectively go either with the criteria of pluralism or independence in the Paris Principles. In this article, therefore, appointment is chosen to be discussed in section III which pose the various issues of independence and at same time reflects composition as a nexus element of independence and which ultimately goes to the test of pluralism. The point here is that the article seeks to forward the three issues consecutively by presenting a comparative analysis of the situation of NHRIs in Ethiopia and South Africa. However, since cross cutting issues have been raised to organize different parts of the article, all the criteria are considered in the meanwhile.

Having this in mind, the article is organized into five sections. As usual, the article begins its discussion with introductory part. Section II introduces the major NHRIs in South Africa and Ethiopia and their respective mandates in comparison. Here, the first Paris Principle which requires NHRIs to be established with a broad mandate will be discussed extensively in a way to evaluate the protective and promotional roles of the national institutions to all human rights concerns. The author argues that adequate powers of investigation, one of the criteria in the Paris Principles, can be observed within the ambit of the broad mandate that need to be given to the national institutions. Similarly, since legal autonomy is about mandate to be defined clearly in the enabling legislation, the experience of the two countries will be highlighted in this section. Section III examines status of the national institutions with the requirement of independence that extends also to the legal, operational, appointment, composition and financial autonomies. Section IV is an assessment of the degree of interaction with the various entities by the South African and Ethiopian NHRIs [the criteria of pluralism]. Finally, there will be concluding remarks.

1. THE MAJOR NATIONAL HUMAN RIGHTS INSTITUTIONS IN SOUTH AFRICA AND ETHIOPIA

As the national institutions may vary in terms of their specific organizational features, we couldn't have an all-fit and standardized models and nomenclatures of NHRIs. Accordingly,

NHRIs have different names, depending on the region, legal tradition and common usage.⁷ Among many possible names, some of the instances include i) Civil rights protector ii) Human rights commission iii) Human rights institute or centre iv) Ombudsman v) Public protector/defender and vi) Parliamentary advocate.⁸ Six models of NHRIs exist across all regions of the world today, namely: Human rights commissions, Human rights ombudsman institutions, Hybrid institutions, Consultative and advisory bodies, Institutes and multiple institutions.⁹ A UN survey conducted on countries' institutional types brought a finding that the Commission, Ombudsman, Hybrid and Others account for 58, 30, 5 and 7 percent, respectively.¹⁰

The Constitution of a given land or sovereign statute of the parliament may establish NHRIs. It may also be structured as a distinct institution in its own right accountable only to the legislature, an independent office of the legislature or an independent office of the executive branch. Thus, it is either the constitution or any other subordinate law which grants recognition to the NHRIs.¹¹ Ethiopia and South Africa are similar in giving the national human rights institutions a constitutional status.¹² However, the Ethiopian federal Constitution or alternatively the Ethiopian Constitution is not strictly adhered to the Paris Principles.

In accordance with the Paris Principles, a broader mandate, appointment and dismissal, a clearly defined subject-matter jurisdiction and reporting requirements to the parliament should be specified in the founding legislation of the institution. There might be a slight difference between the two countries in complying with this requirement of legal autonomy. In South Africa, a broad mandate, subject-matter jurisdiction and independence through appointment and dismissal of the Office of Public Protector (OPP) and the South African Human Rights Commission (SAHRC) including tenure (duration) of the appointees are clearly

⁷ *Id.* at 13.

⁸ *Id.* at 14.

⁹ Office of High Commissioner for Human Rights, *Roles and types of National Human Right Institutions - GANHRI* –, UNITED NATIONS OHCHR, (Nov.,27, 2019, 10:40AM), <https://nhri.ohchr.org> > AboutUs > Pages > Roles Types of NHRIs.

¹⁰ The Paris Principles, *Supra* note 6, at 15. The Source is OHCHR, NHRI survey, 2009.

¹¹ Linda Reif C., *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS. J. Spring, 2000, at 1, 4.

¹² FDRE CONST., art. 55, pt.14 and pt.15. See also Linda C. Reif at 40 above for comparison.

set out in the enabling or founding legislation.¹³ Whereas in the Ethiopian context, the basis for establishing the Ombudsman Institution and the Human Rights Commission is constitutional, matters such as broad mandate, subject-matter jurisdiction and independence through appointment and dismissal of members are not incorporated in the enabling legislation.¹⁴

Generally, in South Africa and Ethiopia, NHRIs are constitutionally and specifically referred as Human Rights Commissions, Ombudsman Institutions and the Public Protector. However, the Ethiopian Constitution doesn't incorporate detailed guidelines or provisions specifically addressing the powers and duties of NHRIs. Even if NHRIs that refer to human rights commissions and the ombudsman are dominant models; it would still be arguable to include other kinds of structures too.

Various groupings are created by different scholars having the effect of multiplying the taxonomy of NHRIs thereby the corresponding nomenclatures are diversified to be used to refer to these institutions.¹⁵ For the purpose of articulating the dominant institutions which have been adopted by many states, NHRIs can be further divided into Human Rights Commissions, Ombudsmen and Specialized institutions.¹⁶ As the HRCs and Ombudsman types are discussed elsewhere in a reference made to South Africa and Ethiopia, let's say a few words on specialized institutions.

Specialized institutions are usually established to promote the human rights concerns of the specific and discriminated groups in a society such as ethnic (including religious and linguistic) minorities, indigenous population, refugees, immigrants, children, women, the poor and the disabled.¹⁷ Specialized institutions do have common features with HRCs and

¹³ SOUTH AFRICA CONST., amend. On 11, October 1996 by the Constitutional Assembly, § 181. and the following.

¹⁴ FDRE CONST., art. 55, pt.14 and pt.15, *supra* note 12.

¹⁵ There are also scholars who tend to categorize national institutions into: Consultative Commissions; Commissions with judicial competence; Commissions with ombudsman competence and judicial competence; National Human rights Centers and Human rights Ombudsmen. See Kjaerum, *National Human Rights Institutions Implementing Human Rights*, 2003, 7-9.

¹⁶ UN HANDBOOK ON THE ESTABLISHMENT AND STRENGTHENING OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, NATIONAL HUMAN RIGHTS INSTITUTIONS, CENTER FOR HUMAN RIGHTS, Professional Training Series No 4, Para. 46, Para.53 and Para.56 (1995).

¹⁷ *Id.* at Paras. 53-55

Ombudsmen models. However, they are categorized under another breed of NHRIs as they perform tasks with regard to the specific group they are assigned to.¹⁸ For instance, in South Africa, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Commission for Gender Equality are constitutionally established.¹⁹ These institutions are vested with the power to promote, protect including the privilege to monitor, investigate, research, educate, lobby, consult and report on the rights of linguistic communities and women respectively. In the Ethiopian experience, however, no specialized commission is established to work on refugees, internally displaced persons, minorities, indigenous people, women and the like.

There might also be arguments to include Consultative Organs and Anti-corruption Commissions in the category of NHRIs. The UN has acknowledged the difficulty of classifications despite many common features among NHRIs.²⁰ Currently, however, the majority of national institutions can be identified as belonging to one of the two broad categories: human rights commissions or the ombudsmen. Thus, this article limits its discussion only to the two common forms of institutional structure and is presented below at length by assessing the South African and Ethiopian approach comparatively.

A. The South African and Ethiopian Human Rights Commissions: Broad Mandate?

The 1993 Interim Constitution has established the SAHRC which latter on incorporated similarly into the 1996 Constitution, with the supporting legislation passed and the Commissioners appointed in September 1995.²¹ The SAHRC has three main functions:²² the first is to promote and entrench a culture of human rights, second, to protect, develop and encourage the fulfillment of human rights and third, to monitor the observance of human rights in the country. It must be noted that the mandate of NHRIs is not limited to the promotion and protection of human rights, it validly include, among others, commenting on the existing and

¹⁸ Helina Azeze, *Assessing the Effectiveness of the Ethiopian Human Rights Commission in Light of the 1991 Paris Principles*, Thesis, Addis Ababa University School of Graduate Studies, 2014, at p.19, Addis Ababa, (Dec., 3, 2019, 9:00PM) etd.aau.edu.et > handle.

¹⁹ SOUTH AFRICA CONST., *supra* note 13, §185 and 187.

²⁰ UN Handbook, *supra* note 16, Para.41.

²¹ Linda, *supra* note 11, at 40.

²² *Id.*, at 40.

draft laws and the ability to receive complaints relating to private bodies that carry out public functions.²³

SAHRC possessed wide ranging powers under the law in order to be able to carry its tripartite mandate. It has the power to investigate and report on human rights compliance, to take steps to secure appropriate redress where human rights have been violated; to carry out research; and educate the public.²⁴ SAHRC's jurisdiction over human rights matters is extended both in the public and private sectors.²⁵

The tripartite broad ranges of powers are vested similarly with the Ethiopian Human Rights Commission (EHRC). Pursuant to article 6 of the EHRC establishing proclamation, the commission is given both protective and promotional mandates.²⁶ But it lags behind or transcend protective activities instead focus on promotional functions. In 2008, for instance, EHRC submitted a report of activities to the House of Peoples' Representatives (HPRs) under which it is indicated that the EHRC has received 150 human rights violation complaints.²⁷ Absence of cause of action and lack of jurisdiction were the grounds mentioned by the

²³ RICHARD CARVER, *ASSESSING THE EFFECTIVENESS OF NATIONAL HUMAN RIGHTS INSTITUTIONS* 20, (2005), International Council on Human Rights Policy (ICHRP), Geneva, Switzerland, the Report which is co-published by the ICHRP and the OHCHR. Broad mandate include: 1) Commenting on existing and draft laws; 2) Monitoring domestic human rights situations; 3) Monitoring and advising on compliance with international standards and co-operating with regional and international bodies; 4) Educating and informing in the field of human rights; 5) Receiving complaints or petitions from individuals or groups (where appropriate); 6) Monitoring government compliance with their advice and recommendations. Receiving complaints or petitions from individuals or groups, in turn, include the following functions: I) Ability to receive complaints against public bodies– NHRIs mandated to receive complaints should have broad powers to deal with them. As with their monitoring role, no relevant public body should be excluded from their jurisdiction. II) Ability to receive complaints relating to private bodies that carry out public functions. A NHRIs jurisdiction should certainly apply when private bodies have been assigned responsibility for public functions, such as provision of basic utilities, health services, education or custodial and law enforcement activities. See RICHARD, p.17-20 III) Investigation of serious violations should not be time-limited– NHRIs should not be prevented from investigating serious human rights violations by time limits (statutes of limitation). See RICHARD, at 21. In general, NHRIs can look for redress for victims.

