

**AN ANALYSIS OF THE UNIVERSAL PERIODIC REVIEW MECHANISM: A
COMPARATIVE STUDY OF ETHIOPIA AND KENYA**

BY

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DECLARATION

This research project is my original work and has not been presented or submitted to any other university for examination.

Signed..... Date

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This research project has been submitted with our authorization as university supervisors

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DEDICATION

I devote this work – with much love and appreciation – to all the women in my family and in my life. Special dedication goes to my spouse, Wangari Ong’ayi; mother, Alice Andeyo and daughter, Kenna Andeyo. These three are the mainspring behind my highest accomplishments in life.

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ABSTRACT

The Universal Periodic Review (UPR) is an interstate peer review instrument. The UPR was established in 2008 by the Human Rights Council (HRC) of the United Nations (UN) to monitor State conformity with human rights requirements under international law and other human rights obligations. The expectation is that the UPR performs HRC's goal of holding UN Member States to respect, protect, fulfil and promote universal human rights. Despite the existence of the UPR mechanism, seemingly, States have continued to apply standards that are below the set international standards thereby continuing with human rights violations. This research sets out to evaluate and compare State adherence to civil and political rights in Ethiopia and Kenya. Ethiopia and Kenya are UN Member States that have each been subjected to the UPR review process for compliance. The two states exhibit different levels of human rights observance. This research was guided by the question: have Ethiopia and Kenya complied with recommendations made during their periodic reviews?

As a qualitative research, the study examined and analysed literature on the UPR mechanism specifically on Ethiopia and Kenya with regards to effecting recommendations given during their reviews. The researcher analysed data from official statistics generated by institutions that include but are not limited to UN bodies especially those that set human rights standards, national non-governmental organisations (NGOs), government departments and national human rights institutions (NHRIs). State is obligated not to interfere with civil and political rights. They belong to the right holder and the State is obligated to provide an environment in which they are not interfered with. Using John Rawls liberty theory (Rawls, 1971) the study interrogates the effectiveness of the UPR mechanism in making Ethiopia and Kenya implement UPR recommendations. John Rawls is an exponent of two essential principles of justice through which just and morally acceptable society could be guaranteed (Rawls, 1993). The first principle guarantees the right of every person to have the broadest basic liberty well-matched with other peoples' liberty. The second one discourses that social and economic positions are to be: to everyone's advantage and available to all. Rawl endeavoured to present how such principles would be universally applied. He thus uses a theoretical "veil of ignorance" in which all the "players" in the social game would be subjected to what is known as "original position" where they have a common understanding of the facts of "life and society", and each of them put up with the rules of the game based on their moral obligation. Through denying them any particular facts about themselves, they are forced to adopt a generalized judgment that bears a strong likeness to the social setting that allows all to enjoy all the basic and fundamental liberties.

States, in preferring economic development over basic liberties in the guise of prioritising economic, social and cultural rights end up violating citizens' rights. The study finds that the UPR mechanism fails to be as effective as it was intended to be due to its inability to censure States for disobedience or failure to implement recommendations. The study also finds that Kenya ranks better than Ethiopia in its observance of civil and political rights recommendations received from the UPR mechanism. The research recommends the Human Rights Council to improve its oversight role by instituting measures that would compel States to implement recommendations. It also recommends the HRC to offer technical support to those States that genuinely encounter limitations.

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ACRONYMS AND ABBREVIATIONS

ACHPR: African Commission on Human and Peoples' Rights
ADR: alternative dispute resolution
APRM: Africa Peer Review Mechanism
ATP: Anti-terrorism Proclamation
AU: African Union
CAT: Committee against Torture
CCPR: Human Rights Committee
CED: Committee on Enforced Disappearances
CEDAW: Committee on the Elimination of Discrimination against Women
CESCR: Committee on Economic, Social and Cultural Rights
CERD: Committee on the Elimination of Racial Discrimination
CHR: Committee on Human Rights
CMW: Committee on Migrant Workers
CPJ: Committee to Protect Journalists
CRC: Committee on the Rights of the Child
CRPD: Committee on the Rights of Persons with Disabilities
CSP: Charities and Societies
ECHR: European Convention on Human Rights
ECOSOC: Economic and Social Council
ECtHR: European Court of Human Rights
EHRC: Ethiopian Human Rights Commission
EPRDF: Ethiopian People's Revolutionary Democratic Front
EU: European Union
G-20: Group of Twenty
GBV: gender based violence
GDP: gross domestic product
GoE: Government of Ethiopia
GoK: Government of Kenya
HRC: Human Rights Council
HRD: Human rights defender

HRW: Human Rights Watch
IACtHPR: Inter-American Court of Human Rights
ICC: International Criminal Court
ICC OTP: Office of the Prosecutor - International Criminal Court
ICCPR: International Covenant on Civil and Political Rights
IEBC: Independent Electoral and Boundaries Commission
IMF: International Monetary Fund
IMLU: Independent Medico Legal Unit
IPOA: Independent Policing Oversight Authority
KHRC: Kenya Human Rights Commission
KICA: Kenya Information and Communication
KNCHR: Kenya National Commission on Human Rights
MUHURI: Muslims for Human Rights
NALEAP: National Legal Aid and awareness Programme
NCIC: National Cohesion and Integration Commission
NEPAD: New Partnership for African Development
NGO: Non-governmental organizations
NHRAP: National Human Rights Action Plan
OAS: Charter of the Organisation of American States
OECD: Organisation for Economic Co-operation and Development
ONLF: Ogaden National Liberation Front
OLF: Oromo Liberation Front
PBO: Public Benefit Organizations
PWLHA: Persons living with HIV and Aids
PLWD: People living with disabilities
SGBV: sexual and gender based violence
TPLF: Tigrayan People's Liberation Front
UDHR: Universal Declaration of Human Rights
UN: United Nations
UNDP: United Nations Development Program
UNGA: United Nations General Assembly
UNICEF: United Nations Children's Fund
UNPO: Unrepresented Nations and Peoples Organisation

UPR: Universal Periodic Review

WTO: World Trade Organisation

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Introduction and Background to the Study

Peer review is a consensual and cooperative model of evaluation. It reflects a growing trend in the international sphere where states and other organisations utilise the assessment by their peers to evaluate and improve in performance e.g. in democracy, governance and human rights performance. In peer reviews, parties willingly subject themselves to standards that are agreed by the peer group. The Human Rights Council (HRC) and other bodies, including, international economic organisations e.g. World Trade Organization (WTO), Organisation for Economic Co-operation and Development (OECD), International Monetary Fund (IMF), and most recently, the Group of Twenty (G-20) have a peer review mechanism (KPMG, 2011). The European Union (EU) has a number of peer review processes, including the Internal Market Scoreboard also (Catherine, Makokera, & Steven, 2014).

Under the HRC, the Universal Periodic Review (UPR) is an inter-governmental organization within the United Nations (UN) system. It is made up of 47 UN member States (peers). The United Nations General Assembly (UNGA) is responsible for electing the 47 members (Markus, 2010). The UNGA is a principal institution alongside the well-recognised Office of the High Commissioner for Human Rights (OHCHR) and others that observe the application of universal human rights treaties. In Resolution 60/25, UNGA mandated the HRC to coordinate the UPR in order to boost the observance of human rights within States (Baird, 2015). It is the only mechanism that brings States as peers to appraise each other's records on the observance of international human rights law and human rights practices.

In Africa, there are two notable mechanisms for peer review. The African Unions' New Partnership for Africa's Development (NEPAD) that was developed in 2003, and the African Peer Review Mechanism (APRM). 34 African States have joined the APRM upon signing and depositing a memorandum of understanding to evaluate each other's quality of governance. The evaluation includes concerns to do with economic and social rights within member States. This mechanism does consider all categories of human rights and its application is only regional.

The UNGA adopted the UPR mechanism in the in *Resolution 60/251* of April 3, 2006 to be responsible for universally supporting the promotion and protection of human rights. The UPR mechanism does this work by monitoring the state of promotion and protection of human rights by States (Markus, 2010). The mechanism is the only one that assesses the extent to which the States comply with all international human rights law. Its review is also applied across all the States. The HRC began using the UPR mechanism in April 2008. The UPR mechanism process functions under a defined cycle made up of a period of between four and four and a half years.

The cycle is a three-phase process that includes an initial State review phase (first phase), implementation of recommendations received by a State during the review phase (second phase) and assessment of State application of the recommendations it received (third phase). The first phase, which is the review, is an interactive discussion between the State being reviewed and her peers. During each review process, a Working Group is responsible for coordinating the conduct of the sessions. The Working Group is composed of all 47 member States of the HRC and its chairperson is also the president of the HRC. The Working Group has a troika composed of three member States. The Troika serves as rapporteurs who organize the review processes. The Troika communicates questions to the State waiting to be reviewed well in advance of the interactive dialogue which is the crux of the review process (Hickey, 2012).

The result of review is revealed in an “outcome report” that lists all the recommendations that the State that was undergoing the process would have to realise before its next review. During the interactive conference or when the UPR review dialogue takes place, a representative of any of the peer States present is allowed to ask questions, make comments, and encouraged to make recommendations to the States that are being reviewed in a process that takes three hours (McMahon E., 2012).

After the interactive discussion, the second phase is follow-up which sums to the tangible attainment of the UPR goals i.e. the enhancement of compliance with human rights and the general human rights situation in a State that has been reviewed. It is at this phase that implementation of recommendations happens. The effectiveness of the UPR as a human rights monitoring mechanism is established here. When the State under review proves its engagement in implementing accepted recommendations, there is a coherent nexus with the promotion and strengthening of human rights. Then comes the third phase which is the

assessment or “next review cycle:” Here the State reports on its compliance with the recommendations or commitments.

As the State reports, it is also reviewed on how it has performed with regards to realizing obligations under its past review. The State presents how it has been able or has not been able to succeed in meeting its obligations. At this phase, the State goes through a three-hour question and answer session, webcast on the UN website. Any UN member State – in this research referred to as “peer” – may participate by asking questions, making remarks or – most commonly - making recommendations based on an assessment of how the State under review has implemented previous recommendations.

1.1.1. The Nature of the Universal Peer Review Mechanism

The UPR is the only mechanism that brings States as peers to appraise each other’s records on the observance of all human rights. The mechanism monitors the implementation of international human rights treaties in order to boost adherence to human rights within States. The improvement of human rights situation in countries is dependent on appropriate and focussed recommendations from their peers and purposeful implementation and follow-up of compliance by States being reviewed. How States implement the recommendations is the prime test of the mechanism. It is at this stage that the extent to which the UPR mechanism has produced positive changes to the general human rights situation in the States reviewed is determined. For the UPR to accomplish its purpose effectively – therefore – States must implement recommendations.

In order to understand the place of the UPR mechanism, it is necessary to appreciate the existing universal structures aimed at improving human rights. Essentially, there are various agreements under the context of the UN and the notable three regional mechanisms found in Africa, America and Europe that have invigorated the formation of large spectra of instruments for monitoring compliance with universal human rights. They are referred to as “*human rights supervisory procedures*.” The main categories of supervisory procedures are the Treaty-based and Non-treaty based bodies (Mechlem, 2007).

1.1.1.1. Treaty-based bodies

Treaty bodies are referred to as the protectors of the legal standards that have been established by the human rights covenants adopted by the UN (Pillay, 2012). There are nine

principal international covenants. They are the covenants and conventions on the Elimination of all Forms of Discrimination Against Women (CEDAW); Economic, Social and Cultural Rights (ICESCR); Civil and Political Rights (ICCPR); against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Elimination of All Forms of Racial Discrimination (CERD); Rights of the Child (CRC); Rights of Persons with Disability (CRPD); Protection of all Persons from Enforced Disappearance (CED); and Protection of the Rights of all Migrant Workers and Members of their Families (Tamirat, n.d.).

Some of the covenants and conventions mentioned have additional protocols and also provide mechanisms for reporting known as “treaty-based bodies.” They include the Committee on Economic, Social and Cultural Rights; Committee against Torture; Committee on the Rights of the Child; Human Rights Committee; Committee on the Elimination of Discrimination against Women; Committee on the Elimination of Racial Discrimination; Committee on Migrant Workers; Committee on the Rights of Persons with Disabilities; Committee on Enforced Disappearances; and The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Treaty-based bodies are not only established under the mentioned conventions and covenants but are also found in regional mechanisms such as the *African Charter on Human and Peoples’ Rights* (ACtHPR), *Charter of the Organisation of American States* (OAS) and *European Convention on Human Rights* (ECHR). Others that are also considered as treaty bodies include the African Commission and future African Court of Justice and Human Rights, the European Court of Human Rights and the Inter-American Court and Commission of Human Rights. Having been established under treaties, they create many other procedures, including reporting procedures, inter-state complaint procedure, inquiries, individual complaint procedure and others.

Similar to the UPR mechanism, reporting procedures provide a platform where State parties report from time to time to a supervisory body on the application of a relevant treaty at the domestic level (IHRC, 2012). *Article 40 of the ICCPR* states that States parties are obliged to ‘submit reports to the HRC regarding actions taken to give effect to rights recognised in the covenant including developments being made in the realisation of provided rights (Jiang, 2014). Further, at the UN level, individually, treaty bodies have, each, formulated general guidelines regarding the procedure, structure and contents of the State reporting (Frowein & Wofrum, 2001).

Inter-State complaint procedures are also part of treaty bodies. A States party to the UN can initiate a complaint against another which is alleged to have violated obligations under any particular covenant. In this procedure however both the petitioning and the respondent States are obliged to recognise the competence of the body adjudicating on the matter.

Several other mechanisms and treaties also provide the opportunity for individual people who feel that their rights have been abused to report their complaints alleging the abuse/s. These human rights abuses have to reflect the violations of the relevant treaty rights. The complaints are adjudicated by experts established by the treaty for quasi-judicial resolution. The complaints could also be adjudicated in an international Court such as the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHPR) and future African Court of Justice and Human Rights.