²⁴ SOUTH AFRICA CONST., *supra* note 13, §184, pt.2, and SAHRC is constitutionally mandated to promote and protect socio-economic rights, see § 184, pt.3.

²⁵ Linda, *supra* note 11, at 41.

²⁶ The Ethiopian Human Right Commission Establishment Proclamation, 2000, Proclamation No. 210/2000, Federal Negarit Gazette, art. 6.

²⁷ The Capacity Strengthening Paper of the Ethiopian Human Rights Commission, January 2000 E.C, p.9. The reason for the EHRC to lag behind in its protective roles is simplest because it receives and entertains minimum cases given the larger size of the country and the 2nd most populous nation in Africa. Besides, the complaint department of EHRC does not have adequate means of transportation and basic investigation equipments, as well as the requisite expertise to carry out proper complaint handlings.

Commission so as to reject the majority of the complaints, only on 3 cases that it has issued a ruling and able to come up with findings.²⁸ In its report to the Universal Periodic Review (UPR), EHRC argued that owing to the enhanced capacity and accessibility and the number of promotion activities, investigations and monitoring made are increasing.²⁹ During the 2012/13 Ethiopian fiscal year, therefore, the Commission has investigated over 1200 cases and has provided necessary remedial measures including monetary compensation for victims of human rights violation.³⁰ However, the total number of files of complaints submitted to the Commission since its inception which until April 2013 exceeds a little over 6,000 is rather small given the sheer size of the country and its poor human rights records.³¹

On the contrary, SAHRC has provided a final decision to 8919 cases only in 2012/13 financial year.³² Even SAHRC's one year performance exceeds by 2919 cases when compared with the EHRC's overall submissions from the outset of its establishment. A decade after its establishment, the EHRC has not issued a single annual report on the human rights violations in the country.³³ This shows the Ethiopian Commission considers little cases when compared with SAHRC and hence the EHRC seems to concentrate on promotional activities than protective functions.

Different reasons might be suggested for this problem. As will be discussed later on cooperation with different government organs is poor and the EHRC lacks full independence for the purpose of flourishing more protective functions. Besides, the fact that the EHRC has yet to establish adequate number of regional offices hinders the establishment of a nation-wide

²⁸ *Id.* at 9.

²⁹ *Ethiopian Human Rights Commission's Submission for the UPR*, ECHR (Feb., 29, 2020, 8:00PM) uprdoc.ohchr.org > uprweb > downloadfile.

³⁰ *Id.* at 2.

³¹ Mohammed Abdo, *The Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance: Challenges and Prospects*, (Dec.4, 2019, 8:50PM), <https://biblio.ugent.be> > publication > file, 8.

³² South African Human Rights Commission, *Annual Report 2017*, SAHRC (Mar.1, 2020, 9:50PM) www.sahrc.org.za > index.php > sahrc-publications > annual-reports. Note that submissions are necessarily greater than 8919.

³³ Lidetu Yimer, *Analysis of UPR Recommendation on National Human Right Institutions: Ethiopia*, UPR (Mar.1, 2020, 9:00PM), www.academia.edu > Analysis_of_UPR_recommendation_on_National.

complaint handling system. Even the already established offices are not robust enough to encourage people to submit the human rights violations.³⁴

Opening an office doesn't suffice in particular with the protection of social, economic and cultural rights. As a matter of fact the nature of social, economic and cultural rights requires the state and its national institutions positive actions and active engagements with the fulfillment of these needs. Even if the Ethiopian Constitution recognizes social, economic and cultural rights as enforceable, a weaker and less staffed EHRC with least number of offices cannot even satisfy the demands with respect to civil and political rights.

When it comes to South Africa, the Constitution pays adequate attention to the social, cultural and economic rights. Different from the Ethiopian approach, the South African constitution explicitly mandated SAHRC to monitor the protection of these rights.³⁵ It recognizes the socio-economic disadvantages and the injustices suffered by its citizens due to long history of racial discrimination.³⁶ As a result, it gives crucial role to the SAHRC to assess the steps taken by governmental bodies towards the realization of economic, social, and cultural rights. Raj argues that NHRIs can follow the example set by SAHRC in articulating strategies in the investigation and ensuring conformity to these rights.³⁷ Thus, every effort needs to be made by NHRIs to ensure that ESCRs are not neglected by the state.³⁸

Generally, NHRIs have the duty to supervise the proper implementation of human rights recognized in international and domestic legal documents. The SAHRC has one of the most active tribunals for making sure that the rights are enforced accordingly. Within its very busy schedule, the Commission Tribunal has had the opportunity to address issues relating to access to information; children; culture; education; equality; freedom of association; freedom and

³⁴ To increase the accessibility of its services, the Commission implemented its plan of establishing six branch offices in different geographic areas of the country. After endorsement with the parliament, the branches were established in six cities, namely Mekele; Hawassa; BahirDar; Jimma; Jigjiga and Gambela. See *Ethiopian Human Rights Commission's Submission for the UPR*, EHRC's Submission for UPR (Feb. 29, 2020, 10:14PM), uprdoc.ohchr.org > uprweb > [downloadfile](#).

³⁵ SOUTH AFRICA CONST., amend., On 8 May 1996, § 184, pt.3.

³⁶ SOUTH AFRICA CONST., amend., On 8 May 1996, Preamble.

³⁷ Raj Kumar C., *National Human Rights Institutions and Economic, Social, and Cultural Rights: Toward the Institutionalization and Developmentalization of Human Rights*, 28 HUM. RTS. Q., 755, 759 (2006).

³⁸ *Id.* at 755.

security of the person; freedom of expression; freedom of religion, belief and opinion; housing, and human dignity; language and culture; and property – just to mention some of the areas addressed.³⁹

Though monitoring proper implementation of the rights is one of the important tasks of Ethiopian Human Rights Commission, less work has been done on the area due to lack of professionals and high affiliation of appointees with the government.⁴⁰ Moreover, EHRC does not give much attention to the protection of economic, social and cultural rights.⁴¹ Justifications for drawing such a conclusion are presented in section II (C) at length.

An assessment of the two systems reveals a sharply contrasting result. While EHRC doesn't give equal weight to social, economic and cultural rights compared with that of civil and political rights, the SAHRC has handled almost all issues listed in the South African Bill of Rights.⁴² EHRC often uses more informal and non-confrontational methods toward the enforcement of its recommendations.⁴³ However, SAHRC passed decisions on considerable issues or complaints lodged to it for consideration, without being constrained by excusable factors such as workload. In fact, some of the decisions of the Commission have been quite insightful – not only to the community, but to other institutions and authorities dealing with human rights issues in and outside the country as well.⁴⁴ Henceforth, it becomes a matter of determination and institutional will if there are dreams by the Ethiopian Commission to make changes in the human rights culture of the country.

As it has been stated in the introductory part of this sub-title, human rights commissions are established for the propagation of human rights education among the wider public. Because of their specialty in the area and defined objective, therefore, human rights commissions are by far

³⁹ CHRIS MAINA P., HUMAN RIGHTS COMMISSIONS IN AFRICA– LESSONS AND CHALLENGES, Legal Perspectives on the Protection and Promotion of Human Rights by African Commissions, 356-357 (2009), Macmillan Education Namibia.

⁴⁰ Helina, *supra* note 18, at 64.

⁴¹ *Id.* at 64.

⁴² CHRIS, *supra* note 39, at 356.

⁴³ Helina, *supra* note 18, at 23.

⁴⁴ This can easily be detected in the decisions made by the courts of law on fundamental rights. See Davis *et al.* (1997) cited in CHRIS, *supra* note 39, at 357.

better than other institutions toward creating awareness, about the bill of rights included in the given constitution and international documents, to all citizens irrespective of their social status. However, since government is equally responsible for such education, chances are that the government will use it for advancing its own purposes too. But still the more successful the human rights commission with its education role, the greater the risk that government action will likely be challenged and that the public will make serious demands for compensation and the punishment of human rights abusers. Governments in turn need to control such education by setting the pace and manage its contents so as to avoid public demands. In this regard, a scholar by the name Marcus critically assesses the strong and weak sides of SAHRC by stating that:

SAHRC is the most active and best-funded commission in Africa – and, possibly, the world. Human rights curricular development is a major function of this Commission. But it is also involved in training officials such as the police and the army, and in regional training of other human rights commissions. However, even the SAHRC did not escape the criticism of overcompensating for the needs and aspirations of government.⁴⁵

The Ethiopian NHRIs do not involve in the human rights curricular development. Rather, it has been left to different organs at different times which include the ministry of capacity building, civil service minister, justice system reform units and justice and legal system research institute. However, the national institutions have used multiple approaches in creating awareness to the general public such as celebrating various human rights days, providing free legal aid services, and organizing different moot court competitions in cooperation with higher educational institutions. The national institutions have also prepared different workshops and seminar works on various issues of human rights concerns.⁴⁶ The

⁴⁵ Marcus Topp, *National Human Right Institutions: Articles and Working Papers; Human Rights Protection by the State in Uganda*, The Danish Centre for Human Rights, 65 (2000); See, also, Nico Horn, *Human Rights Education in Africa*, at 65.