There also exists an individual complaints procedures established under several international conventions that allow persons on their individual capacities to initiate proceedings to protect their rights. Procedures such as these – that allow individuals/petitioner to commence actions that bring governments to account for their actions before an international supervisory body – purpose to provide extensive protection to the petitioner. Individuals whose rights are violated could take their complaint to a body of experts set up by the treaty. Increasingly quasi-judicial adjudication has also taken shape. Regional courts such as the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHPR) and African Court of Justice and Human Rights have also actively taken up individual cases. The ACHPR also allows individuals to start proceedings to defend their rights.

1.1.1.2. Non-treaty based mechanisms

Non-treaty based mechanisms are created by the charter establishing an intergovernmental human rights system or its constitution. They are not legally binding. They may also be created through resolutions made by the general meeting (assembly) or a representative body of that intergovernmental human rights system. In this regard, ‘charter-based’ mechanisms include the *HRC 1503* (human rights complaint) procedure, special procedures and the universal peer review mechanism which this research focusses on. The *HRC 1503 Procedure* is a human rights complaint procedure that became operation in 1972, making it the oldest procedure among any other human rights complaint procedures (Limon & Piccone, 2014).

The special procedures of the HRC are independent human rights mandate holders who are thematic or country specific experts who report and advise the mechanisms (Limon & Piccone, 2014). The special procedures are therefore run by special rapporteurs or working groups, mandate holders, independent experts, special representatives etc. These procedures are further created by resolutions responding to circumstances that considered by the HRC to grave to require a comprehensive study. The UPR mechanism has developed from the structure of special procedures (Limon & Piccone, 2014).

The UPR mechanism first process was in 2008 where the capacity of the UPR mechanism to complement existing human rights mechanisms was first tested. The mechanism established its approach by repeating their concluding observations and recommendations and by pushing States to comply with them (Draluck, 2010). The second cycle of the mechanism began in May 2012. It is during the second cycle that States had the opportunity to present their reports on measures they had taken to implement the recommendations that they received from their peers during the first cycle of review. At this stage, peers were presented with the opportunity to hold the States undergoing review to account on how they had cooperated with the HRC with reference to the levels of implementing recommendations they received. The third cycle started in April 2017, and will finish in October or November 2021.

1.2. Statement of the Research Problem

This study investigates why there are differences in human rights conditions between Ethiopia and Kenya despite both of them subscribing to the UPR mechanism.

Despite the two States voluntarily accepting peers review under the UPR mechanism, their human rights records still seem to be on a decline. In Ethiopia, rampant cases of arbitrary arrests and detention of government dissidents; enactment of repressive legislations e.g. the *Charities and Societies' Proclamation (CSP)*, *Anti-Terrorism Proclamation (ATP)* etc.; there are increased cases of extra judicial killings e.g. killing of up to 1000 people following protests in Oromia and Amhara regions between November 2015 and December 2016 despite recommendations that condemned such actions.

In Kenya, cases of extra judicial killings persist. In 2016, the Independent Medico Legal Unit (IMLU) reported 520 extra judicial killings in Kenya since 2013. There have been attempts to pass repressive legislation to limit civic space e.g. the *Security Laws (Amendment) Act* and retrogressive amendments to the *Public Benefits Organization (PBO) Act* etc. While the two

States fail to fully comply with the UPR mechanism, they have implemented recommendations from the mechanism in distinct ways.

1.3. Objective of the Research

The overall objective of this Research is to compare and evaluate observance of civil and political rights (civil liberties) in Ethiopia and Kenya.

The specific objectives are:

1. To examine the context in which the UPR recommendations are applied; and
2. To determine the extent to which the UPR mechanism has facilitated human rights outcomes in Ethiopia and Kenya.

1.4. Research Questions

This research endeavours to respond to the following questions:

1. What are the social conditions that allow a peer review mechanism to succeed?
2. What are the political conditions that allow a peer review mechanism to succeed?
3. To what extent has the UPR mechanism improved the observance of human rights in Ethiopia and Kenya?

1.5. Justification of the Research

The UPR is the only mechanism that has universal acceptance to coordinate States peer review of all human rights; this study presents an invaluable evaluation of whether the UPR mechanism has succeeded in improving in-country human rights observance in Ethiopia and Kenya. An overview of the UPR mechanism is necessary to determine its effectiveness (Dos Santos, 2016).

This research presents a new attention to new literature that compares and evaluates UPR mechanism outcomes in Ethiopia and Kenya. For States and other stakeholders such as civil society groups, legal practitioners, human rights scholars etc., this research provides an opportunity to understand and further interrogate the effectiveness of the UPR as one of such mechanisms. Stakeholders will therefore be guided on how to better engage with the mechanism and how to appropriately propose improvements where needed.

1.6. Scope and Limitation of the Research

This research is geographical and limited to the comparative examination of how the UPR Mechanism has worked in Ethiopia and Kenya which have distinctive ethnic-cultural-geopolitical approach to governance. The research has applied purposive selection of the two countries within the same sub region in Africa since they have already undergone the first and second cycles of the UPR mechanism. In order to increase the credibility of the conclusions reached. Therefore, the outcome is representative of what exactly happens in the UPR mechanism in all cases.

The two States have similar characteristics that are of interest in this research. The two States are also viewed as top economic powers in the region and wield great influence in regional politics. They have equal capabilities to cooperate with HRC and implement UPR recommendations.

The study is also temporal - between 2009 and 2015. Kenya and Ethiopia, as at 2016, have each partaken two cycles of the UPR review that began in 2009. Ethiopia was first reviewed in 2009 and later in 2014 while Kenya in 2010 and 2015. During their second review, both countries reported on the state of the implementation of recommendations given to them during their first review.

1.7. Definition of Concepts

Civil and political rights: these rights check the powers of the government with regards to actions affecting the individual and their individual freedoms. The rights also provide the space for individuals to participate in government through participating and electing their civil leaders and being part of contributing to law making processes.

Cycle: the UPR cycle is three-phase processes that include a first, second and third phases of implementation of recommendations received during the review.

Follow-up: this is that phase of the UPR mechanism after any given review. The period includes the time between the review and the adoption on the final recommendations. It is also the five year period from one review to the next, during which recommendations should be implemented and monitored. However, this is more regularly known as the Implementation phase.

1.8. Theoretical Framework

This study uses John Rawls liberty theory (Rawls, 1971) to interrogate the effectiveness of the UPR mechanism in making Ethiopia and Kenya act in accordance with civil and political rights recommendations they have received. Using John Rawls liberty theory (Rawls, 1971) the study interrogates the effectiveness of the UPR mechanism in making Ethiopia and Kenya act in accordance with civil and political rights recommendations they have received.

John Rawls is an exponent of the assimilation two important principles of justice over which a just and morally tolerable society could be assured. The first principle guarantees the right of every person to have the broadest basic liberty well-matched with other peoples' liberty. The second one discourses that social and economic positions are to be: to everyone's advantage and available to all. Rawl endeavoured to present how such principles would be universally applied. He thus uses a theoretical "veil of ignorance" in which all the "players" in the social game would be subjected to what is known as "original position" where they have a common understanding of the facts of "life and society", and each of them put up with the rules of the game based on their moral obligation. Through denying them any particular facts about themselves, they are forced to adopt a generalized judgment that bears strong similarities to the social setting that allows all to enjoy all the basic and fundamental liberties (Rawls, 1993).

Many developing States focus on economic development without giving much attention to human development. The focus has been on human needs as opposed to human rights where the quest for infrastructural development to facilitate access to vital services overrides individual rights. Many leaders of the developing States continue to dictate that human rights can only be realised once poverty is completely eradicated, thereby giving less attention to individual rights (civil liberties). In Rawl's views of priority principles, absolute precedence should be given to consideration of liberties. This could be what influences different States' different reception of the UPR mechanism in as much as they willingly ascribed to it. States feel that in their sovereignty, they have already set the priorities for their general public.

The foregoing argument is expounded by States inclination towards justifying their behaviours to determine what to them the priorities for their countries are. Most States that would deviate from honouring basic liberties would dominantly practice utilitarianism using

perhaps justifiable concepts such as *Westphalian sovereignty* that is more concerned of defensive territorial control by the governments to the exclusion of foreign interests or actors from internal governance (Steiner, Alston, & Goodman, 2007). But by the simple fact that States voluntarily enter into the membership of international communities such as the UN, then it shows that this sovereignty can be compromised through invitation as well as intervention and this is well seen in a universal peer process that is supervised by the UN itself through the HRC (Steiner, Alston, & Goodman, 2007).

In this invitation, States, non-state stakeholders such as NHRIs and CSOs also participate from the appreciation that universal monitoring human rights must be done from the understanding and recognition of universality and inalienability; indivisibility; interdependence and interrelated nature of human rights. Basic liberties and rights principle therefore compares with the conception of the universality of human rights. In the universality concept, human rights is intrinsic to any individual born anywhere in the world just by that virtue of being born. Since human rights come from that basic existence of human being, it also means that they are inalienable and cannot be taken away since taking them away would mean endangering the intrinsic existence of that human being.

Universal and inalienable merits of human rights have been disputed in both their conception and operation. Opponents of universalism and basic liberties have opined that the popular universal declaration of rights of rights is imagined in a skewed way to tolerate those tenets that are predominant in the western world (the Americas and Europe mainly). Makau Mutua argues on the perspective that the reason why UPR mechanisms largely remains a compromise is that the notion of universalism of human rights is not entirely perfect and absolute (Mutua, 2004). The question of sovereignty of nations, cultural and religious diversity and other factors all taint the application of the universalism theory as absolute. The diversity and the appreciation that world diverse polity must be left to make a decision with regards to what makes sense to them is what Rawls objects (Rawls, 1993).

The UPR mechanism is another attempt to resolve the same dilemma of how to provide international oversight while respecting national sovereignty (Cowan, Marie-Benedicte, & Wilson, 2002). Therefore the UPR mechanism is a space, albeit one of many spaces in the UN context, where State sovereignty is performed as each UN member State gives a record of efforts it is making to make its citizens realise improved human rights. All this is done by a State before hundreds of its peers. Importantly, the UPR reinforces through repetition not

only the normality of being a sovereign State, but also the idea that it is the State, and its policies, which are responsible for both violations and realisations of human rights (Cowan J. , 2014).

1.9. Methodology

The methodology mainly focused on an analysis of data that has been generated through reports and other forms of documentations by reputable institutions such as the OHCHR, the UPR Info, NHRIs, offices of attorney generals, government departments and a few civil society organizations (CSOs) during the course of the first and second cycles.

The GoE and GoK, combined, have received 797 recommendations since their first review. Out these, the researcher only considered recommendations that are of the traditional classification of civil and political rights and further categorised them into comparable types and finally into clusters. This compare and contrast (Glaser BG, 1967) methodology to come up with comparable clusters was to make a comparative analysis between the two countries practical.

The categorization of recommendations came up with the following clusters:

1. freedom of expression;
2. freedom assembly and association;
3. access to justice;
4. prevention of torture and ending extra judicial killings; and
5. free and fair elections.

CHAPTER TWO

ETHIOPIA AND THE UNIVERSAL PERIODIC REVIEW MECHANISM

2.1. Introduction

The Government of Ethiopia (GoE) has a federal parliamentary structure. In the structure, the head of government is the prime minister. The president is – on the other hand – the head of State. Like many countries of the world, the executive power in Ethiopia is implemented by the executive arm of the government while legislative power is vested in the parliament (Ethiopia, Ministry of Foreign Affairs, 2017). This section will explore the human rights history of Ethiopia before the UPR mechanisms to enable us to understand the socio-political situation of Ethiopia even as it subscribes to the peer review mechanism.

2.1.1. History of Human Rights in Ethiopia

Like most African countries, Ethiopia was never colonised by European powers making it the oldest independent country in Africa. Ethiopia however had a five year occupation before and during World War II by the Mussolini's Italy. The Britain in 1941 evicted the Italians and helped to return Emperor Haile Selassie that had been in exile. It was during Haile Selassie's regime that the post-colonial age Ethiopia experienced one of its worst unrest due to economic challenges and complaints about the feudal-based governance approach. That unrest led to the toppling over of Haile Selassie's regime in 1974 by a communist group called the Derg (Wells, 2009). Mengistu Haile Mariam led this regime at a time that he was also the head of State. Many Ethiopians were killed and others' property seized. During that era military expenditures also ascended to high levels (Wells, 2009). Famine became rife as agricultural harvests fell. In 1985, almost million people died because of the famine.

Mengistu's years in office were marked by a dictatorial grip of power using heavy military financing and resourcing that mainly came from Cuba and the Soviet Union. The drought and famine made the era worse and Ethiopia endured under the conditions of hunger and authoritarianism for a period of 17 years. These situations also aided the collapse of the Derg by having uprisings occurring in different parts of Ethiopia such as Tigray and Eritrea in the northern regions. The Tigrayan People's Liberation front (TPLF) in 1989 merged with the

Amhara Liberation Front (EPDM) and Oromo Liberation Fronts (OPDO) to form the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) that by the time of this study was the ruling party.

As soon as the TPLF joined with others to form the EPRDF, the party abandoned the original objective of Tigrayan independence. The TPLF became more obsessed with overthrowing the Derg regime it had been fighting since 1974 (Ishiyama, 2007). "Marxist-Leninist League of Tigray" then took leadership at the core of the EPRDF party (Pieter, 2013). These leagues of the Tigray were once an assertive pro-Albania splinter group that broke away from the Marxist Ethiopian People's Revolutionary Party (EPRP) which was the leading leftist opposition to the Derg regime in the 1970s (Pieter, 2013). In May 1991, the EPRDF forces overthrew the communist regime forcing Mengistu to flee to Zimbabwe (Pieter, 2013).

Between 1991 and 1995, Ethiopia had a transitional government set up by the EPRDF after the collapse of the Derg regime. In one of its first acts after seizing power, the EPRDF constitutionally restructured the Ethiopian state into a federation of ethnically defined regions (Arriola & Terrence, 2016). Meles Zenawi was elected to be the president of the TGE during the transitional period. During this period Ethiopia struggled with rebuilding its economy and providing basic need for its population, including food. The Federal Republic of Ethiopia was proclaimed in 1995 after elections that saw Meles elected as the first Prime Minister of Ethiopia. During this period, Ethiopia experienced stability and growth in its economy. He remained the prime minister until his death in 2012.

The current situation in Ethiopia is that, over the past 25 years the TPLF and EPRDF which is the ruling coalition has autocratically used political power. The EPRDF has misused the justice system, and other public resources to silence and/or eliminate all forms of oppositions and political dissents, despite the constitutionally declared democracy, in order to ensure monopoly and lasting partisan political goals.

Despite the negatives mentioned, the World Bank reports economic growth for Ethiopia that is strong and broad based over the past 10 years compared to its neighbours and the regional average. Ethiopia has had a 10.8% growth per year from 2004 all the way to 2015 against region's 5.4% (World Bank, 2017). The World Bank further documents positive trends in poverty reduction in Ethiopia with rates having come down to 33.5% of people living in poverty in 2011, from 55.3% in 2002 (World Bank, 2017). The government is also

implementing its second Growth and Transformation Plan (GTP II) running from 2015 to 2020 with a blueprint of public investment projects that are likely to turn the country into a lower-middle-income country by 2025. Despite the rosy economic account, Ethiopia has dark side. The country has faced many droughts that have put its people under food deprivation.

Another dark side is that, Ethiopia, being a member of the UN and member of its core international human rights treaties, does not honour many of its international obligations. When it does, the country has also been criticized for its failure or delay to report on its implementation of the treaties it reports on (Tamirat, n.d.). Being a member of the AU and reporting procedures such as the ACHPR and APRM, Ethiopia has also failed or delayed to submit periodic state reports of its implementation of the African Charter. According to the ACHPR's State reporting statistics, as of 2017, the GoE has one overdue report expected at the ACHPR (ACHPR, n.d.). The foregoing makes the UPR a very unique system that the GoE has respected and at the two review occasions, timely submitted itself and presented itself for review. It is for that reason that the study of Ethiopia is very important.

2.3. The State of Civil and Political Rights in Ethiopia

Ethiopia is party to the *International Covenant on Civil and Political Rights (ICCPR)* having ratified the covenant. In 2009, the Federal Democratic Republic of Ethiopia submitted its initial report to the Human Rights Committee. Ethiopia has also gone through two peer reviews at the UPR mechanism where civil and political rights issues were discussed. This section will discuss various civil and political rights issues that are prominent in Ethiopia.

2.3.1. Freedom of expression

State-owned or oriented press dominates Ethiopian media. Many privately owned papers that used to be independent practice self-censorship where they avoid political reporting. The papers also experience low circulation. Journalists operating inside Ethiopia have also been drawn into self-censorship especially since defamation was made a crime. In 2008 Ethiopia also passes a media law that legislated on increased in penalties that include indeterminate fines for defamation. This law also allows prosecutors to institute and act on cases without the individual complainants themselves (Calson, 2016). National security has also been a guise that has been used by the GoE where prosecutors are permitted by the law to seize material before publication. A June 2016 cybercrime proclamation criminalizes mass mailings and certain types of online speech (Calson, 2016).

The GoE has censored websites belonging to or supporting critical opposition/dissident expressions. The authority has also continued to monitor their online and physical communications. The GoE has also orchestrated blockage of localized internet. Phones switch offs are also rampant following massive demonstrations. The GoE has invested in blocking access to messaging applications including WhatsApp and Twitter whenever there are any forms of disquiet in the country. Parts of Oromia region had infrequent cuts in messaging that lasted more than six months (Davison, 2016).

In sub-Saharan Africa Ethiopia is the third most notorious country in jailing journalists. Between 2015 and 2016, journalists who covered anti-government protests in different parts of the county including Amhara and Oromo regions were arrested or intimidated. Similarly, protestors by the Muslim community were arrested or threatened with arrests. Similar to reporting anti-government protests, those journalists seeming to be sympathetic to the opposition activities attract harassment and the threat of prosecution under the ATP. Many are charged with terrorism and incitement. In 2015 a group of young bloggers was arrested and tried using the ATP.

The GoE has attempted to label universities as pro opposition and restrict academic freedom. The GoE prohibits political activities in university campuses (Tamirat, n.d.). Even as this happens the GoE has pressured students and university lecturers into joining the ruling party. Employment, promotions and slots at universities have been used as the bait for them. The control in the education sector is also witnessed through the Ministry of Education who through informers monitors and regulates education curricular to make it comply with EPRDF demands. Research, speech, and assembly in the universities are frequently restricted. Students make a large proportion of those arrested, beaten, and killed in unrests since they have constantly been at the front of anti-government protests and make largest numbers of protesters (Tamirat, n.d.).

2.3.2. Freedom of assembly and association

Although guaranteed by the Ethiopian constitution freedom of assembly and association has faced huge recoil since 2005. Organizers of large public meetings must get government permit 48 hours in advance of any of such meetings. Opposition groups are routinely denied permits to hold public meetings. Organizers of such opposition meetings are also subjected to government interference to postpone dates or change locations in case the approvals to hold

the public meetings are made. During protests in Amhara and Oromo regions security forces meted violence against protesters by firing tear gas and live bullets into protesters. The protests were linked to the contentious Addis Ababa Master Plan where the GoE apparently cleared part of Oromia land for an investment project, which intended for the extension of the Addis Ababa, which is the capital city of Ethiopia.

Freedom in the World 2016 – Ethiopia, a Freedom House report documents that the 2009 *Charities' and Societies Proclamation (CSP)* and other directives prohibits implementation of political and human rights program work by non-Ethiopian NGOs. This provision has limited foreign NGOs programming in Ethiopia. Any group receiving more than 10 percent (10%) of their finance from out of the country is likewise referred to as foreign NGO (Freedom House, 2016). This classification includes most domestic NGOs too. The law also limits the funds for “administration,” through including activities such as trainings for service providers e.g. health workers or teachers in administration costs.

Restriction of trade union is also rife in Ethiopia. For instance, civil servants and teachers do not have collective bargaining rights. Their registration can be cancelled at any time by the government (Freedom House, 2016). The government has also infiltrated trade unions and created its own parallel unions that are allied to the Confederation of Ethiopian Trade Unions. More than two thirds of the workforce has been recruited into the union. There has not been a legal strike in Ethiopia since 1992. Many union leaders continue to face harassment. These leaders are often jailed (Freedom House, 2016).

The GoE continues to restrict freedom of movement especially in areas affected by mass demonstrations across Oromia and Amhara Regions. Restriction is also prevalent in other regions such as Somali region (Freedom House, 2016). State controls private business through very rigid registration and taxation systems and dominance of state-run commerce. In Ethiopia all land must be leased from the State. Thousands of citizens have been displaced through forced evictions by the government to make way for foreign investments where the government leases out enormous strips of land to foreign governments and financiers for agronomic development in impervious contracts. In a particular case, the GoE evicted indigenous populations from Gambella area to make way for development scheme such as hydroelectric dams (Freedom House, 2016). The eviction was tagged “villagization project” where locals were forced into villages outside the land they lived in. This state of affair largely contributed to the anger behind the 2015/2016 demonstrations.

2.3.3. Accountability within the security forces

During demonstrations in Ethiopia the security forces detains citizens for months without charge. Following the 2015 protests in Oromia region that spread to Amhara Region security forces brutality has been on the increase. According to a report by Amnesty International, in August 2016; at least 100 people were killed across Amhara and Oromia regions in one weekend, including thirty people in a town in Bahir Dar, which is the northern region of Ethiopia (Amnesty International, 2016). Security forces also entered learning institutions where they made arrests detaining children under 18 (Tamirat, n.d.).

All over the society in Ethiopia, the EPRDF has registered its presence through informers. The EPRDF has also –directly and, increasingly, electronically – enhance its surveillance thus inhibiting private or free discussions. Citizens are afraid of speaking against the GoE since it has infiltrators all over. Surveillance has been very high with opposition politicians accusing the GoE of listening-in to their phone conversations or constantly watching their online communications.

2.3.4. Access to justice

While supposedly the judiciary in Ethiopia is officially independent, it makes judgements that suggest influence of government policy. Other laws have also come in place that have denied or limited the chances of citizens to access justice. The ATP for instance gives very wide discretion to security forces, allowing for suspects to be held for up to four months without being formally charged. Ethiopia's prisons continue to put inmates under degrading and inhumane conditions. Conditions inside the places of detention are either harsh, and detainees often report abuse, including regular reports of torture. Ethiopia's notorious Maekelawi and Qilinto prisons are known for overseeing torture to inmates in the quest by the police to force evidence. Most of the time and depending on the charges levelled against them, the inmates cannot have access to lawyers to help them in appeal cases.

2.3.5. Free and fair elections

The Orthodox Amhara and Tigrayans have since 1994 been seen to have relegated the Oromo and other largely Islamic groups in the South of Ethiopia (Arriola & Terrence, 2016). The Federal Constitution of Ethiopia has institutionalized political power on the basis of ethnicity, since the nine regional administrative states match to presumed ethnic native land. Each of

these regional states has its own legislative, executive, and judicial branches (Arriola & Terrence, 2016).

Ethiopia has held parliamentary elections regularly since 1995 (Arriola & Terrence, 2016). But the EPRDF's use of state resources and repression, coupled with boycotts by weak opposition parties, left the overwhelming majority of Ethiopian voters without any meaningful choice during the first decade of multiparty elections (Arriola & Terrence, 2016). The 2005 was the only elections that had large opposition coalitions competing against the EPRDF and actively campaigned across the main regions of the country (Arriola & Terrence, 2016).

The opposition party increased its representation from 12 to 172 members however; it was during the same time that the GoE prohibited both local and international elections observation. The International Republican Institute (IRI), International Foundation for Electoral Systems (IFES) and the National Democratic Institute (NDI) were expelled from Ethiopia. The GoE questioned the legal registration standing of these organisations to work in Ethiopia (Ishiyama, 2007). Subsequent elections in Ethiopia have been marred with irregularities and intimidation of opposition politicians. In 2010 EPRDF won 500 out of 547 seats in parliament while winning 546 out of the 547 in the 2015 elections representing 100% win.

2.4. Recommendations by the Universal Periodic Reviews Mechanism

The GoE underwent its first human rights review under the UPR mechanism in December 2009 where it received a raft of 142 recommendations from recommending states. During adoption of the report in the Plenary on March 19, 2010, GoE accepted: 98 recommendations given; rejected 32; and kept 12 pending. Out of the 98 recommendations that Ethiopia accepted to implement, 23 were on specific on civil and political rights; 53 were on economic, social and cultural rights; while the remaining 22 were very general.

A total of 252 recommendations were given by various participating states during the UPR process in May 2014. The increased number of recommendations could be attributed to increased familiarity with recommending states and the fact that Ethiopia was also being reviewed for second time. States had interacted more with the mechanism and had also interacted more with the State under review. Out of the 252 Recommendations, Ethiopia accepted 199. This signifies an increase in the number of recommendations accepted as well

from 98. About 47 of these accepted recommendations relate to the broad category of civil and political rights.

2.4.1. Analysis of recommendations on freedom of expression

In 2009, Ethiopia received five (5) recommendations with regards to freedom of expression. The recommendations were made by the following States: France, Germany, Norway, Australia and Netherlands. While the recommendations urged GoE to guarantee genuine freedom of expression within the electoral processes this did not happen since the 2010 general election was marred with intimidation and close down of independent media houses and arrest of opposition leaders.

In 2010 alone, Ethiopia arrested more than 100 opposition leaders that were charged for treason and sentenced to life imprisonment. Many media publications were also shut down and more than 13 journalists jailed within the same period. After the review, the GoE used the Anti-Terrorism Proclamation (ATP) of 2009 to charge dissidents. In 2011, more than 100 people were charged using the ATP among them, prominent blogger Eskinder Nega, Andualem Arage and Natnael Mekonnen, the last two who are opposition party politicians.

In its 2014 review, Ethiopia received 13 recommendations on freedom of expression from Japan, Republic of Korea, Chile, Germany, France, Ireland, Cuba, Somalia, Canada, Slovakia, Denmark, Mexico and Australia. Perhaps the eight (8) more recommendations compared to its previous review came as a result of the deteriorated state of freedom of expression even after a previous review. Being a year to the 2015 elections as well some of the new recommendations urged GoE to pledge respect for the freedoms to politicians and journalists and also when applying the ATP, in line with the NHRAP. Despite these recommendations, 2015 saw high levels clampdown on dissenting voices in Ethiopia. The ATP was used during the period to charge journalists and political opposition members. Though the number is unknown, several prominent journalists and opposition leaders were jailed.

The GoE has also on several occasions closed down internet and other social media sites especially in areas that were affected by anti-government protests post November 2015. According to the International Centre for Non-Profit Law, the parliament in Ethiopia hurriedly passed a *Computer Crime Proclamation* in June 2016. The proclamation was passed to respond to publicity over human rights violations that were continuously raising

attentions during the protests in Oromia. Most of the reports of the protests were coming out through the social media. The proclamation sets out very punitive measures for very general and wide online activities. It also permits the authorities to conduct surveillance giving them censorship powers that limit freedom of expression (ICNL, 2017). After the proclamation was passed authorities went ahead to restrict citizen access to certain social media platforms, notably Twitter, WhatsApp, Viber and Facebook in the affected areas. Oromia was the main target during this time. Social media posts have also been used as evidence in prosecuting criminal charges brought against digital activists (ICNL, 2017).