⁴⁶ For instance, EHRC celebrated HRS day every year and give trainings. It conducts a 16 days activism campaign and organized workshop on occasion of the nation and nationalities days in 2017. See Ethiopian Human Rights Commission Reporting Period:- Ethiopian Fiscal Year 2006 Project Title: Strengthening Democratic Governance to Accelerate and Sustain Ethiopia's Transformation, UNDP (Nov. 12, 2019, 2PM), <https://info.undp.org-docs-pdc-documents-ETH>. Ethiopian Institution of the Ombudsman has conducted consultative workshops for federal and regional executive organs with the aim of promoting governance and fighting maladministration against Persons with Disability. It also discusses with federal and regional public relation officials and other stakeholders

EHRC is legally permitted to educate the public using the mass media and other means with a view to enhancing the tradition of respect and demand for enforcement of rights.⁴⁷

When it comes to the South African NHRIs particularly the SAHRC is notable for its activism in the region.⁴⁸ As part of its promotional responsibility, the SAHRC has carried out a series of training programmes, collaborative educational and awareness activities and public outreach engagements. In 2019 financial year, for instance, the SAHRC conducted more than 400 public outreach engagements that enable to reach in excess of 90,000 people.⁴⁹ This targets rural, semi urban, marginalized and disadvantaged communities who often have least access to human rights information and services.⁵⁰ In the same year, with more than 2000 media and communication activities, the commission now reached an audience of 3.6 billion people across print, broadcast and online media.⁵¹ Also, the SAHRC has actively campaigned on the inclusion of human rights in the schools' curricula apart from doing many researches on education and human rights.

The SAHRC was also a pioneer in setting up a Centre for Human Rights Education Training.⁵² While there were several organs that take part in the education and human rights affairs, no one coordinated the educational programs of the different role players from government, civil society and educational institutions including universities except SAHRC.⁵³ The SAHRC's Centre still serves as an example of how educators from civil society and government can be brought together to coordinate a focused human rights education without duplication.⁵⁴

on the performance of the freedom of mass media and access to information proclamation on workshop held at Adama town for two days. See The Ethiopian Institution of the Ombudsman Official Report, I The Ombudsman, Jan., 2017, 3-4, (Nov. 12, 2019, 2PM), www.theioi.org > downloads.

⁴⁷ EHRC Establishment Proc., *supra* note 26.

⁴⁸ Ebenezer Durojaye, *Turning Paper Promises to Reality: National Human Right Institutions and Adolescents Sexual and Reproductive Rights in Africa*, 26 NETH. Q. OF HUM. RTS., 547, 560 (2008).

⁴⁹ South African Human Rights Commission, *Annual Report 2019*, For the Year Ended 31 March 2019, SAHRC (Mar. 2, 2020, 10:12 AM), www.sahrc.org.za > index.php > sahrc-publications > annual-reports.

⁵⁰ *Id.* at 22.

⁵¹ *Id.* at 27.

⁵² Nico Horn, *Human Rights Education in Africa*, (Nov. 12, 2019, 4:25PM), <https://www.academia.edu> > Introduction_Human_rights_education_in_the..., at 66.

⁵³ *Id.* at 66.

⁵⁴ *Id.* at 66-67.

More importantly, the SAHRC has played the role of an amicus curie (friend of the court) during the hearing of important cases by the South African Constitutional Court.⁵⁵ For example, the ground breaking decision in the *Grootboom* Case is the collective efforts of SAHRC and the Constitutional Court.⁵⁶ This kind of a situation allows SAHRC to bring its expertise into play with regard to specific issues dealing with human rights of the people. It also exemplifies willingness on the part of the Commission to live up to its crucial roles of safeguarding human rights in the country.⁵⁷ Such a precedent enables the SAHRC to extend more assistance to the Constitutional Court in the other cases as well, through providing information, expertise, and an enlightenment that has a bearing on the issues. This approach by the Commission is quite commendable as it is a symbol for a genuinely determined and autonomous institution dedicated to protecting human rights in a that society. This creates conducive environment for the Commission to shape the country's jurisprudence and domestic decisions in a way of reflecting the idea of international human rights instruments.

As Chris rightly put it, the SAHRC is one of the most respected NHRIs in Africa.⁵⁸ This is due to the fact that SAHRC enjoys considerable independence, earns sufficient finance and commands a lot of respect from the population in the country. It is one of the many institutions established in post-apartheid South Africa to address the ills associated by years of racial discrimination in the country.⁵⁹ Since much is expected from the Commission, broad mandate is given to it.

B. The Ethiopian Institution of Ombudsman and the South African Public Protector

While promotion and protection of human rights are dealt in the human rights commissions, matters of good governance are handled in the ombudsman type of models. Here, it doesn't mean that human rights and good governance are unrelated. But the nature of the problem that calls for the intervention determines the institutions' effectiveness and their responsive

⁵⁵ John C. Mubangizi, *A Comparative Discussion of the South African and Ugandan Human Rights Commissions*, 48 THE COMP. INT'L. L.J. OF SOU'N AFR. 130, Mar., 2015. One of the achievements of SAHRC is litigating cases in the courts and entering as amicus curiae in landmark cases, such as *Government of the Republic of South Africa and Others v. Grootboom and Others*.

⁵⁶ Ebenezer, *supra* note 48, at 566.

⁵⁷ *Id.* at 566.

⁵⁸ CHRIS, *supra* note 39, at 354.

⁵⁹ *Id.* at 354.

measures toward addressing people's diverse interests. Courts, law-making houses, human rights commissions and ombudsman institutions can make their own respective roles in the protection of human rights. The distinction is that while courts focus on procedural and formal investigations, the ombudsman uses mediation and "good offices" to investigate and resolve complaints thereby bringing quicker remedies. The institution of ombudsman or public protector is established in many countries to devise quick measures against mal-administration.

A glimpse at the models of NHRIs, it can be stated that the mandate of South African Public Protector Office is fundamentally that of the Ombudsman type. This is because its ultimate objective is ensuring good governance by conducting investigations of mal-administration and corruption.⁶⁰ The human rights recognized in South African Constitution are relevant for the work of the Public Protector when receiving maladministration complaints and conducting investigations.⁶¹ You can find the same approach in Ethiopia. This is because in dealing with maladministration, the Ethiopian Institution of Ombudsman (EIO) should keep in mind the human rights of victims.⁶² From the perspective of human rights, the EIO is expected to cause a culture shift at all levels so that executive offices and any concerned parties will not tolerate maladministration.⁶³ Such a transformative measure must ensure the needs and rights of women, children, and vulnerable groups in the community as well.

Since Ethiopia is adopting a representative democracy, the Constitution vested the power of establishing the EIO with the parliament i.e. the House of Peoples' Representatives.⁶⁴ The highest law-making organ of the country enacted a law in 2000 delineating the powers, duties, responsibilities and the very establishment of the EIO.⁶⁵ The objective of the institution, as clearly provided in Article 5 of the proclamation, is to bring about good governance, observance of the rule of law and ensure that citizens rights and benefits provided for by law are respected by organs of the executive. In order to attain these objectives, the EIO is entrusted

⁶⁰ Linda, *supra* note 11, at 41.

⁶¹ *Id.* at 41.

⁶² A Proclamation to Establish the Ethiopian Institute of Ombudsman, 2000, Proclamation No.211/2000, Federal Negarit Gazeta, Addis Ababa, 2000 (Ethiopia), art. 6, pt.1 in cross-reference to art. 6, pt.2.

⁶³ Government of FDRE, Ethiopian Institution of the Ombudsman, Four-Year Capacity Building Program: Strengthening the Capacity of the Ethiopian Institution of the Ombudsman, UNDP, at 5.

⁶⁴ FDRE CONST., *supra* note 12, art. 55, pt.15.

⁶⁵ A Proc. to Est. EIO, *supra* note 62, Preamble.

with a broad range of powers such as monitoring the compatibility of administrative directives, decisions and practices of the executive with the constitution and other laws; receiving, investigating and seeking remedies to the complaints of maladministration; and undertaking studies on means of curbing mal-administration.⁶⁶ The establishment proclamation mandated the institution to exert its every effort to come up with advanced techniques of prevention and rectification against mal-administrations.

The author argues that the EIO is exactly a counterpart institution to that of South Africa's Public Protector, the difference is simply a sort of nomenclature. This is because both institutions are empowered to conduct investigation but they do not have the power to enforce what they have recommended;⁶⁷ their role is simply limited to suggest the executive branch to take corrective measures. Their role is mainly to mediate. This may be construed as an inability on the part of the ombudsmen to defend the public effectively.⁶⁸ But these institutions by the very nature are required to employ soft methods.

The general objectives of the ombudsman to improve performance of public administration and enhancing government accountability to the public⁶⁹ can partly be achieved through education. As it has been discussed above, EHRC is legally permitted to educate and create awareness and to make cultural transformation a reality with respect to human rights. Likewise, a recently draft amendment proclamation for the establishment of the ombudsman authorizes the EIO to create awareness on matters of good governance and administrative justice.⁷⁰ Yet, this idea is not reflected in the provisions of a currently operating proclamation. As a matter of

⁶⁶ *Id.* art. 6

⁶⁷ The Ethiopian Institution of the Ombudsman Official Report, I The Ombudsman, Jan., 2017, 1, (Nov. 12, 2019, 2PM), www.theioi.org > downloads. For instance, The Chief Ombudsman of the Ethiopian institution said that the Institution has been following the implementation of its recommendations and most executive organs took remedial actions as per the institution's recommendations. But there are few government offices who are reluctant to respond to the recommendations of EIO and the institution presented the details of these offices to the parliament to comply the citizens rights provided by Constitution and relevant laws. For comparison, see also *supra* note 8 at p.41.