The GoE has escalated intimidation to journalists to stop them from reporting on critical issues. Part from journalists, opposition activists and other dissident groups have also been threatened or arrested instigating journalists to avoid reporting on sensitive topics that would bring such people under risk. Intimidation has included detention. There have been as well, informal editorial controls by the government where government officials place requests and demand for recall of articles perceived as critical of the government. In efforts to drive them out of business, the government reportedly has numerously distressed promoters not to advertise in magazines that are critical of the administration (HRW, 2015).

Weeks before Ethiopia's second review under, on April 25 and 26, 2014, the GoE arrested six affiliates of a popular bloggers network known as the Zone 9 Bloggers. The Zone 9 Bloggers and three more journalists were all charged with terrorism. After nearly 18 months of detention, an Ethiopian court cleared all the members of the Zone Bloggers of terrorism charges. While all the bloggers are free, they continue to receive threats. Other activists also continue to receive threats as the GoE incarcerates journalists and online activists. In July 2015 three journalists were convicted under the *ATP*. On February 18, 2015 two journalists affiliated with Bilal Radio were also convicted under the same law and denied bail. Ethiopian citizens still face government reprisal against them for discussing security force abuses. According to a report by the CPJ, more than 57 media professionals have fled Ethiopia since 2011 (CPJ, 2015).

2.4.2. Analysis of recommendations on freedom assembly and association

In the 2009 UPR, the GoE received recommendations from Ireland, Netherlands, Brazil, Sweden, and Norway calling on Ethiopia to ensure full respect for the rights of association and assembly, including, to the ability of NGOs to function. These recommendations came

after Ethiopia had enacted the CSP in 2009 that among other things restricted the amounts of foreign funds that a national NGO would receive to 10%. The legislation also capped to 30% on the budget that any particular organisation would use on administrative purpose. This provision is still harmful to human rights groups such as Ethiopia Human Rights Council (HRCO) that had to close down nine (9) of its 12 regional offices due to inability to sustain staff. Like other organizations that had been receiving foreign funding, HRCO's bank accounts were also frozen retrospectively in the implementation of CSP. Different forms of protests were also outlawed and opposition members denied permits to use major halls for their meeting.

In the 2014 review, recommendations on freedoms of association and assembly went up from three (3) to 16. Norway, South Sudan, Denmark, Nigeria, Bhutan, Cuba, Burundi, Armenia, Holy See, Canada, Cuba, Republic of Korea, Somalia, Germany, Mexico and Slovakia. That sharp rise in the number of recommendations attested to the severity of the situation of human rights in Ethiopia with regards to freedom of association and assembly.

Despite the increase and directed recommendations that GOE removes obstacles to the functioning of the NGOs in Ethiopia, the government relented on implementing the infamous CSP and in closing down NGOs. The government body that regulates NGOs, the Charities and Societies Agency in 2016, declared that it had shut down over 200 NGOs within a period of nine months (Badwaza, 2016). According to reporting from the Journal of Not-for-Profit Law, the shutdown followed the Charities and Societies Agency directive targeting NGOs for non-compliance with the CSO law (ICNL, 2017). The foregoing indicate that despite recommendations urging the GoE to comply with certain standards to enhance freedom of association and assembly, the government departed from the recommendations and made the situation worse.

2.4.3. Analysis of recommendations on access to justice

In 2009, GoE received 12 recommendations with regards to improving access to justice for vulnerable groups and provision of legal aid. Peers that made recommendations were Azerbaijan, Austria, Holy See, Switzerland and Cabo Verde. Specific recommendations required that GoE secure immediate reparation and protection to victims of sexual and gender based violence (SGBV). Another specific recommendation called on the GoE to guarantee equal treatment of all ethnic groups in Ethiopia.

Notwithstanding the recommendation requiring prosecution of violators of SGBV, the Ethiopian law does not provide for any kind of civil remedies against domestic violence and SGBV (Fite, 2014). Victims and survivors of domestic violence and SGBV cannot acquire protection order, financial or other reparation relief, custody order, shelter, habitation order or medical benefits because there is no policy or law that provides for specific civil remedies for the victims and survivors.

The GoE has also not brought itself to a place where it would ably deal with issues of equal treatment. Arguably, the federal structure is responsible for many communal and identity conflicts (Temesgen, 2015). These conflicts are associated with issues related to self-determination or secession, the politics of land, resource sharing, political power, representation, identity, citizenship, ethnic and regional boundaries and others (Temesgen, 2015). The drawing of boundaries led to the generation of violent conflicts among various ethnic groups and almost in all border areas of regional states. Due to the protracted natures of border disputes, the Somali, Afar and Oromia regions established permanent bureaus dealing with border affairs (Temesgen, 2015).

In the 2014 review, the number of recommendations dropped from 12 to five (5) with Democratic Republic of the Congo (DRC), Germany, Bolivia, Nicaragua and Portugal recommending. In a specific recommendation, GoE was requested to avert discrimination and societal stigma against persons living with disabilities (PLWD) and persons living with HIV/AIDS (PLWHA). Societal stigma and discrimination against PLWHA continued in the areas of employment, community integration and education. These groups of persons continued facing difficulties in accessing various services (US, 2017). On prevention of discrimination and societal stigma against PLWD, the constitution does not speak of equal rights of those living with disabilities but prohibits discrimination against persons with physical and mental disabilities in employment (US, 2017). It is hard to determine whether Ethiopia had improved in the observance of such anti-discrimination rights.

On a positive note, the GoE during the period launched awareness formation and mobilization campaigns on women's social and political rights and gender mainstreaming analysis that have included judicial bodies concerning gender based violence (GBV). Additionally, in 2012, a crisis centre for victims of sexual violence was set up in Addis Ababa. Through this crisis centre, victims of SGBV can now access a triad of services that include – but are not limited to – physical, psychological and legal support. The legal support

offered by the crisis centre includes pro bono services. Grounded on this yardstick the government plans to establish similar centres in other parts of Ethiopia to offer the same services.

The Ethiopian Human Rights Commission (EHRC) reported to have started 111 free legal aid centres throughout the country to offer legal aid to the utmost at risk groups free of charge. By 2012, GoE reported that in excess of 12,000 people, mostly vulnerable groups, had received different forms of free legal aid assistance from the legal aid centres from the time when the centres were started in 2010 (UNDP, 2011). The GoE is also implementing the 2012 National Strategy on Elimination of Harmful Traditional Practices which was distributed in Regional States and City Administrations. The Ministry of Justice and the Ministry of Women, Children and Youth Affairs in collaboration with UN Children's Fund (UNICEF) started a centre for the investigation and prosecution of violence against children at the First Instance Court in Addis Ababa (HRC, 2014).

As part of its success, GoE reported that it had established a national coordinating body to work with the community regarding violence against children, the legal regime and its effects. This national body constitutes of judicial administration organs. To make the investigation and prosecution of offenders very effective the GoE also reports different measures were taken such as establishing Victim Friendly Benches in Addis Ababa, Adama, and Awassa courts. In giving free legal aid service and psychiatric services for victims, the government also has reported that it has created several juvenile justice offices at Regional and Federal Courts. Child justice and rehabilitation centres are also under operation.

2.4.4. Analysis of recommendations on prevention of torture and ending extra judicial killings

In its 2009 review, Ethiopia received six (6) recommendations touching on prevention of torture and extra judicial killings. The recommendations came from Finland, Sweden, USA, Ireland and Norway. In 2014 the recommendations shot up to 22 with Bhutan, the Russian Federation, Paraguay, Venezuela, Italy, Mexico, Norway, Djibouti, Nigeria, Somalia, France, Madagascar, Cabo Verde, Portugal, DRC, Chile, Kyrgyzstan, Finland, Switzerland and Spain making the recommendations.

The UN Committee Against Torture (CAT) in 2010 reported that it was alarmed about frequent, continuing, and regular claims with regard to the routine use of torture security

forces against those that are opposed to the EPRDF regime in one way or the other (Committee Against Torture, 2010). The torture happens in various places of detention, including police cells, prisons, military bases and other hidden places of detention (Committee Against Torture, 2010). Arrests and torture of large populations of ethnic Oromos (thousands as reported) also occurred in large scale (US, 2016). The government had accused thousands of the ethnic Oromos arrested of terrorism,

Ethiopia has not made efforts to report on efforts it is doing towards prevention of torture and protection of HRDs despite it receiving vast recommendations in its 2009 review and many more in the 2015 review. The GoE continues to indiscriminately detain and prosecute HRDs, journalists, bloggers and peaceful protestors under various provisions of the ATP (Amnesty International, 2017). Others faced intimidation, threats and arbitrary arrests as a result of their work on the Oromo protests. Even after the second review of Ethiopia, bloggers allied with the Zone 9 collective were arrested and charged with terrorism and released, almost two years later. On December 19, 2015, Fikadu Mirkana and on December 25, 2015, Getachew Shiferaw, who are a reporter and editor in different media stations were also arrested in relation to their work covering the Oromo protests.

2.4.5. Analysis of recommendations on free and fair elections

The GoE in 2009 received only three Recommendations with regards to free and fair elections from the United Kingdom (UK), Canada and Norway who urged the GoE to ensure free and fair elections in 2010 including through full operation of the electoral Code of Conduct. This did not happen since the 2010 elections proved worse than the 2005 elections where intimidation and arrests of opposition leaders took place. Opposition leaders were also denied permits to hold rallies and meetings in the country.

In a specific recommendation, Canada asked the GoE to see to it that there were systems for addressing grievances ahead of the elections. This recommendation was triggered by the 2005 experience where 200 protesters were killed in election related demonstrations. Instead of putting up appropriate mechanisms for addressing grievances the GoE enhanced both online and physical surveillance of dissident voices, including opposition leaders, journalists, individual bloggers, NGO workers and HRDs. Election observers in the period were also silenced. The elections ended up having the ruling EPRDF win 500 of 547 parliamentary seats while any contests of the results of the elections muzzled.

In 2014, the recommendations with regard to a free and fair electoral process increased from three (3) to eight (8). The Holy See, Canada, Nigeria, Sri Lanka, Equatorial Guinea, Malaysia and Afghanistan made the recommendations. Canada was making the same recommendation for the second time asked that the GoE required that the GoE takes necessary measures for citizen participation in political processes ahead of the 2015 elections, including allowing every political actor to have unconstrained access to use of all available forms of media for political campaigning that would enable a level playing field for all political parties. This was not to be the case in the elections as CSOs that previously monitored elections were not allowed to conduct election observations. International groups such as Carter Centre were only given restricted mandate with regards to election observations.

Independent media was also gagged while threats and intimidation of journalists persisted as many were arrested for their editorials. Freedom of assembly was also curtailed with gatherings forcefully dispersed. In most cases the organisers of the gathering who are the political leaders arrested and charged with unrelated offences.

Notably, Ethiopia's first and second reviews have happened short of a year to elections and there have been strong recommendations as listed calling for measures to enable an electoral process that allows full participation of citizens and all other actors in a better way than the 2005 elections. In 2010, EPRDF won the parliamentary seats by 99.6% in a largely flawed election. Problems that faced the opposition lack of access to funding, rigorous registration process and intimidation and arrests that kept members of the opposition busily engaged at the expense of participating competitively.

In May 2015, despite an increased in the number of recommendations calling for free and fair elections, the conditions for the participation of the opposition were worse than in 2010. No foreign observer was allowed to observe, with the EU making it known that it would stay out of the polls because GoE had ignored their recommendations following the previous elections. EPRDF was declared the winner in the general elections having garnered close to 100% of the vote. The 100% represents 546 out of the 547 seats in parliament that EPRDF and its regional allies won.

On a positive note, after recommendations from Sri Lanka, Equatorial Guinea, Malaysia, and Afghanistan in the 2014 for Ethiopia to improve the participation of women in policymaking, Ethiopia has had a 20.1% increase in its share of women in parliament from between 2001 to

2011. In the 2015 general elections, 212 out of 547 were women, representing 38.8% members of parliament in the lower house by any standard worldwide this is a positive outlook in as far as gender parity is concerned. In the upper house, 49 out of 153 members are women; representing 32.0% of members. This is an improvement from 2010 when women representatives in both houses was at an average 21%.

CHAPTER THREE

KENYA AND THE UNIVERSAL PERIODIC REVIEW MECHANISM

3.1. Introduction

The Government of Kenya (GoK) is a democratic republic. The President of the republic of Kenya unlike in the Ethiopian system is the head of state and also heads the government in accordance with a new constitution passed in 2010. As head of government, the president chairs the cabinet in the exercise of their executive power in the executive branch of government. The cabinet is composed of people chosen from outside parliament. Previously though, the president has appointed members of parliament to cabinet position which required them to resign from their elective posts. Legislative power is vested exclusively in Parliament. This section will discuss the socio-economic position of Kenya before the UPR and discuss the status of human rights before the UPR set in and after.

3.1.1. History of Human Rights in Kenya

Since Kenya gained its independence from colonial rule in 1963 it has had four presidents. In 1969 Kenya became a *'de facto'* single political party State after great opposition of the government coming from the former vice president then (Fage, Crowder, & Oliver, 1984). When the first president of Kenya, Jomo Kenyatta died in 1978, Daniel Moi took power. A coup attempt by the Kenyan air force in August 1982 was terminated making Moi push Parliament to make an official declaration that Kenya was a single political party State whereas the ruling party, the Kenya African National Union (KANU) became the only legal political party. Moi started clamping down on dissident voices in the 1980s and early 1990s, forcing many who were critical of the government to face intimidation, torture and incarceration. Many others fled into exile, and the press was tightly controlled. Parliamentary elections were held in 1983 and later in 1988 under the one party rule.

In a series of other laws that gave the president a lot of powers, in 1987, Parliament amended the constitution for another time to give Moi the power to dismiss senior judges and civil servants. Despite some of these amendments such as Kenya being a one party State and

power to dismiss senior civil servants and judges were repealed in the 1990s as the executive branch continued to exercise extensive control over the legislator and the judiciary using a system of patronage and intimidations. These repressive propensities gave birth to rebellion from groups of prominent politicians, lawyers, academician and even university students, many of who were arrested, detained incommunicado and many imprisoned against harsh sentences under Preservation of Public Security Act (Cap. 57) of 1987. Few privileged dissidents found their escape into exiles. Despite this, the push for a multiparty democracy continued.