⁶⁸ Final Report Prepared for the Foundation of Human Rights for Democracy and Governance Research Program, *Assessment of the Relation between Chapter 9 Institutions and Civil Society*, HUM. SCs. RES. COUNC., Jan. 15, 2007, at 123. See also *supra* note 62, art. 5 and 6.

⁶⁹ Hermela Binyam, *A Comparative Analysis of the Involvement of National Human Rights Institutions in the UN and the African Union systems*, Master Thesis, Lund University, INT'L HUM. RTS. L., 1-77, 17 (2015).

⁷⁰ A Proclamation to Amend the Establishment of the Ethiopian Institution of the Ombudsman (Draft Amendment), art.7, pt. 8.

practice, however, the EIO commonly applies media that disseminate information and providing lessons on human rights and good governance issues. Both institutions are actively using Radio and Television broadcast services and newspapers (like Addis Zemen) having a nation-wide circulation to make the people aware of the institutions and on the rights of women, children and persons with disability.⁷¹

C. The Role of NHRIs to the Protection of Economic, Social and Cultural Rights

Although a generation of human rights is now unsupported idea, countries so far have overlooked socio-economic rights. Some countries exclude totally from being incorporated in their constitutional provisions.⁷² Some also include only in the Preamble or on Directive Principles of State Policy section treating the rights merely as policy matters.⁷³ The constitution of Uganda and Namibia can be cited as a good example. While incorporating many of the socio-economic rights under Directive Principles of the States' Policy, enforceability of the rights is limited to those that are contained in the Bill of Rights.⁷⁴ The South African Constitution is exceptional in that it explicitly includes socio-economic rights in the lists of its Bill of Rights.⁷⁵

Similarly, the Constitution of Ethiopia devoted substantial provisions to the socio-economic rights both in terms of notion of rights [as Bill of Rights] and as of guiding principles shaping economic and social policy objectives. The constitutional rules pertaining to the right to development, property and clean environment fall in the notion of rights. For instance, Article

⁷¹Yemsrach Endale, *The Roles and Challenges of Ethiopian National Human Right Institutions in the Protection of Human Rights in Light of the Paris Principles*, Master Thesis, Central European University, Department of Legal Studies, Budapest Hungary, 1-96, 34 (2010).

⁷² MUTUA MAKAU, *HUMAN RIGHTS NGOs IN EAST AFRICA: POLITICAL AND NORMATIVE TENSIONS*, 93 (2009), University of Pennsylvania Press, Philadelphia, (Mar.2, 2020, 8:40AM), books.google.com.et > books.

⁷³ John Cantius Mubungizi, *the Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation*, 2 AFR. J. LEG., STUD., 18 (2006). See also *Id.* at 13 and 18 of the same.

⁷⁴ *Id.* at p.17.

⁷⁵ SOUTH AFRICA CONST., *supra* note 13, § 24 and the following.

41 talks about Economic, Social and Cultural Rights and duly acknowledged them as core elements in the corpus of the human rights.⁷⁶

A related provision is Article 90 (1) which qualifies that “To the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.”⁷⁷ But it must be noted that policy is not a law and it is not mandatory.⁷⁸ From the above discussions, it can be argued that Ethiopia and South Africa have appropriately acknowledged the importance of socio-economic rights in equal terms with that of civil and political rights, while there is a stark difference in formulations.

However, there might be a little difference when one scrutinizes the level of enforcement and the extent of obligation the states are willing to assume. When compared to other NHRIs in sub-Saharan Africa, the SAHRC is rated considerably higher in terms of level of commitment, effort and effectiveness in advancing the domestic implementation of socio-economic rights.⁷⁹ In South Africa, there is a well-developed jurisprudence and case law that signifies the rights are enforceable in the court of law.⁸⁰

In Ethiopia this is not the case and, indeed, the law seems to support the idea of “progressive realization”. There are arguments rendering the enforcement of socio-economic rights a status of policy objectives and, in fact, it is signified by the phrase “to the extent the country’s resources permit” in the constitution itself. Economic objectives in the Ethiopian Constitution are formulated as matters of policy objectives which lacks enforceability and justiciability before the court of law and for the realization of which immediate obligation is not assumed.

⁷⁶ FDRE CONST., *supra* note 12, art. 41, pt.1, pt. 2, and art.40 up to art.44. This is because the fundamental rights and freedoms chapter, in particular, from Art 40 through to Art 44 is completely devoted to the ESCRs.

⁷⁷ FDRE CONST., *supra* note 12, art. 90, pt. 1.

⁷⁸ Governments make policies only for achieving certain goals unlike laws which are framed to bring justice into the society and formally administered at the courts. See Prabhat S. Difference between Law and Policy, (Feb., 11, 2020, 3:15PM), <http://www.differencebetween.net/miscellaneous/politics/difference-between-law-and-policy>.

⁷⁹ Jacob Ayebaesin Beredugo and Viljoen Frans, *Towards a Greater Role and Enhanced Effectiveness of National Human Rights Commissions in Advancing the Domestic Implementation of Socioeconomic Rights: Nigeria, South Africa and Uganda as Case Studies*, 48 THE COMP. & INT’L. L. J. SOU’N AFR., 401, 419 (November, 2015).

⁸⁰ John C. Mubungizi, *supra* note 55.

There are no case laws on how to interpret socio-economic clauses and assess government performances toward achievement of opportunities and rights.

Within the rich jurisprudence of South Africa which can be taken as a good lesson even globally, the SAHRC has enormous opportunities and mandates to ensure the realization of socio-economic rights.⁸¹ In other words, the SAHRC can play a significant role in assisting the court on how to interpret socio-economic clauses.⁸² In the absence of explicit mandate to monitor socio-economic rights coupled with an uncertain justiciability in the constitutional provisions, the EHRC is not expected to play its own role in the interpretation of such rights. Since many of the socio-economic rights are constitutionally guaranteed,⁸³ however, it can be argued that the EHRC still has a space and opportunities at least in promoting such rights as development, property and clean environment and mainstreaming them to different governmental institutions.

The SAHRC regularly participates in parliamentary processes by making submissions on draft legislation and amendment of laws. The SAHRC's submissions of legislations are enormous ranging from health care services to cybercrimes and cyber security bill.⁸⁴ For instance, in 2007, the SAHRC sent a letter to parliament on the need to amend the Choice on Termination of Pregnancy Act (CTOPA) to increase women's access to safe legal abortions.⁸⁵ The Act and its amendments as suggested by SAHRC have been successful in increasing the number of legal terminations while decreasing illegal terminations, leading in a decline in the total number of documented terminations.⁸⁶

The belief that ESCRs are merely policy objectives and cannot provide a legal basis for enforcement has been overcome in the decisions given by the Constitutional Court of South

⁸¹ Jonathan Klaaren, *A Second Look at the South African Human Rights Commission, Access to Information, and the Promotion of Socioeconomic Rights*, 27 HUM. RTS. Q., 539, 540 (May, 2005).

⁸² *Id.* at 541.

⁸³ For instance Article 43 (1) of the FDRE constitution provides The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development. Environmental Rights are also recognized in the FDRE constitution Article 44 (1) which stated "All persons have the right to a clean and healthy environment."

⁸⁴ South African Human Rights Commission, *Submission on Legislation*, SAHRC (Dec. 11, 2019, 3PM), <https://www.sahrc.org.za/index.php/sahrc-publications/submission-on>.

⁸⁵ Kanzira, *supra* note 3, at 7.

⁸⁶ *Id.* at 7.

Africa in number of cases.⁸⁷ As regards the right to health care, for instance, the Court, in a Grootboom Case,⁸⁸ held that policy or law which fails to meet the urgent needs of vulnerable and marginalised groups would be regarded as being unreasonable. Consistently subscribing itself to this standard of reasonableness, SAHRC in its part concluded that there existed gaps between enactment of legislation and development of policy on one hand and actual implementation of these laws and policies on the other hand.⁸⁹ This is an additional evidence showing the commitment of SAHRC to work in a spirit of unity with the Constitutional Court towards building a developed and democratized nation. As will be discussed latter on, such an approach followed by SAHRC i.e. the enormity of relations formed with different organs is to be in consonant with the requirement of pluralism in the Paris Principles. The reasonableness standard in the above case can similarly be used to measure the effectiveness of government's laws and policies as regards adolescents in the country.⁹⁰

Every year, SAHRC requests and gather information from the state organs on whether they have taken measures to the realization of socio-economic rights. Also, it oversaw a survey conducted by a specialist NGO on public perceptions regarding the realization of economic and social rights in South Africa.⁹¹ The study done by Community Agency for Social Enquiry (CASE) plays a role of shadow report as it supplement the information provided by government departments by presenting perspectives of the people, NGOs and activists working with disadvantaged communities.⁹² The study found that generally respondents are not satisfied with the rate of delivery of social services.⁹³ While there is a sense that development is taking place, it is patchy, poorly coordinated, and it does not seem to reach the neediest groups equally.⁹⁴

⁸⁷ Raj, *supra* note 37, at 765. Section 27(2) of south African Constitution mandates that the state "take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights

⁸⁸ *Government of the Republic of South Africa and Others v. Grootboom and Others*, (2000) 11 B.C.L.R. 1169 (South Africa, Constitutional Court). In that case the Constitutional Court had held that government's policy on housing had failed the test of reasonableness as it did not address the need of those marginalized and in urgent need.

⁸⁹ Ebenezer, *supra* note 48, at 560.

⁹⁰ *Id.* at 560-561.

⁹¹ Sandra Liebenberg, *Development and Human Rights South African Country Study, Socio-Economic Rights Project Community Law Centre, UNI., of the WEST., CAPE, HUM., DEV. REP.*, 32 (2000).

⁹² Community Agency for Social Enquiry (CASE), *Economic and Social Rights: CASE Report, Volume VI of the Report of the South African Human Rights Commission to Parliament, 1999*, vii.

⁹³ Sandra, *supra* note 91.

⁹⁴ *Id.* at 32.

So far, it is discussed that the SAHRC is explicitly mandated to monitor socio-economic rights. When it comes to Ethiopia, of course, with a broader interpretation of the establishment proclamations, it can be contended that the mandate of national institutions embraces ESCRs, albeit a specific provision is absent to that effect. The dichotomy between civil and political rights on the one hand, economic, social and cultural rights, on the other hand is also constitutional. Arguably, this is because of the fact that the FDRE constitution doesn't treat socio-economic rights in equal terms with the civil and political rights. Art 6(1) of the EHRC proclamation stipulated that the Commission is mandated to ensure that human rights and freedoms provided for under the constitution are respected by all. In the same fashion, Art 6 (1) of Ombudsman establishment proclamation entitles EIO to monitor the constitutional rights of citizens. Since the fundamental rights and freedoms chapter, in particular, from Art 40 through to Art 44 is completely devoted to the ESCRs, and because of the points mentioned in the introductory part of this section, the FDRE Constitution is inclusive of the ESCRs under the notion of rights. Thus, it is permissible both constitutionally and legally to supervise ESCRs by the National Institutions.

However, as Yemsrach points it out rightly, observance of the practice in Ethiopia in respect of promoting and protecting ESCRs remain at the minimum level. She stated that similar to the law, the EHRC has devoted less time for advancing these category of rights.⁹⁵ The EIO, however, dealt with administrative matters relating to the right to education inside vocational schools with particular emphasis on disabled people and women.⁹⁶

2. INDEPENDENCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

A given NHRI is said to have met the requirement of independence as per the Paris Principles on the basis of the following criteria: a) Independence through legal autonomy; b) Independence through operational/financial autonomy within the political and democratic

⁹⁵ Yemsrach, *supra* note 71, at 30.

⁹⁶ FDRE Institute of Ombudsman, Report Submitted to the Legal and Administrative Committee in the House of Representatives, Addis Ababa, at 9 cited in Yemsrach, *supra* note 71.

space; c) Independence through appointments; and d) Independence through composition and pluralism.

The first requires the mandate of the institution to be clearly stipulated by the legal provisions within the enabling legislation or the constitution. The second i.e., operational autonomy signifies the ability for the NHRI to execute its mandate without external interference or control. This basically refers to the level of funding and infrastructure that allows the institutions to be independent of the government. The third prescribe that “the composition and appointment of members should be through the pluralist representation of the social forces such as civil societies involved in the protection and promotion of human rights. As a fourth point the principles consider the appointment and dismissal procedures as a means of guaranteeing independence. Even though the criterion of pluralism is inherent in appointment and composition, section 3 (B) presents independence through appointment and composition jointly and section 4 devotes its discussion to the remaining aspects of pluralism.

A. Independence through Financial Autonomy

For a truly independent NHRI, it is a necessary condition that the executive or any other government branch shall not control its budget either directly or indirectly. This principle of financial independence has been emphasized in a number of reports by the UN.⁹⁷ The reports, subscribing themselves to the Paris Principles, stated that a national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding.⁹⁸

In the case of *New National Party of South Africa v. Government of the Republic of South Africa*, Constitutional Court affirmed the relevance of financial autonomy for the NHRIs.⁹⁹

⁹⁷ Anne Smith, *The Unique Position of National Human Rights Institutions: A Mixed Blessing?* 28 HUM. RTS. Q., 904, 918 (Nov., 2006).

⁹⁸ *Id.* at 918. National Institutions for the Promotion and Protection of Human Rights, adopted 4 Mar.1994, G.A. Res. 48/134, U.N. GAOR, 48th Sess., U.N. Doc. A/Res/48/134 (1994). The Paris Principles arose from the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in 1991. They were endorsed by the UNCHR in March 1992.

⁹⁹ *New National Party of South Africa v. Government of the Republic of South Africa*, (1999) 5 B.C.L.R. 489 (South Africa, CC).

Although the issue at stake concerns independence of IEC (Independent Electoral Commission), the Constitutional Court makes it clear that it is equally applicable to all institutions, including NHRIs.¹⁰⁰

The enabling legislation of NHRIs shall specify vividly their financial sources to help them execute the mandate and roles efficiently. Like the South African NHRIs, Ethiopian statute clearly states the sources of fund for the NHRIs. Accordingly, the finance of Ethiopian NHRIs is to be drawn from a budget and subsidy allocated by the government.¹⁰¹ The laws further stipulate that the national institutions can draw their budget from sources like assistance, grant and any other sources.¹⁰² From the *prima facie* diversified fund sources, therefore, it can be stated that the Ethiopian statutes guaranteed financial autonomy of the national institutions.¹⁰³ In practice too, the Ethiopian parliament decides on the issue of budget after the national institutions determine their budget and submitting the same for approval to the parliament.¹⁰⁴ In conclusion, the national institutions do have a financial autonomy supported both with statutes and practice.

On the contrary, the law requires that an amount equivalent to quarterly portion of all the above sources shall be deposited, in advance, at the National Bank of Ethiopia. It further prescribes that the deposited money needs to be utilized in accordance with financial regulations of the government.¹⁰⁵ This lets the government to counterbalance the national institutions' activism with its repressive acts through intruding in the financial autonomy of the national institutions and controlling over the spending power of their budget.¹⁰⁶

As mentioned above, the legal and practical scheme is important to secure financial autonomy of the National Institutions. In actual terms, however, the EHRC is not receiving a

¹⁰⁰ *Id.*

¹⁰¹ EHRC Establishment Proc., *supra* note 26, art. 36 pt.1 a, see the Amharic version; in particular, because it is more clear than the English version. EIO Est. Proc., *supra* note 62, art. 36 pt.1 a.

¹⁰² *Id.* art. 36 pt. 1 b.

¹⁰³ It is argued that availability of fund sources like aid, grant and any other means guarantees at least, in paper, the independence of Ethiopian national institutions: see Yemsrach, *supra* note 71, at 56.

¹⁰⁴ EHRC Establishment Proc., *supra* note 26 and EIO Est. Proc., *supra* note 62, art.19 pt. 2.

¹⁰⁵ EHRC Establishment Proc., *supra* note 26 and EIO Est. Proc., *supra* note 62, art.36 pt.2.

¹⁰⁶ Yemsrach, *supra* note 71, at 56-57.

sufficient budget and doesn't have the ability to influence budgetary allocation. Following parliamentary approval, the budget is placed under the control of the Ministry of Finance instead of direct parliamentary supervision. The report of the EHRC to the parliament noted various difficulties relating with dispensation of allocated budget.¹⁰⁷ In the end, independence could be compromised.¹⁰⁸

National institutions cannot balance the source of their budget at this time. This is because most of the NGOs that work on human rights matters already remain without function owing to the restrictive requirements existed in the past CSOs law of 2009. Activist human right organizations have met the same problems encountered by NGOs for the government frozen their budgets.¹⁰⁹ The newly enacted law, however, amends one of the shortcomings of the Charities and Societies Proclamation No. 621/2009 which preclude societies to solicit fund from foreign sources. According to the new law, any organization is allowed to mobilize resources and solicit funds from any legal source¹¹⁰ and irrespective of the nature and type of the civil society.

Absence of strong monitoring and supervising mechanism by the national institutions emanates from the impacts of the past law. Hence, it is quite difficult to say Ethiopian NHRIs have true financial independence.¹¹¹ But it is anticipated that the new law liberalizes and create ample opportunities for advancing the mandate of the national institutions through mobilizing

¹⁰⁷ Federal Republic of Ethiopia in Collaboration with UNDP, *Strengthening the Capacity of the Ethiopian Human Rights Commission*, EHRC, Jan.11, 2008, at 11.

¹⁰⁸ The alarming situation of a problem regarding the independence of Ethiopian NHRIs has an inextricable link with their exclusive reliance on budget from the government. Though the law grants the right of these institutions to draw their budget from other sources, the practice demonstrates that majority of the money comes from the government. Hence the government might punish those institutions that are active against its will through deliberate reduction of budget. The adoption of restrictive law on NGOs exacerbates this problem of national institutions. See HRC, compilation of five years annual report for the HPR, Addis Ababa, Ethiopia, 2010 cited in Yemisrach at 57.

¹⁰⁹ Two former leading rights organizations, the Ethiopian Women's Lawyers Association (EWLA) and the Human Rights Council (HRCO, formerly EHRCO), have had to slash their budgets, staff, and operations. Their bank accounts, which the government arbitrarily froze in December 2009, remain frozen. The government-affiliated Ethiopian Human Rights Commission lacks independence and is not yet compliant with the Paris Principles, which the United Nations General Assembly adopted in 1993 and which promote the independence of national human rights institutions, *Country Summary of Ethiopia*, H.R. WATCH, Jan., 2012, at 3.

¹¹⁰ Organizations of Civil Societies Proclamation, 2019, Proclamation No.1113, Federal Negarit Gazeta, 25th Year No.33, Addis Ababa, 2019 (Ethiopia), art. 63, pt. 1 c. It provides that any organization shall have the right to solicit, receive and utilize funds from any legal source to attain its objective.