In December 1991, Moi, decided to allow multiparty politics after yielding to pressures from within and outside. Human rights violations through arbitrary arrests and detention did not automatically end with the introduction of a multiparty system in Kenya. Academics, university students and quite a lot of opposition political leaders were arrested in 1992 for apparently spreading unsubstantiated reports about a conceivable military coup against the government (Canada, 1992). This repressive leadership matched with rebellious quests from opposition members for a change of constitution continued with Moi winning the 1992 and 1997 presidential elections. In 2002, Moi announced that he would not contest in an election that saw opposition first president, Mwai Kibaki elected.

During Kibaki's years various freedoms were respected, especially the civil liberties. All freedoms expanded tremendously within the period. The period was however marked with political tension in the aftermath of the 2007 general elections where the results of the elections were contested leading to post elections violence (PEV) in many parts of the country. The PEV necessitated mediation and establishment of various commissions of inquiry including the Commission of Inquiry into Post-Election Violence (CIPEV).

The CIPEV which was popularly known as the Kriegler Commission was set up to investigate causes of conflict and make recommendations on addressing grievances. It was through this process that the constitution making processes was revisited and a constitution passed and promulgated in August 2010. The Constitution of Kenya is progressive in as far as positive impact on the socio-political life of Kenyans is concerned. Kibaki's term came to an end in 2013 and he was replaced as president by Uhuru Kenyatta.

The constitution provides for an expansive Bill of Rights. In Article 22 provides an avenue for any member of the public to petition courts of law on violations of rights in public

interest. The constitution also establishes several independent democratic institutions that are tasked with promoting human rights, good governance and democracy. These commissions are:

1. Kenya National Commission on Human Rights (KNCHR);
2. Judicial Service Commission (JSC);
3. Independent Electoral and Boundaries Commission (IEBC);
4. National Land Commission (NLC);
5. Parliamentary Service Commission (PSC);
6. Commission on Revenue Allocation (CRA);
7. Public Service Commission; and the Salaries and Remuneration Commission (SRC).

According to a World Bank Group economic report in March 2016, Kenya's economic performance growth rate stretched by 5.7% in the third quarter of 2016 compared to 5.8% in the same period in 2015. Kenya has experienced a myriad of challenges between 2010 and 2016, including terrorist attacks between 2013 and 2016. In September 2013, almost 70 people were killed at the Westgate Shopping Mall in Nairobi. In June 2014, another 48 died at Mpeketoni, Lamu County. In April, 2015, 148 people, mainly students, were killed during an attack at Garissa University College and several attacks in North Eastern region in 2016.

Kenya has – since independence – signed and ratified more than 49 treaties besides acceding to nearly 87 others. The GoK has also signed and ratified the seven major treaties just like Ethiopia. Kenya has also endeavoured to submit State reports and present itself to the various committees of the treaties for review. In 2015, GoK submitted to the ACHPR, its combined 8th to 11th periodic report covering the period 2008 – September 2014 (GoK, 2015). Despite all these, Kenya has been unwilling to implement recommendations and decisions of the ACHPR in three decisions that the Commission gave in favour of the applicants.

3.2. The State of Civil and Political Rights in Kenya

Kenya has a Judiciary that many see as independent and impartial. The appointment of judges is by and large transparent. This includes the process of the appointment of the Chief Justice where in May 2016, the High Court ruled against several amendments to the Judicial Service Act that would have given the president powers to appoint the Chief Justice (Kadida, 2016). However, Kenya continues to struggle with rule of law. Senior government officials routinely

act contrary to the constitution without any consequences. Many of these officials, including cabinet secretaries, have been implicated in grand corruption but continue to avoid any legal repercussions. In the same vein, several high profile crimes, including the murder of a prominent businessman, Jacob Juma, have gone unpunished. Many of these high profile killings have allegedly been linked to highly trained criminals-for-hire within the state security services.

3.2.1. Freedom of expression

While the GoK does not actively seek to limit open private communications and discussions, existing laws give state authorities wide discretion that can be used to limit open, free private discussion and freedom of speech. In October 2015 Parliament passed the Parliamentary Powers and Privileges Act, which bars journalists from maligning the legislature and limits their ability to report on parliamentary proceedings. In January 2016 the Cabinet Secretary for Interior, issued a unilateral unconstitutional directive banning the publication of images of victims of Al-Shaabaab terror attacks victims. This was followed by the arrest of two journalists who were charged under Section 29 for the Information and Communication Act (KICA), which bans improper use of a licensed communications system.

3.2.2. Freedom of association and assembly

The constitution of Kenya and existing laws require organizers of public meetings to notify local police in advance. The Kenya Police Service has no power to prohibit public meetings. However, police have used excessive force against political protestors and vulnerable populations such as immigrants, ethnic minorities, and incarcerated persons. In 2016 police reacted with a heavy hand to protests led by the opposition killing at least five demonstrators. The GoK tends to respect the constitutional provision for freedom of religion. However, anti-terror operations against al-Shabaab have left Muslim youths particularly exposed to state violence and intimidation. Despite being known within the region to have a vigorous civic space where political parties, CSOs, the media, and various social groups interact in a relatively accommodating legal and institutional environment, a lot of clawback has happened to Kenya's civic space since 2013.

While the constitution of Kenya protects the freedom of movement, employment, and choice of resident, several practical considerations limit Kenyan's ability to exercise these rights. Security is one such concern. Following repeated attacks against non-Muslims in North-

Eastern parts of the country, many Kenyans, including civil servants such as teachers, have chosen to avoid working in other parts of the country. Another concern is ethnicity. After the post-election violence in 2007 and 2008, many Kenyans retreated to their respective ethnic reserves, a fact that limits mobility across the country (Stewart, Catrina, 2016).

3.2.3. Access to justice

Article 48 of the constitution provides the opportunity for any person living in Kenya to access the justice system and for the access not to be hindered by unreasonable legal fees. This provision sets ground for the rights for every Kenyan to find justice through the available systems. In part of the more traditional way to actualise access to justice, Kenya has adopted and is actualizing the use of alternative dispute resolution (ADR) in solving disputes. ADR which may also include other traditional dispute resolution mechanisms are acknowledged within the laws of Kenya. Having mentioned available systems, in the exercise of judicial authority, *Article 159 of the constitution* enjoins the promotion of ADR including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms through courts and other tribunals (Muigua & Kariuki, 2013). The GoK has also enacted laws that are progressive in ensuring access to justice such as the Small Claims Court and the *Legal Aid Act*.

The GoK has reported as well to be working to ensure better access to judicial services by setting up more courts to ensure that courts are reasonably close to the people. Setting up more courts has meant that litigants do not have to travel far to access justice. Kenya has also set up a Judiciary Transformation Framework that focuses on the delivery of justice through addressing issues of court users such as right to the right to expeditious resolution of disputes and that of legal representation. These rights are intrinsic to the principles of law and natural justice. In Kenya, the judiciary has been working towards improving the speed and affordability of justice, raising public understanding of the law and court procedures and promoting public participation through the Court User Committees that have been very valuable in ensuring citizens at the community levels have the basic information of the courts of law and interact with judicial officers.

3.2.4. Prevention of torture and ending extra-judicial killings

Despite constitutional safeguards protecting civil liberties, Kenya's democracy has been substantially impaired by stubborn and grave abuses by the security services. The abuses has

often justified in the context of combatting crime and terrorism. Kenyan citizens continue to be subjected to regular brutality from national and county government security forces but mostly the regular police. Cases of torture in custody and extrajudicial killings are reported consciously. Abuses by specialized units like the Anti-Terror Police Unit (ATPU) have gone unpunished, despite widespread condemnation from the civil society. In the first eight months of 2016, 122 civilians had been killed by police, a 7% increase from the same period in 2015. Kenyans also became exposed to terrorist attacks like the attack in Mandera on 25 October 2016 that targeted a guesthouse and left 12 dead. Over an eight-month period in 2016, Human Rights Watch documented 34 cases of extrajudicial killings and enforced of forcible disappearances of suspected al-Shabaab sympathizers in Nairobi and the Muslim-majority North-Eastern and Coastal regions of the country (HRW, 2016). The blatant murder of human rights lawyer, his client and driver also confirmed cases of extrajudicial executions by security personnel. Many other Kenyans have died in the hands of police officers.

3.2.5. Free and fair elections

The history of Kenya elections has been tainted by violence or disenfranchisement of certain populations of people, mainly, based on ethnic lines. Nearly all elections since multiparty resumed in 1992 have been challenged in court. The 2010 Constitution of Kenya however provides more comprehensive electoral process than the previous constitution. The constitution gives the explicit right of each citizen participate in electoral process whether as a political aspirant, a voter or both. On parity in representation, the constitution also requires that – before the elections – parties submit party nomination lists to ensure extra seats for special representation that includes women, youth, persons with disabilities and labour.

The constitution also underpins the value and privilege entrenched in the right to vote for leaders through democratic elections. This has largely been the case in Kenya. The 2013 elections – for the first time – provided Kenyans with the opportunity for citizens to elect the representatives in five key positions in the country. These elective offices are the president and his deputy; county governor; county senator; county woman representative to the national assembly; constituency member of parliament; and member of county assembly.

The constitution also provides for election dispute resolution. The constitution in its *Article 87* requires speedy and fair resolution of electoral disputes. The process allows any citizen of Kenya to make an application to the Court in dispute of announced election results within 28

days from the time the IEBC declares them. The same does not apply to a presidential petition which has a different petition approach. Further, dispute resolution mechanisms are also allowed in electoral issues with the *Elections Act, 2011*, providing for it as is also with *Article 87* of the constitution. In the 2013 presidential elections, the opposition party petitioned the Supreme Court of the Republic of Kenya contesting the electoral win of Uhuru Kenyatta. The petition was dispensed with within a constitutionally allowed timeframe of 14 days after the petition.

3.3. Recommendations by the Universal Periodic Reviews Mechanism

The GoK submitted and was reviewed before the UPR mechanism in May 2014. This was the first cycle of review by the UPR Working Group for Kenya. Kenya received a total of 150 recommendations during this review. Out of the 150 recommendations that were made, Kenya accepted 128; postponed decision on 15 and rejected seven (7). Kenya postponed making decision related to recommendations that touched on the ratification of human rights instruments to which Kenya has not ratified. This could have been a calculated step by the Attorney General since *Article 2 (6)* of the constitution has made Kenyan a dualist State in as far as domesticating instruments that it has ratified.

Kenya's human rights performance was again reviewed by the UPR Working Group in January 2015, at the 21st Session of the HRC in Geneva, Switzerland. This was the second cycle where the UPR Working Group made 253 recommendations to the Government of Kenya, designed to ensure that the Kenyan people enjoy their human rights and are free to exercise their fundamental freedoms to the fullest. Out of the 253 recommendations, Kenya accepted 192 and rejected.

3.3.1. Analysis of recommendations on freedom of expression

At its first UPR in 2010, Kenya accepted 12 recommendations on the right to freedom of expression. At its second review in 2015, these recommendations had not been adequately implemented. There is reported an increase in the incidence of threats and attacks, legal restrictions and other numerous challenges on, especially human rights defenders (HRDs) working in on extractive rights, labour rights, land rights, monitoring security forces brutality and ant-corruption. HRDs working on these issues can find themselves being followed, threatened and/or attacked.

Reports of arrests of HRDs on false claims were also made during the implementation period. Most of the HRDs were arrested while carrying out their human rights work. A prominent human rights lawyer who had been working on several sensitive human rights cases related to excesses by the security forces and other authorities. Peter (Wanyonyi Wanyama) wanyama was shot dead in 2013. Another renowned human rights activist who documented the use of excessive force and other human rights violations against demonstrators (Hassan Guyo) was also shot dead in the same year. No successful prosecutions are yet to happen in both cases.

Article 34 of the Constitution of Kenya provides for the freedom of speech and press. Trying to clawback on the constitutional safeguards, the parliament enacted the *Kenya Information and Communication Act (KICA)*, 2013; *Media Council Act, 2013*; *Parliamentary Powers and Privileges Act, 2014*; and *Security Laws Amendment Act (SLAA)*, 2014, which all included punitive provisions against the media. *Section 90 of KICA* allows for the search of broadcasting establishments and seizure of equipment, equipment and section 17 provides for high fines and imprisonment for offences related to the use of radio frequencies. In January 2016, four individuals were detained on the basis of section 29 of KICA for improper use of a licensed telecommunication gadget as a result of their online commentary, which violates on the individuals' freedom of expression as safeguarded under the constitution.

3.3.2. Analysis on recommendations on freedom of association and assembly

In Kenya, the constitution provides safeguards for freedom of assembly and association as fundamental rights. The GoK only received two (2) recommendations from Norway and the Czech Republic in 2010 on this theme. The attempted de-registration of hundreds of NGOs in December in 2014 happened within the 2010 recommendations implementation and follow-up period highlighting a worrying trend. 2015 saw subject recommendations shoot from two to at least nine (9). Sweden alongside USA, Norway and Denmark asked the GoK to fully implement the 2013 *Public Benefit Organization (PBO) Act*, which is aimed at safeguarding rights and space for civil society, in line with the constitution.

The UK, Canada, Netherlands, encouraged the GoK to review all new laws so as protect the role of an active civil society. Kenya has an energetic and dynamic civil society and NGO sector. On the other hand, the GoK seems not interested in enabling the sector to thrive. Through proposing harmful amendments, the National Assembly in Kenya has attempted on numerous occasions to make amendments to the existing NGO law that are aimed at

weakening sector actors in their programming. The proposed amendments are aimed at consolidating government control over the sector. The GoK has also increasingly accused the sector of serving “foreign interests,” especially those that supported the International Criminal (ICC) trials against President Uhuru Kenyatta and his Deputy William Ruto. The government has also accused the civil society and NGO sector of funding terrorist activities.