¹¹¹ Yemisrach, *supra* note 71, at 57. This all prevents national institutions from freely giving their comment or recommendation against abusive act of the government.

as many legal funds or resources as possible. Just like what SAHRC has been doing, Ethiopian institutions shall stand and demand straightforward for the protection and advancement of their causes.¹¹²

B. Independence through Appointment and Composition of NHRIs

Independence of a national institution is multi-dimensional that necessitate all independence types to exist all-together. As the mandate of national institutions clearly be established with the law, specific and well established methods of appointment and dismissal are equally important to ensure independence. The Paris Principles duly acknowledged this by stating that “In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act”.

The founding legislation should plainly prescribe the terms and conditions which include the method (voting or any other procedures); criteria (such as nationality, qualifications, profession) and duration of appointment; whether members can be reappointed; and issues of privileges and immunities.¹¹³ Similarly, to avoid compromise of independence, explicit specification of conditions under which a member would be dismissed and the body entitled for the dismissal (a parliament or an equivalent organ) should be included on the official act.¹¹⁴

In addition to the method of appointment, the very personality of those who are selected as commissioners or chairpersons are equally vital for the institutions’ independence. In the appointment process, the crucial requirement is that appointees need to be neutral politically and are persons of high moral standing or integrity. Absence of such a character on the part of the appointees means the office is unlikely to gain confidence of the public.

¹¹² The South African Human Rights Commission criticizes the allocation of funding for the Commission by the Ministry of Justice. It argues that the budget of the Commission is given a lower priority than other activities of the Ministry and concludes that funding for the Commission should be granted directly by the Parliament. See Pityana B., National Institutions at work: The case of the South African Human Rights Commission, British Council Seminar, Belfast, May 1998 cited in Birgit Lindsnaes and Lone Lindholt, Human Rights Institutions Articles and working papers, The Danish Centre for Human Rights 2000.

¹¹³ UN Handbook, *supra* note 16, para.78.

¹¹⁴ *Id.* at para.80.

The most difficult challenge facing NHRIs is lack of independence with respect to appointment and composition of commissioners and staff members. Thus, NHRIs are at the mercy of governments which have a final say as regards who and when appointments are made. *Even in South Africa, where the appointment process for the SAHRC is seen as transparent because of the involvement of civil society and a parliamentary committee responsible for nominating the candidates, the danger of political appointees still exists (emphasis added).*¹¹⁵ The appointment provisions for the Public Protector and Human Rights Commission have been criticized as not being independent enough from the executive branch, with the result that appointments can be subject to politics.¹¹⁶

In Ethiopia the chief, deputy and other commissioner are appointed by the parliament upon receipt of two-third majority vote. However, before it comes into the attention of the parliament, the initial recruitment of appointees is done by the nomination committee. Being chaired by the speaker of HPRs, the nomination committee is composed of different members that include speaker of the house of federation, seven people from the house of Federation, two members elected by the joint agreement of opposition parties having seat in the house, president of the Federal Supreme Court, representative of the Orthodox Church, Catholic Church, Evangelical Church and Islamic Council.¹¹⁷ In contrast to this, the nomination committee of ombudsman does not allow religious institutions to assume membership status enabling them to observe the appointment process.¹¹⁸

Close scrutiny of the committee reveals that the leading political party has effectively manipulated composition and activity of members.¹¹⁹ High affiliation of the nominating committee to the government challenges the appointment of politically neutral officials.¹²⁰ Such problems are not unique to Ethiopia; rather they are the fundamental obstacles experienced by many national institutions including SAHRC.

¹¹⁵ Anne, *supra* note 97, at 926. As one former commissioner admitted herself, "I was initially appointed by the country's President who has quite a lot of say in these appointments. See the interview with Helen Suzman, former member of the SAHRC in South Africa (Aug. 2002) cited in Anne Smith.

¹¹⁶ Linda, *supra* note 11, at 42.

¹¹⁷ EHRC Est. Proc., *supra* note 26, art. 11.

¹¹⁸ EIO Est. Proc., *supra* note 62, art. 11.

¹¹⁹ Yemsrach, *supra* note 71, at 59.

¹²⁰ Yemsrach, *supra* note 71, at 60.

Likewise, the chief, deputy and other ombudsman are appointed upon the receipt of two-third majority vote of the parliament.¹²¹ The law further requires that the nominees shall have to receive the support of a two-thirds vote of the members of the committee. The appointees shall be recruited by a nomination committee. Looking at article 11, the composition of nomination committee once again comprises persons loyal to the ruling government. In the country, positions are not assumed on the basis of merit. The situation in South Africa to the appointment of Public Protector is similar as the procedure is highly politicized. Given the fact that the ruling party holds more than 60 percent of the seats in the National Assembly, there is a good chance that the person appointed to the position of Public Protector will be one who is sympathetic to or supportive of the African National Congress (ANC), if not an actual member of the party. In fact, the Public Protector from 2009 up to 2016 was an ANC member of the National Council of Provinces prior to his appointment. A number of academic commentators suggest strongly that the Public Protector is lacking independence and is not fulfilling his duties and functions adequately.¹²²

3. PLURALISM

The ultimate purpose of pluralism is to ensure that NHRIs are establishing effective engagement with other parts of government, civil societies and participations at the regional and global human rights system.¹²³ Pluralism is important to enhance independence, credibility and effectiveness apart from its potential to create and strengthen cooperation and collaboration with various stakeholders. The Paris Principles recognize that maintaining relationships with civil society can help NHRIs to protect their independence and pluralism.¹²⁴

¹²¹ EIO Est. Proc., *supra* note 62, art. 10 pt. 2 b and d. Besides, Art. 10 (2) b provides the nominees shall have to receive the support of a two-thirds vote of the members of the Committee.

¹²² Assessment of the Relation between Chapter 9 Institutions and Civil Society, *supra* note 68, at 123. The current Public Protector is also appointed because of her close relationship with then President Jacob Zuma.

¹²³ UNDP and OHCHR, *Compliance with the Paris Principles: Principle 4: Pluralism*, Taken from UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions, Published December 2010 by the United Nations Development Program and the Office of the High Commissioner for Human Rights (Mar. 3, 2020, 3:22PM), [www.asiapacificforum.net > resources > paris-principles-criteria-plural](http://www.asiapacificforum.net/resources/paris-principles-criteria-plural).

¹²⁴ RICHARD, *supra* note 23.

As it has been discussed above, independence through membership and composition is an easy and effective way of ensuring pluralism i.e. maintaining diversity in its commissioners or higher office holders. Equally important, however, is NHRIs should collaborate and cooperate with other stakeholders, and doing so is itself a test of commitment to pluralism.¹²⁵

In the opinion of the writer, pluralism can be seen into two lenses. One, pluralism is reflected through membership and staff composition which incorporate representatives of most social forces such as NGOs, trade unions or professional associations. Second, pluralism can also be effectively measured by the test of consultation and cooperation i.e., to what extent the NHRI is cooperating and consulting with other bodies responsible for promoting and protecting human rights.¹²⁶ Pluralism through membership and composition is already considered in the above section. What comes here is an investigation of pluralism through consultation and cooperation by looking at comparatively NHRIs in South Africa and Ethiopia.

A. Accreditation and Affiliate Status of NHRIs

There is always a reasonable skepticism that a government may establish a NHRI which is pseudo human rights and democracy protector that lacks independence and serve as an apologist for a dictatorial system.¹²⁷ For that reason, the international community has devised mechanisms for assessing and accrediting NHRIs based upon the extent to which they comply with the Paris Principles.¹²⁸ Only accredited NHRIs are eligible for full membership in the International Coordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights.¹²⁹ The ICC awards letter grades as A, B and C to the NHRIs corresponding to their reputation. “A” indicates Compliance with the Paris Principles, “B” Not

¹²⁵ UNDP and OHCHR Report, *supra* note 123, at 3.

¹²⁶ *Id.* at 3.

¹²⁷ Carole J. Petersen, *Bridging the Gap: The Role of Regional and National Human Rights Institutions in the Asia Pacific*, 13 ASIAN-PAC. L. & POL. J., 174, 198 (2011).

¹²⁸ *Id.* at 198.

¹²⁹ *Id.* at 198.

fully in compliance with the Paris Principles, and “C” status is Non-compliance with the Paris Principles.¹³⁰

“A” status institutions can participate fully in the international and regional meetings of national institutions, as voting members, and they can hold office in the Bureau of the ICC or any sub-committee the Bureau establishes.¹³¹ “A” NHRIs freely participate sessions of the Human Rights Council, take the floor under any agenda item, and submit documentation and take up separate seating.¹³² “B” status institutions may participate as observers in the international and regional meetings of national institutions. They cannot vote or hold office within the Bureau or its sub-committees. “C” status institutions have no rights or privileges with the ICC and in United Nations rights forums.¹³³ NHRIs accredited by the ICC as being in compliance with Paris Principles may participate and address the Human Rights Council in an independent capacity.¹³⁴

When we come back to our focus of discussion there is a clear disparity of status. Unlike the Ethiopian Human Rights Commission, the South African Human Rights Commission is able to secure an ‘A’ grade status.¹³⁵ Hence, SAHRC is entitled to all of the rights and privileges mentioned above.

Since the Ethiopian NHRIs are lacking accreditation, this lets the world community know that the national institutions are not fully independent or effective and, therefore, not entirely credible. At the time when the EHRC expects a decision on its application for accreditation at

¹³⁰ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER, NATIONAL HUMAN RIGHT INSTITUTIONS: HISTORY, PRINCIPLES, ROLES AND RESPONSIBILITIES, 44 (2010) Professional Training Series No. 4 Rev. 1, United Nations, New York and Geneva. In accordance with the Paris Principles and the Statute of the International Coordinating Committee, the committee assigns standards to the quality of NHRIs. The Committee uses A, B and C classifications for accreditation of NHRIs. The level of the privilege varies depending on the status a particular NHRI is able to secure. Accordingly, an “A” NHRI is a voting member, B is an observer member, and C is a non-member.

¹³¹ Statute of the International Coordinating Committee for National Institutions, art.24, pt.1 and art. 31, pt. 4.

¹³² *Id.* art. 38.

¹³³ *Id.* at 45.

¹³⁴ 45 A/HRC/4/91, para. 15

¹³⁵ GILBERT SEBIHOGO et al., STUDY ON THE STATE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIS) IN AFRICA, United Nations Development Program(UNDP) and Network of African National Human Rights Institutions (NANHRI), 18 (2016), Blandford Consulting. SAHRC is selected as one sample in the study, see at 10.

the UN on November 2012, it was stated that “Before applying, we wanted to see to it that we are in the right position.”¹³⁶ But now in light of the improvements being made by the commission such as opening regional offices,¹³⁷ working in collaboration with the universities, and of the attempts to comply with the Paris Principles, it was hopefully expected that the ICC will respond the Ethiopian application positively with an ‘A’ status. Unlike SAHRC, however, the EHRC still has failed to accredit itself with an “A” status. In fact, the ICC awards the EHRC letter “B” accreditation¹³⁸ which entitles the latter to limited privileges in the UN human rights system.

In addition to accreditation status with the ICC, NHRIs have the opportunity to avail themselves of an affiliate status with the African Commission on Human and Peoples’ Rights. However, unlike with NGOs, the African Commission has weaker relationship with NHRIs. SAHRC, even when compared with other African NHRIs, it has opened a great opportunity for and is able to facilitate the works of the African Commission. The SAHRC stressed the need to strengthen the relationship between the African Commission and NHRIs for the development and respect of human rights.¹³⁹ This encouraged the adoption of criteria granting special status to NHRIs.

It would appear that the African Commission’s basis for granting affiliate status to NHRIs lies in Article 26 of the African Charter. This article encourages the establishment of NHRIs in order to further the aims and objectives of the African Charter. The African Commission’s recognition of NHRIs lies in its desire to develop a ‘co-operative relationship’ with the national

¹³⁶ Remarks of Ambassador Tiruneh Zenaw, Former Commissioner of EHRC, EHRC (Aug. 15, 2019, 2:11PM), <https://www.allafrica.com/stories/201210160544.html>, see also EHRC (Aug. 15, 2019, 2:29PM), <https://www.shegertribune.blogspot.com/2012/10/Ethiopian>.

Any NHRI seeking accreditation shall apply to the Committee’s Chair and provide the following supporting documentation: Articles 10 and 11 of the International Coordinating Committee’s statute cover accreditation: 1) A copy of the legislation or other instrument by which it is established and empowered in its official or published format; 2) An outline of its organizational structure, including staff complement and annual budget; 3) A copy of its most recent annual report or equivalent document in its official or published format; 4) A detailed statement showing how it complies with the Paris Principles as well as any respects in which it does not so comply and any proposals to ensure compliance. The EHRC is included these requirements in its application addressed to the ICC. Supra note waltainfo.

¹³⁷ *Id.*

¹³⁸ GILBERT, *supra* note 135, at 17.

¹³⁹ MALCOM EVANS AND RACHEL MURRAY, *THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS: THE SYSTEM IN PRACTICE* 311 (2nd Ed., 2008), Cambridge University Press.

institutions.¹⁴⁰ As of January 2007, nineteen national human rights institutions have affiliate status.¹⁴¹ Unlike with the ICC where there is a discrepancy of status, now, both SAHRC and EHRC have an affiliate status with the African Commission.

It is worth noting that the African Commission do not require proof of accreditation with the ICC for an NHRI to be granted observer status.¹⁴² The EHRC, like that of the SAHRC, has obtained an observer status before the African Commission. Although EHRC falls short of accreditation with the ICC, it has obtained an affiliate status with the African Commission. This requires the EHRC to involve actively and work in close cooperation with the African Commission. While obtaining an affiliate status before the African Commission is lenient, terms or conditions to fulfill the requirements of the ICC accreditation are stringent.

B. Participation of NHRIs at the Regional and Global Level

Roles such as providing shadow reports and bringing communications on behalf of individuals in order to ensure government accountability are the important tasks of NHRIs. Kapindu shows that NHRIs can also play an independent role as a mediator between NGOs and governments on the international plane; as well as popularizing international human rights instruments and institutions at the domestic level.¹⁴³ Office of the High Commissioner for Human Rights (OHCHR) provides technical assistance for the establishment and strengthening of various NHRIs.¹⁴⁴ For instance, OHCHR provided advice and assistance on the strengthening of NHRIs both to Ethiopia and South Africa leading to amendments to their legal framework to be fully

¹⁴⁰ Resolution on the Granting of Observer Status to National Human Rights Institutions in Africa, ACHPR/Res.31 (XXIV) 98 as cited in MALCOM EVANS AND RACHEL MURRAY, *Id.* at 311.

¹⁴¹ Report of the African Commission on Human and Peoples' Rights, EX.CL/322(X), Executive Council of the African Union, Tenth Ordinary Session, 25–26 January, 2007, Addis Ababa, Ethiopia, para. 12 as cited in MALCOM EVANS AND RACHEL MURRAY, *supra* note 139.

¹⁴² Redson Edward Kapindu, *Book Chapter Reviewed on Rachel Murray: The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa*, 125 SOU. AFR. L. J., 193, 200-201 (2008).

¹⁴³ *Id.* at 198.

¹⁴⁴ The establishment and strengthening of national institutions has become one of the key strategic aims of OHCHR and a major component of its program of advisory services and technical assistance in the field of human rights. During the last two years (around 1998) the Office of the High Commissioner provided information, advice or assistance, at their request, to the various Governments and countries in the process of establishing or contemplating the establishment of national human rights institutions. Ethiopia was the beneficiary of the High Commissioner's assistance. Likewise, the Office of the High commissioner has an ongoing project for technical cooperation with the Government of South Africa and the South African Human Rights Commission as a co-partner. See Paulo Sergio Pinheiro and David Carlos Baluart, National Strategies — Human Rights Commissions, Ombudsman, and National Action Plans, Human Development Report (2000), Background Paper, at 7.

compliant with the Paris Principles.¹⁴⁵ Both Ethiopia and South Africa are beneficiaries of funding for capacity-building projects of NHRIs from UNDP and OHCHR. Additionally, OHCHR held periodic consultations with the SAHRC in monitoring the implementation of a project that aimed at addressing human rights concerns of non-nationals encountering xenophobia and discrimination.¹⁴⁶

SAHRC is notable for its proactive role and is engaged in many activities such as hosting NHRIs forums and presenting case studies of South Africa in various seminars both at southern sub-regional level and the entire continent.¹⁴⁷ Relatively speaking, SAHRC forms stronger relationship than other NHRIs with organizations at the regional and sub-regional level including the African Commission.¹⁴⁸ SAHRC is also involved actively on thematic issues of the UN system.¹⁴⁹ It is not exaggerating to conclude that SAHRC is the leading NHRI in Africa. The author believes that the Ethiopian NHRIs has a lot to take lessons from the South Africa NHRIs in the latter's active engagement both at the regional and global level.

It is also important to be noted that the SAHRC has been active in the submission of shadow reports to treaty monitoring bodies. This serves an educative role model to any other NHRIs in Africa including the EHRC. One of such reports was the shadow report submitted to the Committee on the Convention on Elimination of Racial Discrimination (CERD).¹⁵⁰ The

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 6.

¹⁴⁷ General Assembly, *Office of High Commissioner for Human Rights*, OHCHR (Dec. 5, 2019, 8:30AM), <https://www.ohchr.org> > Regular Session > Session20 > A-HRC-20-9_en. For instance, from 19 to 21 October 2011, OHCHR supported the SAHRC in holding the Biennial Conference of the Network of African National Human Rights Institutions, in Cape Town attended by 100 representatives of NHRIs from the African continent which focused on ways to engage with State and non-State actors on the promotion and protection of the human rights of older persons and persons with disabilities. A declaration on the role of NHRIs in addressing the rights of older persons and persons with disabilities was adopted at the end of the Conference (emphasis added)

¹⁴⁸ Livingstone Sewanyana, *Building Strategic Partnerships between NGOs and National Human Rights Institutions (NHRIs): Human Rights in Conflict and Counter-Terrorism Situations*, 3 EAST AFR. J. HUM. RTS. & DEM., 53, 58 (2005), Printed in Kenya.

¹⁴⁹ For instance, at the nineteenth session of the Human Rights Council, NHRIs from Georgia, South Africa and Timor-Leste made video statements following the presentation of the reports of the special procedures on enforced disappearances, the right to food, and arbitrary detention. This new practice is expected to be further applied in future sessions of the Council, on a case-by-case basis, upon request from interested NHRIs.

¹⁵⁰ Ebenezer, *supra* note 48, at 563. "Despite the abolition of the policy of Apartheid in the country, the government still struggles with completely eliminating racial discrimination from the fabric of society. *This report submitted in line with the General Recommendation 28 of the CERD Committee, provides a good example of how an NHRI can effectively monitor government's commitments to promoting human rights within its*

report captures the challenges faced by the South African government in overcoming racial discrimination in the country. Many NHRIs in Africa are really lagging behind in the preparation and submission of shadow reports to treaty monitoring bodies. With the exception of the SAHRC most NHRIs do not submit shadow reports because they do not want to be seen as confrontational to the government that have established them and sometimes provide them with necessary funding and are playing safe.