3.3.3. Analysis of recommendations on access to justice

In its 2010 review, Kenya only received three recommendations with regards to access to justice for vulnerable groups and provision of legal aid. Botswana urged GoK to address challenges with regard to achieving respect for the rule of law and good governance as Senegal recommended for the improvement of the situation of the most vulnerable groups while Bolivia requested that Kenya implements the recommendations and decisions of its own judicial institutions and of the ACHPR, particularly those concerning to indigenous peoples’ rights.

In 2015, recommendations on access to justice for vulnerable groups and provision of legal aid went from three to six. Since the UPR process, GoE has institutionalised the provision of legal aid. The GoK developed a National Legal Aid and awareness Programme, (NALEAP). The National Assembly is in the process of passing the *Legal Aid Act*, which was developed by NALEAP and covers legal counsel, civil and constitutional cases.

To be eligible to receive the legal aid, the recipient has to be a person that cannot afford to pay for the services. Supporters of the scheme are still pushing for there to be regulations similar to schemes developed in other jurisdictions having that have a general cut-off point for consideration of legal aid recipients based on resources. The cut0off will determine whether an applicant gets the legal aid, does not get the legal aid or will be required to pay a fee as a contribution. Through the Legal Aid Act advocates for alternative dispute resolution mechanisms are required tp speed up the justice process and reduce congestion in courts.

3.3.4. Analysis of recommendations on prevention of torture and ending extra-judicial killings

In calling prevention of torture and ending extra-judicial killings, GoK received 25 recommendations in 2010. France, Netherlands, USA, Canada, Zimbabwe, UK, Finland, Spain, Austria, Czech Republic, Belgium, Slovakia, Denmark, Botswana, Lesotho, Rwanda,

Ireland, Chile, Lithuania, Morocco, Brazil, Mexico, Australia, Japan, Sweden, Holy See, Norway and Botswana were among the recommending States. In 2015 the recommendations reduced to 23. This drop could be attributed to the fact there was a reduction in cases of extra judicial killings during the period between 2010 and 2015.

Despite the 2010 and 2015 recommendations, Kenya's democracy is substantially impaired by persistent and grave cruelties by the authorities, often justified in the context of combatting crime and terrorism. Legitimate safeguards against violence and ill treatment; have not prevented systematic aggression meted against Kenyan citizens by State authorities, most habitually, the police. Police have used excessive force against political protestors and vulnerable populations such as immigrants, ethnic minorities, and incarcerated persons. This section discusses these abuses in detail while offering suggestions for curtailing them and ending the impunity that frequently protects their perpetrators.

The expanded bill of rights in the constitution created safeguards against arbitrary arrest in its *Article (29(a))*, detention without trial (*29(b)*), subjection to any form of state or non-state violence (*29(c)*), subjection to physical and psychological torture (*29(d)*), or treatment or punishment in a cruel, inhuman or degrading manner. However, there were numerous violations of these protections during the review period. In a 2013 survey by the Independent Policing Oversight Authority (IPOA) that polled 5,082 households in 36 counties, 33% of respondents mentioned that they had experienced a form of police malpractice within the year (IPOA, 2013).

Close to 60% of incidents of torture in Kenya are reported to have been committed by police officers. 126 people were killed by police from January to December 2015. Out of these, 97 were summarily executed, 20 were shot to protect life and 9 were shot under unclear circumstances. Violations linked to counterterrorism operations were also reported. A September 2015 report of the KNCHR documenting human rights violations in the post 2013 fight against terrorism in Kenya reports over 120 cases of police against citizens that. Out of the 120 cases, 25 were of extrajudicial killings and 81 were on enforced disappearances (KNCHR, 2015).

3.3.5. Analysis of recommendations on free and fair elections

With regards to free and fair elections, Kenya did not receive any specific recommendations its first UPR in 2010, save for general recommendations from the UK and Republic of Korea

calling on Kenya to have fair referendum process. The GoE implemented the recommendation since Kenya conducted a successful constitutional referendum that saw the Kenya finalise and promulgate its 2010 constitution in August of the same year that the recommendations were given. In 2015, recommendations from mainly focussed on gender and minority representation in legislative positions as opposed to conduct of elections.

The situation of Kenya within the period of the recommendations has improved. The Kenyan constitution and the laws enacted thereafter such as the *Elections Act, 2011*, created an electoral framework largely capable of facilitating regular, free and fair elections. An independent electoral management body, the IEBC, was established. Electoral laws were implemented and the principle of universal suffrage observed. The 2013 elections and all subsequent by-elections were by secret ballot. Both domestic and international observers monitored the election. Nearly all observers found the 2013 elections to have been free and fair despite serious challenges, such as widespread misuse of public resources, violence and intimidation during political party nominations, and the failure of the Electronic Voter Identification (EVID) and electronic transmission systems, which cast suspicion on the tallying process.

Special groups are all recognised in the constitution as deserving of constitutional protection. However, Kenya still has challenges in women's political representation. Female representation in legislative organs as of 2016 was only 9.8%, by far, less than Rwanda, South Africa, Tanzania and Uganda who have all managed at least a 30 - 60% female representation in their parliaments. In December 2012, The Supreme Court of Kenya ruled that implementation of gender equity should be done in a progressive manner and not with immediate realization. The ruling was a blow to the gender parity supporters and women rights movement/s that wanted the affirmative action right for women realised. The court also gave parliament a deadline of August 27, 2015 to pass laws regarding how gender equity would be achieved in the general election in 2017. This was not done as was directed by the court. In the implementation of this recommendation Kenya has not implemented the recommendation as required in certain areas such as legislating on gender parity in elective positions.

Ethnic parity and representation of the minorities in elective offices and political appointments remains a concern in Kenya. In as much as it is difficult to analysis ethnic minority representation, because ethnicity is both sensitive with the devolution process

ethnicity has taken a different angle. County administrative territories are based on post-independence Kenyan districts that are dominated by single ethnic groups. Dominant ethnic group of each county is overrepresented in its county government composition. By the time of this research, all the governors in Kenya were male and appointed county executive committees with a bulk of members from their own ethnicities.

Labour migration and economic opportunity was also proven to have resulted in mixture of ethnic groups making local politics fixated with the question of who counts as indigenous and who is a foreigner. Spates of ethnic bigotry; political party zoning; border conflicts; and contention over land and other resources have been reported in more than 17 counties that the NCIC has identified as at risk of violence in 2017.

CHAPTER FOUR

ETHIOPIA AND KENYA: COMPARATIVE ANALYSIS

4.1. Introduction

After the delving into the human rights history of Ethiopia and Kenya, and further analysing how they have implemented the recommendations they received from their peers, this chapter seeks to do a comparative analysis of the performance of the two States in human rights observance. The chapter will discuss how Ethiopia and Kenya compare in the observance of civil liberties already identified and in the execution of recommendations they received.

4.2. Ethiopia and Kenya: Comparative Analysis

The GoE underwent its first human rights review under the UPR in December 2009 where it received a raft of 142 recommendations from recommending states. During adoption of the report in the plenary on March 19, 2010, the GoE accepted: 98 recommendations given; rejected 32; and kept 12 pending. Only 23 recommendations were on specific on civil liberties; 53 were on other rights; while the remaining 22 were very general (HRC, 2010). Meanwhile, the GoK presented its first UPR report in May 2010. This was when Kenya was first reviewed under the UPR mechanism by the Working Group, marking Kenya's first cycle of review.

Out of a raft of 150 recommendations that were made to Kenya during this review, GoK accepted 128; postponed decision on 15 and rejected seven. Most recommendations that Kenya deferred were those touching on ratification of those human rights instruments to which Kenya had not ratified (GoK, 2015). From the onset, GoK accepted more recommendations from peer States to improve on its human rights as compared to GoE.

During GoE's second cycle in May 2014, Ethiopia received a total of 252 recommendations. The increased number of recommendations could perhaps be attributed to increased familiarity with recommending states and the fact that GoE was also being reviewed for second time. States had interacted more with the mechanism and had also interacted more

with the state under review. The increase could also be attributed to the fact that Ethiopia state of implementation of recommendations it accepted during the first review was not up to standard. Out of the 252 recommendations received, GoE accepted 199. This signifies an increase in the number of recommendations accepted as well from 98. About 47 of these accepted recommendations relate to the broad category of civil and political rights. This signified a reduction in the number of recommendations that Ethiopia accepted with regards to civil and political rights (HRC, 2014).

Kenya's human rights performance was again reviewed by the UPR Working Group in January 2015, at the 21st Session of the HRC in Geneva, Switzerland. This was the second cycle where the Working Group presented to the GoK 253 recommendations. Out of the 253 Recommendations, Kenya accepted 192 and rejected (HRC, 2015). Kenya received slightly less recommendations than Ethiopia and also accepted slightly less recommendations than Ethiopia.

4.3. Comparative Analysis the Implementation of Recommendations

This study ascertains that the number of recommendations on civil and political rights issues received by both Ethiopia and Kenya increased during the countries' second review. The recommendations in the second UPR for the countries were also more specific and directed at particular government arms. This particular positive shift in practice showed that many recommending States had gained more experience and were keen at proposing recommendations that were measurable and time bound.

The increased in the number of recommendations received by both countries could have as well meant that Ethiopia and Kenya did not effectively implement recommendations proposed during their first review and that the recommending countries had to reiterate what had been already proposed. This is how Kenya and Ethiopia compared on the execution of given recommendations with regards to civil liberties that the study has analysed.

4.3.1. Freedom of expression

Citizens of Kenya enjoy freedom of speech, independent media, independent blogging, online freedom and other forms of freedom of expression as compared to their Ethiopian counterpart. In as much as the GoE has on numerous occasions attempted to curtail on these freedoms through retrogressive legislations, the attempts have been challenged in courts of

law where the courts have reinstated the freedoms. In Ethiopia, the GoE has laid control in all forms of media and controls the only single telecommunications provider making it hard for its citizens to enjoy these freedoms that are safeguarded within the Ethiopian constitution. The GoE has also a lot of influence over judicial processes that citizens are not at liberty to challenge any form of curtailment to the freedom of expression.

Kenya on the other hand has had very open environment that allows for free expression. Individuals and media have had the space to operate and air their opinion even before Kenya went through its first review under the UPR mechanism and the coming into force of the Kenyan constitution in 2010. In fact the constitutional safeguards on rights only reaffirmed what the practice had been in as far as free expression was concerned.

Despite the space for Kenyans to freely express themselves, there have been several attempts by the GoE even within the UPR follow-up period that the State has attempted to limit these liberties through law and administrative actions. Such attempts have been contested in court where the courts have re-established the liberties. A good case in point was in 2014 when several sections of the Security Laws (Amendment) Act, 2014 were ruled illegal by the High Court in Kenya. The High Court found those sections outlawing certain freedoms of the media as illegal. The fact that the Judiciary has come out strong to defend free expression on itself makes Kenya's implementation of the recommendations better than Ethiopia.

4.3.2. Freedom assembly and association

Kenyans enjoys freedom to coalesce and relate on wide spectrum of issues more than their neighbours in Ethiopia. The *Constitution of Kenya* guarantees these freedoms which include freedom to picket (protest/demonstrate) for purposes of presenting appeals or petitions to government officials and other offices on grievances. Although the freedom has been limited on certain political activities such as opposition demonstrations in 2014 that were violently dispersed and a couple of others that have been violently dispersed by the police, the general right to peacefully and without arms, to gather, to protest, to picket, and to present petitions to public authorities has been allowed.

On numerous occasions the GoK has tried to clamp down on freedom of association through civil society organising. In 2014 and 2015, the NGO Coordination Board made several attempts at deregistering and/or freezing bank accounts of hundreds of NGOs including leading human rights groups like the Kenya Human Rights Commission (KHRC). These

attempts have always been upset whenever these organizations go to the High Court. The government has also been reluctant to commence the progressive *PBO Act* and instead proposed negative amendments that have also, been defeated twice before the National Assembly.

The GoE has also remained reluctant to its obligation to respect freedom of assembly, and association. Since 2005, Ethiopia has had intensive crackdown on dissenting voices. Ironically, the 2009 period when Ethiopia had its first UPR process also saw GoE enact an array of draconian legislation including the *CSP* and the *ATP*. These two laws have decimated the country's once vibrant human rights community and the independent media by criminalizing legitimate acts of dissent. These unrelenting attacks on critical voices has cast a profound climate of fear and severely restricted the ability of civil society and human rights activists to challenge government policy and action, and also to interact with each other and to engage citizens in any organized manner.

Local journalists have fled the country since and many international journalists deported. Freedom of assembly has also been hindered with government forces forcefully dispersing protesters. Deadly force was used to deal with Oromia and Amhara protesters in the aftermath of November 2015 protests that saw more than 1000 people killed over a period of almost one year.

While both Ethiopia and Kenya governments have had their share of trying to limit freedom to assemble and associate, in Kenya, the strong civil society has firmly ensured that the executive actions does not take away rights. The civil society has petitioned the court in most cases where these freedoms have been seen to be interfered with. The GoE on the other hand has interfered with these rights unhindered. In the Ethiopia system, the courts have been used to rubberstamp executive excesses in as far as these rights are concerned making Ethiopia's record in freedom of assembly and association bad. Kenya has therefore surpassed Ethiopia's performance in as far as implementation of recommendations on freedom of assembly and association is concerned.

4.3.3. Access to justice

Ethiopia has improved on its access to justice mechanisms for certain minority groups such as people living with PLWHA and people living with disability. The country has also made decreed proclamations that are harsh on SGBV and on discrimination of persons based on

disability, ethnicity or race at the work place. On the other side, Ethiopia also has thousands of citizens that are tried using lumped up charges under the ATP and others incarcerated without trial in the aftermath of the November 2015 protests. While Ethiopia has worked very hard to implement recommendations regarding access to justice for other sections of vulnerable groups, there are those that are especially political prisoners that cannot access the same justice.

In Kenya, the constitution provides for the rights of individuals to petition the court without cost on matters that are of public interest. The constitution also provides for the rights of an accused person and fair trial. The judiciary has been keen on ensuring that there is observance of that right by the police. The GoK has also attempted other forms of legal aid through the NALEAP. While there are cases where access to justice has been hindered or reduced in the guise of security where terrorism suspects are held for longer period of times without trial, this has not been on large scale. The case of hundreds members of Somali community who were detained without trial at a Kasarani stadium in Nairobi after Westgate terror attack in what the police termed as Usalama watch as criticized by many. Despite these, the rule of law system in Kenya protects access to justice much more than the Ethiopian system.

4.3.4. Prevention of torture and ending extra judicial killings

Since the promulgation of the ATP in Ethiopia, the GoE has used vague provisions within the proclamation to charge all manner of political opposition, journalists and individual dissidents. Currently there is a Cybercrime proclamation that also targets activist bloggers and HRDs who get tried on uncertain charges such as misuse of telecommunication equipment and find themselves tortured within the confines of the prisons. The GoE has also used lethal force to contain or disperse protesters on various occasions. The brutality that the GoE metes out on its citizens can be attributed to GoE's growing authoritarian posture since Ethiopia's most competitive elections in 2005 that ended in violence and protracted political crisis. It was thereafter that Ethiopia started passing many retrogressive laws.

In Kenya, the situation is not any much better with cases of torture, although very guarded reported. Organizations such as IPOA, IMLU and the KNCHR that attend to victims of torture have reported abuses within places of detention. Unlike Ethiopia where it is mostly political dissidents that are tortured, in Kenya suspects of terrorism and suspects of criminal activities are killed by the police in broad daylight. In a famous case in 2016, a lawyer, his

client and a taxi driver were found murdered after attending court. Though the police service through its spokesperson keep refuting claims of the service permitting systemic extra judicial executions alternative authorities prove otherwise. On that note, compared to Ethiopia, Kenya may be at par with Ethiopia in as far as cases of extra judicial killings are concerned.

4.3.5. Free and fair elections

In Ethiopia, the ruling EPRDF consolidated its strong grip on power by eliminating political opponents and other potential sources of dissent through a combination of violent crackdown and the use of repressive laws. EPRDF's 100% election victory in the 2015 parliamentary elections was the culmination of this consolidation sending a very strong message that the ruling party was determined to be the sole political force in Ethiopia for years to come, all these was despite there being numerous recommendations calling on the GoE to take necessary measures to enable democratic processes in advance of the 2010 and 2015 elections.

Kenya on its part has attempted to come up with better laws to comply with Article 81 and 82 of the Constitution of Kenya with regards to general principles of the electoral system. Despite Kenya's effort to have an IEBC, its credibility independence has been challenged a number of times including after the 2013 elections when the main opposition unsuccessfully contested the presidential election before the Supreme Court of the Republic of Kenya. The opposition then successfully pressed for the ousting of all the IEBC commissioner and amendment to electoral laws. Kenya's progress on its electoral reforms, though not perfect seems to have improved as compared to pre 2010 era. This alone attests to the fact that Kenya's electoral governance is much better than Ethiopia's.

CHAPTER FIVE

FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1. Introduction

From the comparative study, the GoE and the GoK have failed to fully implement recommendations that they receive with regard to civil and political rights. Even when they have attempted to implement these recommendations, both seem to focus on those that have little or no implications in as far as challenging their political existence. In implementing recommendations on access to justice for instance, the States would rather create programs that would ensure that vulnerable groups in the categories of women, PLWDs or PLWHAs are treated fairly and can access courts as opposed to making the same available for that political prisoner who has been detained on account of falsified charges for instance.

The spread of terrorist attacks and other related forms of insecurity globally has also made GoE and GoK justify their affronts and reasons to curtail rights. Such has been witnessed when governments have been reluctant to ensure that there is accountability within the security forces in ending extra-judicial killings; prevention of torture and protection of HRDs; and freedom of assembly, association and expression. Through this, both GoE and GoK – at different levels – have restricted peaceful dissent and embarked on the most intense crackdown on independent groups including HRDs. In such an environment, impunity for serious abuses such as torture that occurs by government authorities and other ill, inhumane or degrading treatment, enforced disappearances and extrajudicial killings then becomes a norm since it becomes one of the only institutionalised ways to deal with dissent.

To sum up, the GoE and GoK fail most on recommendations that call upon them to desist from curtailing individual liberties, especially so, the rights of citizens to assemble and register their protests on certain issues; form organised groups and speak openly. They, by the same token fail to guarantee accountability of security forces in response to accusations levelled against them on cases of torture and extra judicial executions. This means that they disregard recommendations on civil liberties. This chapter will discuss the findings of the study and make appropriate recommendations to stakeholders.

5.2. Findings

The GoE and GoK have failed to fully implement civil and political rights commitments they made in their first UPR reviews. Indications also show that they may also fail to implement successive follow up recommendations. With both States up for their third rounds of review before 2020, the stakeholders in the UPR mechanism have to try and cure some of the shortfalls as it is increasingly becoming a wasted process if States will continue disregarding recommendations they received after all work and resources go into the reviews and follow up.

Despite all these weaknesses, the study has determined that GoK has implemented more recommendations on civil and political rights than GoE. While Kenya has had its fair share of failing to implement recommendations especially to do with political representation and bringing to justice perpetrators of extra-judicial killings, there are a lot of progressive measures that it has taken to protect rights. It is after its first review process that Kenya promulgated a new constitution that is progressive and provides for a raft of rights under its bill of rights.

The Kenyan judiciary has been very progressive in its role of interpreting the constitution, thereby ensuring that excesses from the executive and legislature are checked. Kenya has also undertaken a lot of positive reforms with regards to its independent institutions and democratic institutions. Whilst a lot of these reforms are attributed to measures that the GoK had to take to address the matters that arose after the post-election skirmishes of 2007/2008, a lot of recommendations received during the period reiterated those measures.

The GoE on the other hand has continued to fail to implement recommendations and many times has been seen to even clawback on the rights that already exists within the constitution of the country. There are instances where laws such as the CSP have been passed with provisions that have stifled the operation of NGOs through curtailing their advocacy and fundraising activities. Other laws such as the ATP have also been used by security forces to perpetrate arbitrary arrest and detention of dissidents.

Ethiopia has also slipped back on political justice with instances where political elections have become worse since 2005 and worsened even after the UPR mechanism reviews. The same applies to deteriorating capacities of its independent and democratic institutions to work without interference from the executive. The NHRI in Ethiopia is one of such complacent

institution that does not speak on behalf of the citizens it should be representing any more. Notably, the environment of citizen participation in political has improved in Kenya as compared to Ethiopia due to efforts such as the UPR. More NGOs from Kenya participate in drafting shadow reports and advocacy for the review processes than those from Ethiopia. In fact, Ethiopia human rights activists who participate in advocacy face a lot of intimidation and threats from officials from the government.

5.3. Conclusion

Although the invention of the UPR mechanism is a positive step towards the implementation of universal human rights in every UN member State, certain of shortfalls may challenge its efficacy. First, the UPR is a reporting process that does not generally create firm obligations on the States. As such, UPR recommendations may be likened to soft law which are not binding. This means that the process only creates standards of several levels of influence, persuasion, and compromise which are integrated in promises between the UN member States but do not necessarily establish enforceable human rights and responsibilities (Murphy, 2010).

Recommendations from the UPR mechanism remain declaration of intention and by this fact alone, the realisation of the goal of the UPR mechanism to enhance human rights observance in each of States being reviewed may be questioned (Olsson, 2015). The HRC also has no coercive capacity to deter defiance. In the absence of an authoritative international authority, for that reason, the implementation of these obligations depends on the goodwill of each State.

This study has established that the UPR has fundamentally remained weak. It also remains an exercise of concession generated from the need to have an instrument that works for all UN member countries. The UPR mechanism approach has been to respect the reality of a consensus-based supervisory process for the UN member States in order to promote universal human rights norms. This study has also confirmed that States could reject or disregard valuable recommendations without fear of repercussions. This outcome leads to the question whether the UPR mechanism is still needed.

Many progressively solid and explicit recommendations that could cause essential human rights developments in the countries undergoing review seem not to have been implemented due to liberty given to the two States in decision making (unlike in treaty bodies mechanism

where the mandate holders do not have to rely on the governments' benevolence and concern in making findings and recommendations. Mandate holders in treaty body mechanisms put forward their recommendations for binding execution. In the UPR mechanism, States choose the recommendations they are pleased with, but even then, they face no real pressure in case they do not implement them.

Despite GoK recording a better performance than GoE in implementing recommendations on civil liberties, it still failed to implement a lot of recommendations received. Recommendations being the main result of the whole UPR mechanism, they have to be effected by States but from Ethiopia's and Kenya's first and second review process, it is evident that there is no elaborate mechanism by HRC to measure or appraise the implementation. There is neither a process to determine how human rights have improved or degenerated on the ground while dealing with States' under review. This further could undermine the UPR process.

5.4. Recommendations

To achieve the goal of a peer review that States commit to intentionally, it is incumbent on the States to appreciate this goodwill and make retrospect measures to improve on human rights. With regard to this study, the GoE and GoK should set up legislative, administrative and political reforms that safeguard in country implementation of recommendations given and accepted by them in order to attain human rights protection and promotion. The following are the recommendations from the study:

5.4.1. Establishment of National Universal Periodic Review Secretariats

Many governments such as Ethiopia and Kenya seem to be placing their implementation of the UPR recommendations mandate – just as it is with other treaty reporting – under the coordination of the offices of the attorney generals. While this is strategic, these offices at times lack the essential capacity to respond to all the issues appertaining to the implementation of the recommendations since the recommendations are very many and offices of the attorney general also have a lot of other legal work on their shoulders.

For governments to keep with the recommendations given, they have to make deliberate efforts to establish departments that would concentrate on the implementation of recommendation, reporting and follow up on the UPR mechanism. This will avert situations

where governments go to follow up processes with a lot of recommendations that they had accepted but have not implemented.

5.4.2. Human Rights Council to Establish Follow up Mechanism

In as much as the UPR mechanism is a consensual and cooperative model of State evaluation, energies must be put in monitor state compliance with international human rights obligations otherwise States will spend so much resources and time to travel to Geneva to conduct talkshop that will not benefit the citizens on the ground. The HRC should establish UPR follow up bodies within existing treaty bodies or special procedures to monitor status of implementation of recommendations related to their mandates with an effort to put pressure on governments that fail to implement peer recommendations to do so. The HRC should create mechanism/s for peer to peer follow up as processes that involve more participation of other State and non-state actors in the States being reviewed so as to play their human rights monitoring, response and where possible, oversight roles.

5.4.3. Human Rights Council to Provide Capacity Development to States

In Resolution 60/25, UNGA mandated the HRC to coordinate the UPR so as to enhance States' observance of human rights. The HRC has a big task of improving on its internal expertise and strategize on elaborate processes for facilitating assistance on capacity development to States that have undergone review to assist in effective and regular follow up of issued recommendations. The HRC could do this by using an approach that will be familiar with the State responsibilities to respect, protect, promote and fulfil human rights.

5.4.4. Human Rights Council to Provide Clear guidelines for Recommendations

Having looked at the socio-political environments in Ethiopia and Kenya, peer States that engage with these States have to be careful to note nuances in the two countries with regards to their historical and political challenges. Recommending States therefore have to issue measurable and implementable recommendations or word the recommendations in such a language that they are concisely logical. On the same token, the HRC should also develop criteria on how to draft recommendations so as to avoid the very ambiguous or general recommendations that are difficult to measure or that do not place particular obligations on States under review.

BIBLIOGRAPHY

- Arriola, L. L., & Terrence. (2016, January). Ethiopia's 100% Election. *Journal of Democracy*, 27, 77.
- Ateneo Human Rights Center. (2012). *The indigenous Peoples and the Universal Periodic Review. A Comiplation of Situationers on the IP's as Submitted to the (UPR 2nd Cycle, 2012)* . Makati: Ateneo Human Rights Centre. Retrieved from <http://www.unpo.org/downloads/427.pdf>
- Baird, N. (2015). he Role of International Non-Governmental Organisations in the Universal Periodic Review of Pacific Island States: Can 'Doing Good' Be Done Better. *Melbourne Journal of International Law*, 4.
- Bantekas, I., & Oette, L. (2013). *International Human Rights Law and Practice*. Cambridge: Cambridge University Press.
- Canada. (1992, March 1). *Restoration of Multiparty Government and Kenyans of Somali Origin*. Board of Immigration and Refugee. Retrieved 21 June, 2017, from Refworld: <http://www.refworld.org/docid/3ae6a80a28.html>
- Catherine, G., Makokera, & Steven, G. (2014). Promoting Peer Review as a Compliance Mechanism for Regional Integration. 1.
- Charlesworth, H. (2015). *The Complimentary Roles of States and Civil Society in the UPR Process*. Geneva: Australian Permanent Mission to the UN in Geneva.
- Charleworth, H., & Larking, E. (2014). *Human Rights and the Universal Periodic Review: Rituals and Ritualism* . Cambridge: Cambridge University Press.
- Charters, C. (2004). Universalism and Cultural Relativism in the Context of Indigenouse Women's Rights. *Human Rights Research Journal*, 10. Retrieved from <http://www.victoria.ac.nz/law/centres/nzcpl/publications/human-rights-research-journal/publications/vol-1/Charters.pdf>
- Chauville, R. (2015). In R. Chauville, & A. N. Hilary Charlesworth (Ed.). Cambridge: Cambridge University Press.
- Cowan, J. (2014). *The Universal Periodic Review as a public audit ritual: An anthropological perspective on emerging practices in the global governance of human rights*. (H. Charlesworth, & E. Larking, Eds.) Cambridge: Cambridge University Press.