Most states of Africa reported to different bodies that they have established NHRIs capable of protecting the rights of their citizens. Contrary to this claim, Human Rights Watch criticized so many human rights commissions across Africa as mere efforts by the states to “deflect international criticism of human rights abuses” and didn’t address them genuinely. But, South Africa has been specifically excluded from this, and the country’s institutions including SAHRC has been praised for reporting and speaking out strongly against human rights abuses.¹⁵¹

Apart from obligations of reporting and the possible role to be played, NHRIs are entitled to attend sessions of the African Commission. In attending sessions SAHRC do have a better record than EHRC.¹⁵² Some, like the Ugandan Human Rights Commission, do not take part in the workings of the African Commission due to financial difficulties.¹⁵³ Being afforded with affiliate status, it is appropriate that the African Commission and NHRIs take the relationship beyond mere rhetoric and paper-based affiliate status.¹⁵⁴

C. The Extent of Cooperation of NHRIs in South Africa and Ethiopia with NGOs

jurisdiction (emphasis added). The CERD Committee in Recommendation 28 has enjoined NHRIs to ‘assist their respective States in complying with their reporting obligations.’”

¹⁵¹ A Comparative Look at Implementing Human Rights Commission Laws, Institute for International Law & Human Rights, (March, 2009), the University of Virginia, School of Law’s Human Rights Law Clinic, at p.24.

¹⁵² See Bonolo R Dinokopila, *Beyond Paper-based Affiliate Status: National Human Rights Institutions and the African Commission on Human and Peoples’ Rights*, 10 AFR. HUM. RTS. L. J., 29, 41 (2010). And Para 7 20th Activity Report, AU Doc EX.CL/279(IX). But the participation of NHRIs in the sessions of the African Commission is erratic. The Activity Reports indicate that a high water mark of attendance was reached at the African Commission’s 39th ordinary session, when 19 NHRIs attended. The number decreased sharply to five at the following session, and only four institutions attended the 42nd session; and the 43rd ordinary session was attended by three NHRIs.

¹⁵³ *Id.*

¹⁵⁴ Bonolo, *supra* note 152, at 52.

In a study conducted by Human Rights Watch, the human rights commissions in Africa that are considered and sought to create partnerships with NGO communities are the commissions with strongest performance records.¹⁵⁵ As usual, the study cites SAHRC, as it is closely working with civil society organizations in a spirit of openness. Many national human rights commissions in Africa, however, maintain an ad hoc relationship with civil society groups.¹⁵⁶ Either the relationship is based on an individual commissioner, a project or none at all.¹⁵⁷

In Ethiopia, the legacy of a very restrictive law on NGOs passed in 2009 and which last for 10 years makes collaborative work with NGOs a difficult challenge. This makes the NGOs to have no role at all or a very minimal one in the activities of the commission. A couple of months ago, however, the Ethiopian Parliament adopted a new law governing civil society organizations (CSOs) that permit all the categories to engage in any lawful activity including human rights advocacy. Yet, another challenge with the new law could be that it has tightened the control of the state over the administration of funds, both by indigenous and foreign CSOs. In contrast, the SAHRC presents a good showpiece evidenced by its collaboration with national NGOs in the high profile hearings on poverty and joint studies on xenophobia.¹⁵⁸

In South Africa, the Committee comprising members from NGOs and Community Based Organizations has been established for consultation on the mechanisms to address and deliberate upon agendas of a public concern. The Committee which usually is taking common actions with NHRIs, presents an excellent case study for institutionalized collaboration with NHRIs.¹⁵⁹ Ethiopia should take lessons from South African experience in the latter's concerted action involving actively NGOs and various stakeholders in a robust promotion and protection of human rights. The Ethiopian NHRIs may be seen to cooperate either in seminars, meetings, commemorations of international days or other events but these are often isolated and ad hoc. Therefore, they need to concentrate on permanent activities and institutionalized cooperation with NGOs as that of South African NHRIs.

¹⁵⁵ Livingstone, *supra* note 148, at 54.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 55. There are not many institutionalized arrangements.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

We discussed in the above that SAHRC has played the role of an *amicus curie* (friend of the court) during the hearing of important cases by the South African Constitutional Court. As such, the famous *Grootboom Case*¹⁶⁰ is the mutual efforts of SAHRC and the Constitutional Court. This kind of a situation allows SAHRC to bring its expertise into play with regard to specific issues dealing with human rights of the people. This shows that SAHRC is a better institution to live up to its crucial responsibilities to safeguard and work in collaboration with other organs having the role of protecting human rights. SAHRC's assistance to the Constitutional Court through providing information, expertise, and an enlightenment that has a bearing on the issues is a good test of pluralism.

Even in its subsequent reports, SAHRC has consistently been subscribing itself to the standard of reasonableness, and concluded that there existed gaps between laws and the actual enforcement.¹⁶¹ The subsequent reports are additional evidence for the commitment of SAHRC to work in a spirit of unity with the Constitutional Court and other entities towards building a developed and democratized nation. Here, the EHRC could draw a lesson from the SAHRC that the latter closely works in consultation and cooperation with other bodies responsible for promoting and protecting human rights.

CONCLUDING REMARKS

As new multiethnic democracies, South Africa and Ethiopia are attempting to consolidate democracy through constitutional, legal, and institutional reform. Human rights problems continue because of the legacies of the past apartheid regime in South Africa and poor human rights records in Ethiopia. Thus, different NHRIs have been established in both countries to address human rights violations and administrative breaches. The OPP and EIO investigate administrative complaints and act as a mechanism for the implementation of national and international human rights norms. The SAHRC and EHRC have the role of monitoring and implementing the international, regional, and domestic constitutional human rights obligations of their respective government.

¹⁶⁰ Ebenezer, *supra* note 48, at 566.

¹⁶¹ Ebenezer, *supra* note 48, at 560.

The first Paris Principle which requires NHRIs to be established with a broad mandate evaluates the protective and promotional roles of the South African and Ethiopian national institutions to all human rights concerns. Accordingly, while the South African national institutions are aggressive enough to address their protective and promotional responsibilities, the Ethiopian institutions seems to have concentrated on promotional roles. By the same taken, it is commendable that socio-economic rights need to be treated in equal terms with civil and political rights. Needless to mention, as the founding legislation of the Ethiopian national institutions is the constitution, mandates, subject-matter jurisdictions, appointment and tenure and the various dimensions of independence require a constitutional regulation rather than employing a subordinate law. In fact, these and other equivalent institutions are crucially important for strengthening constitutional democracy in the country.

The second Paris Principle being considered as a point of comparison in this article is independence. If a word suffices to summarize the effectiveness of NHRIs, the writer would say ‘independence’ as this term is having something with financial, operational, legal autonomy and the broad mandates and the issues of pluralism as well. Thus, the South African and Ethiopian NHRIs need to be found in an independent status in multiple dimensions-if one is lacking, the other criteria will greatly be affected. Take for instance, independence through membership and composition is an easy and effective way of ensuring pluralism i.e., maintaining diversity in its respective commissioners or higher office holders. Equally important, however, is NHRIs should collaborate and cooperate with other stakeholders, and doing so is itself a test of commitment to pluralism. As independence of the national institutions is diminished by interference of the executive or the dominant parties, the EHRC/SAHRC and the EIO or the OPP must strive to be neutral politically.

Thirdly, the criteria of pluralism measures NHRIs either with the diversity of composition or effective engagement of the institutions with other branches of government, civil society and human rights actors at the regional and international level. The four institutions in South Africa and Ethiopia do have a good rate with the diversity of composition. However, mere composition is pointless or remains nominal if it is not supplemented with an equally important and crucial value-independence. Yet, the South African NHRIs aggressive engagement or

cooperation with multiple stakeholders of human rights remains a lesson on how to institutionalize collaborations in the Ethiopian context. NHRIs in South Africa and Ethiopia need to interact more with national democratic institutions, the African Commission and human rights NGOs. Internally, the collaboration with ombudsman, Anti-corruption commission, and NGOs would also be a valuable asset in addressing human rights abuses as well as providing effective protection and support to human rights defenders. The practice of a NHRI distancing itself from NGOs, defending government actions for illegitimate reasons or denouncing the work of NGOs as it is the case in some countries runs contrary to good practice. EHRC must take lessons from the SAHRC on how to involve various stakeholders and NGOs in a robust promotion and protection of human rights.

Several African NHRIs have affiliate status with the African Commission, but have rarely fully utilized this formal relationship. Exceptionally, SAHRC works together with the African Commission resulting in the adoption of declarations and of setting useful standards, rules and principles. However, the practice seems to lack continuity. At least, NHRIs could be of tremendous assistance in ensuring that states adhere to the African Charter and comply with decisions rendered by the African Commission. Equally important, Ethiopian NHRIs should strive to secure an 'A' status with the ICC. As part of a strong national protection system, NHRIs compliance with the Paris Principles have an important role to address the core human rights concerns at the national level and to ensure that international human rights norms and standards are respected.

The focus of national institutions varies to some degree. Concentration on civil and political rights and the rule of law is found in most countries including Ethiopia. However, specific focus on economic, social and cultural rights is only clearly expressed in the mandate of a few national institutions such as the South African and Ghanaian human rights commissions. The distinctive feature of the South African Constitution is that it includes not only political and civil rights, but also recognizes socio-economic rights as justiciable rights. SAHRC have taken numerous measures, ranging from creating awareness to the extent of intervening constitutional court cases, towards the realization of socio-economic rights. The EHRC must take lessons from SAHRC to the better protection of socio economic rights enshrined in the Ethiopian

Constitution. The Ethiopian Constitution recognizes socio-economic rights in terms of both enforceable rights and as of policy matters. Ethiopian NHRIs shall take the initiative in bringing this dilemma to the attention of the government and suggesting the latter appropriate and reasonable standards or remedies enabling it to work for the realization of the rights.