- Cowan, J. K., Marie-Benedicte, D., & Wilson, R. A. (2002). *Culture and Rights: Anthropological Perspective*. (J. K. Cowan, D. Marie-Benedicte, & R. A. Wilson, Eds.) Cambridge: Cambridge University Press. Retrieved from <http://humanrights.uconn.edu/wp-content/uploads/sites/767/2014/06/CultureRightsIntro.pdf>
- De Schutter, O. (2014). *International Human Rights Law, 2nd Edition*. Cambridge: Cambridge University Press.
- Dos Santos, H. R. (2016). *The role of the Universal Periodic Review in advancing human rights in the administration of justice*. International Bar Association's.
- Draluck, E. (2010). Law, Politics and Obligations in the Universal Periodic Review: In Search of Effective Balance. 6 - 21.
- Federal Republic of Ethiopia, G. o. (2017). *Ministry of Foreign Affairs*. Retrieved November 23, 2016, from Ministry of Foreign Affairs website: <http://www.ethiopia.gov.et/government-structure>
- Fite, M. D. (2014, March). The Ethiopia's Legal Framework on Domestic Violence against Women: A Critical Perspective. *International Journal of Gender and Women's Studies*, 2, 56.
- Ford, J. (2016, April 28). The Risk of Regulatory Ritualism: proposals for a treaty on business and human rights. *The Global Economic Governance Programme*, 9,10.
- Freedman, R. (2011, August). New Mechanism of UN Human Rights Council. *Netherlands Quarterly of Human Rights*, Vol. 29/3, 289–323, 2011., pp. 291-299. Retrieved from <http://www.corteidh.or.cr/tablas/r26991.pdf>
- Freedom House Report. (2011). *Ethiopia Freedom in The World 2011*. Washington D.C.: Freedom House. Retrieved May 23, 2016, from <https://freedomhouse.org/report/freedom-world/2011/ethiopia>
- Freedom House Report. (2016). *Freedom in the World 2016 - Ethiopia*. Retrieved November 20, 2017, from <http://www.refworld.org/docid/57985a329.html>
- Frowein, J., & Wofrum, R. (2001). Domestic Impelementation of International Covenant on Civil and Political Rights Pursuant to its article 2 para. 2. *Max Planck Year Book of United Nations Law*, 5, 2001, 399 - 472.
- Glaser BG, S. A. (1967). *The Discovery of Grounded Research: Strategies for Qualitative Research*. New York: Aldine De Gruyter.

- Government of the Republic of Kenya. (2015). *Kenya: Combined 8th -11th Periodic Report, 2008 - 2014*. Nairobi: Government of Kenya.
- Government of the Republic of Kenya. (2012). *Universal Periodic Review of the United Nations Human Rights Council: National mid Term Report*. Nairobi: Government of the Republic of Kenya.
- Haocai, L. (2009). Development Security and Human Rights. *Beijing Forum on Human Rights* (p. 1). Beijing: China Society for Human Rights Studies. Retrieved from <http://www.chinahumanrights.org/CSHRS/2/P020130514539581875675.pdf>
- Hickey, E. (2012, May). The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground? A Critical Evaluation of the First Cycle and Recommendations for Reform. *ICL Journal*, 9.
- HRC Report. (2006). *A/RES/60/251; 13 IHRR 1195*. Geneva: OHCHR.
- HRC Report. (2010). *Report on the Working Group on The Universal Periodic Report: Ethiopia*. Geneva: OHCHR. Retrieved May 24, 2016, from http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.17_En.pdf
- HRC Report. (2014). *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*. Geneva: OHCHR. Retrieved from <http://www.refworld.org/pdfid/53e2036f4.pdf>
- HRC Report. (2014). *Report of the Working Group on the Universal Periodic Review: Ethiopia*. Geneva: OHCHR.
- HRW Report. (2015, 1 21). *Journalism Is Not a Crime*. New York: HRW. Retrieved from HRW Web site: <https://www.hrw.org/report/2015/01/21/journalism-not-crime/violations-media-freedoms-ethiopia>
- HRW Report. (2016, June 16). *"Such a Brutal Crackdown": Killings and Arrests in Response to Ethiopia's Oromo Protests*. Retrieved March 13, 2017, from HRW: <https://www.hrw.org/report/2016/06/16/such-brutal-crackdown/killings-and-arrests-response-ethiopias-oromo-protests>
- HRW Report. (2016, February 21). *Ethiopia: No Let Up in Crackdown on Protests "Killings, Detention of Protesters Enter Fourth Month"*. Retrieved March 10, 2017, from HRW: <https://www.hrw.org/news/2016/02/21/ethiopia-no-let-crackdown-protests>
- HRW Report. (2016, August 19). *Letter to Secretary Kerry on Trip to Kenya, Nigeria, and Saudi Arabia*. Retrieved November 13, 2016, from Human Rights Watch:

<https://www.hrw.org/news/2016/08/19/letter-secretary-kerry-trip-kenya-nigeria-and-saudi-arabia>

HRW Report. (2002, September 20). *Human Rights in Kenya*. Retrieved May 28, 2017, from Human Rights Watch: <https://www.hrw.org/reports/2002/kenya2/Kenya1202-01.htm>

ICNL Report. (2016, 10 27). *Civic Freedom Monitor: Ethiopia*. Retrieved December 22, 2016, from ICNL Website: <http://www.icnl.org/research/monitor/ethiopia.html>

ICNL Report. (2016, December 2016). *Civic Freedom Monitor: Kenya*. Retrieved December 10, 2016, from ICNL Website: <http://www.icnl.org/research/monitor/kenya.html>

ICNL Report. (2017, May). Civic Freedom Monitor: Ethiopia. *International Journal of Not-for-Profit Law*.

IPOA Report. (2013). *Baseline Survey on Policing Standards and Gaps in Kenya*. Nairobi: IPOA. Retrieved December 2, 2016, from <http://ijm-deutschland.de/wp-content/uploads/2015/08/Baseline-Survey-on-Policing-Standards-and-Gaps-in-Kenya.pdf>

Ishiyama, J. (2007). Examining the 2005 Ethiopian Parliamentary Election Results Under Alternative Electoral Rules. *Scholar Works at WMU*, 2.

Ivic, S. (2010). Dynamic nature of human rights: Rawls's critique of moral universalism. *Trans/Form/Ação, Marília*, 33, 223, 224.

Jiang, N. (2014). *China and international human rights: harsh punishments in the context of the International Covenant on Civil and Political Rights*. Berlin: Springer.

KNCHR Report. (2015). *The Error of Fighting Terror with Terror*. Nairobi: KNCHR. Retrieved August 23, 2016, from <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf>

Komanovics, A. (2014). Strengthening the Human Rights Treaty Bodies: A Modest but Important Step Forward. *Pécs Journal of International and European Law - 2014/I*, 24-30. Retrieved March 15, 2016, from http://epa.oszk.hu/02600/02691/00001/pdf/EPA02691_pjiel_2014_1.pdf

KPMG Report. (2011). *Developing a Market Entry Strategy for Poland*. Warsaw: KPMG.

KPMG Report. (2011). *Developing a Market Entry Strategy for Poland*. Warsaw: KPMG.

Limon, M., & Piccone, T. (2014). *Human Rights Special Procedures: Determinants of Influence*. Universal Rights Group .

- Markus, S. (2010, May 21). *The Universal Periodic Review of the Human Rights Council and Its Interaction with other Human Rights Procedures*. Retrieved May 15, 2010, from UN Website: <http://webtv.un.org/watch/markus-schmidt-on-the-universal-periodic-review-of-the-human-rights-council/2623272782001>
- McMahon, & R, E. (2012). *The Universal Periodic Review: a work in progress*. Geneva: Friedrich-Ebert-Stiftung.
- McMahon, E. (2012). *The Universal Periodic Review : a work in progress. An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council*. Geneva: Friedrich-Ebert-Stiftung.
- McMahon, E. R. (2010). *Human Rights Council's Performance To-date*. Friedrich Ebert Stiftung.
- Mechlem, K. (2007). Treaty Bodies and the Interpretation of Human Rights. *Vanderbilt Journal of Transitional Law*, 42:905, 910 - 919.
- Murphy, J. F. (2010). *The Evolving Dimensions of International Human Rights Law*. New York: Cambridge University Press. Retrieved June 2, 2016, from <https://iuristebi.files.wordpress.com/2011/07/the-evolving-dimensions-of-international-law-hard-choices-for-the-world-community.pdf>
- Mutua, M. W. (2004). *The Complexity of Universalism in Human Rights*. New York: SUNY Buffalo Law School.
- OHCHR Report. (2005). Monitoring implementation of the international human rights instruments: an overview of the current treaty body system. (p. 5). Geneva: OHCHR.
- OHCHR Report. (2014, October 21). *Background Release*. Retrieved May 23, 2016, from <http://www.ohchr.org/>:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15192&LangID=E>
- OHCHR Report. (2015, June 27). *OHCHR*. Retrieved June 23, 2016, from OHCHR Website:
<http://www.ohchr.org/EN/HRBodies/CHR/Pages/CommissionOnHumanRights.aspx>
- OHCHR Report. (2016). *Key concepts on ESCRs* . Retrieved December 12, 2016, from OHCHR Website:
<http://www.ohchr.org/EN/Issues/ESCR/Pages/WhataretheobligationsofStatesonESCR.aspx>

- OHCHR Report. (2016, August 29). *What are human rights*. Retrieved from OHCHR Web site: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>
- Olsson, I. A. (2015). International Soft Law. In I. A. Olsson, *Four Competing Approaches to International Soft Law* (p. 179). Scandinavian Studies In Law.
- Österreich, V. (2012). The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground? *ICL Journal*, 3. Retrieved from https://www.icl-journal.com/download/a671e91c60a30231e1067f41ba849986/ICL_Thesis_Vol_7_4_13.pdf
- Pieter, E. (Ed.). (2013). *Africa A to Z: Continental and Country Profiles* (Third ed.). Africa Institute of South Africa.
- Pillay, N. (2012). *Strengthening the United Nations Human Rights Treaty Body System: A report by the United Nations Commissioner for Human Rights*. Geneva: OHCHR .
- Rana, S. (2015, Fall Fall). Review or Rhetoric? An Analysis of the United Nations Human Rights Council's Universal Periodic Review. *Independent Study Project (ISP) Collection. Paper 2239.*, pp. 15 - 16. Retrieved from http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=3262&context=isp_collection
- Rawls, J. (1971). *A Theory of Justice*. The Belknap Press of Harvard University Press.
- Rawls, J. (1993). *Political Liberalism*. New York, NY: Columbia University Press.
- Sanja, I. (2010). Dynamic nature of human rights: Rawls's critique of moral universalism. *Trans/Form/Ação, Marília*, 33, 223 -224.
- Sharma, V. (2002). *Human Rights Violation: A Global Phenomenon*. New Delhi: APH Publishing. Retrieved from https://books.google.co.ke/books?id=VqrXQpxrG2UC&printsec=copyright&source=gbs_pub_info_r#v=onepage&q&f=false
- Spohr, M. (2010). United Nations Human Rights Council: Between Institution-Building Phase and Review of Status. *United Nations Law, Volume 14, 2010*, p. 179. Retrieved from http://www.mpil.de/files/pdf3/mpunyb_05_spohr_14.pdf
- Steiner, H. J., Alston, P., & Goodman, R. (2007). International Human Rights in Context. In S. H. J., A. Philip, & G. Ryan, *Law Politics Morals* (p. 692). New York: Oxford University Press.

- Stewart, C. (2016, January 7). *Kenya has become a perilous place to be a teacher with the threat of al-Shabaab leaving young people in crisis*. Retrieved June 27, 2016, from Independent: <http://www.independent.co.uk/news/world/africa/kenya-has-become-the-most-perilous-place-on-the-planet-to-be-a-teacher-resulting-in-empty-classrooms-a6801311.html>
- Stewart, Catrina. (2016, January 7). *Kenya has become a perilous place to be a teacher with the threat of al-Shabaab leaving young people in crisis*. Retrieved June 15, 2016, from Independent: <http://www.independent.co.uk/news/world/africa/kenya-has-become-the-most-perilous-place-on-the-planet-to-be-a-teacher-resulting-in-empty-classrooms-a6801311.html>
- Tamirat, A. G. (n.d.). *Ethiopia's Human Rights Treaty Reporting to the UN Treaty Bodies*. Retrieved January 10, 2017, from Abyssinia Law: <http://www.abyssinialaw.com/blog-posts/item/1483-ethiopia-s-human-rights-treaty-reporting-to-the-un-treaty-bodies>
- Temesgen, S. M. (2015, November). Weaknesses of Ethnic Federalism in Ethiopia. *International Journal of Humanities and Social Science Invention*, 4(11), 51.
- The World Bank Report. (2016). *The World Bank*. Retrieved December 10, 2016, from The World Bank Web site: <http://www.worldbank.org/en/country/ethiopia>
- The World Bank Report. (2017, March 7). *Kenya Overview*. Retrieved June 21, 2017, from The World Bank: <http://www.worldbank.org/en/country/kenya/overview>
- U.S. Department of State. (2014). *2013 Country Reports on Human Rights Practices: Ethiopia*. Washington D.C.: U.S. Department of State. Retrieved December 23, 2015, from <https://www.state.gov/j/drl/rls/hrrpt/2013/af/220113.htm>
- UNDP Report. (2011, November). *Vulnerable people get free legal aid in Ethiopia*. Retrieved October 13, 2016, from UNDP Website: <http://www.africa.undp.org/content/rba/en/home/ourwork/democratic-governance-and-peacebuilding/successstories/ethiopia-legal-aid.html>
- Wells, K. (2009). *International and Domestic Sources of State Stability and Regime Collapse: Merchant Capital in Ethiopia, 1974 - 1995*. ProQuest LLC.