

# Ethiopia and the Universal Periodic Review Mechanism: A Critical Reflection

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## Abstract

*The UPR mechanism of the HRC is designed to periodically review the compliance of each member state of the UN with their human rights obligations. Ensuring the effectiveness of UPR requires states, inter alia, to set up the necessary institutions; prepare quality national UPR report and submit the same timely; allow the active and meaningful involvement of CSOs at different phases of UPR; make responsible decision in determining which recommendations to accept or reject; duly implement accepted recommendations; and design a strong follow-up system. Ethiopia has done better in terms of timely submission of national reports and actively taking part in the constructive dialogue compared to reporting to treaty bodies. The major gaps this article identified include: limited involvement of CSOs in Ethiopia's UPR process; exclusive reliance on ad hoc committees for the preparation of national reports; rejection of widely shared recommendations that could significantly contribute to the strengthening of human rights protection in the country; absence of UPR implementation matrix and follow-up mechanism. While resource constraints and lack of capacity can be mentioned as well founded challenges, this article contends that the underlying reason for Ethiopia's inadequate performance in the UPR mechanism within the available resources is lack of adequate attention paid to human rights by the government stemming from its developmental state ideological orientation. To improve its performance in the UPR process, this article recommends Ethiopia to establish a permanent organ responsible for UPR reporting and follow-up, allow the active participation of CSOs in its UPR process, reconsider the widely shared recommendations it has rejected whose implementation will strengthen human rights protection, and fully implement the recommendations it has accepted.*

**Key words:** Universal Periodic Review, Human Rights Council, Ethiopia

## Introduction

Up until 2006, the United Nations Commission on Human Rights (UNCHR) was the main political body of the United Nations (UN) in charge of supervising states' compliance with their human rights obligations as set out in the Universal Declaration of Human Rights (UDHR) and human rights treaties to which they are parties. The Commission achieved 'remarkable effectiveness in

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marshaling international public opinion against violator governments' and 'brought tremendous pressure to bear on governments whose practices have fallen seriously out of line with international human rights standards.'<sup>1</sup> However, the Commission was severely criticized for its double standards and 'discredited [for] its perceived [excessive] politicization.'<sup>2</sup>

On 15 March 2006, the General Assembly of the UN passed Resolution 60/251 to establish the Human Rights Council (HRC) replacing the Commission. Like the Commission, the HRC is entrusted with the task of 'promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner';<sup>3</sup> 'address[ing] situations of violations of human rights, including gross and systematic violations, and make recommendations thereon';<sup>4</sup> and 'promot[ing] the effective coordination and the mainstreaming of human rights within the United Nations system.'<sup>5</sup> Based in Geneva, the HRC is a subsidiary body of the General Assembly of the UN and is composed of 47 elected UN member states based on equitable geographic distribution.<sup>6</sup>

In order to address the credibility deficit of the UNCHR, the HRC is made different in several respects. In terms of membership, while member states of the UNCHR were elected by the majority vote of the 54 members of ECOSOC, member states of the HRC are elected by the majority vote of the General

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<sup>1</sup> Lyal S. Sunga, *What Effect if Any Will the UN Human Rights Council Have on Special Procedures?*, in INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS: ESSAYS IN HONOR OF JAKOB TH. MÖLLER 169, 174 (G. Alfredsson *et al.* eds., 2<sup>nd</sup> ed. 2009).

<sup>2</sup> Ibrahim Salama, *Institutional Re-engineering for Effective Human Rights Monitoring: Proposals for the Unfinished Business under the 'New' Human Rights Council*, in INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS: ESSAYS IN HONOR OF JAKOB TH. MÖLLER 185, 186 (Gudmundur Alfredsson *et al.* eds., 2<sup>nd</sup> ed. 2009); Rhona Smith, *The United Nations Human Rights System*, in INTERNATIONAL HUMAN RIGHTS LAW: SIX DECADES AFTER THE UDHR AND BEYOND 215, 220 (Mashood Baderin and Manisuli Ssenyonjo eds., 2010); Rosa Freedman, *New Mechanisms of the UN Human Rights Council*, 29/3 *Netherlands Quarterly of Human Rights* 289, 292 (2011).

<sup>3</sup> UN General Assembly Resolution 60/251, at para. 2.

<sup>4</sup> *Id.*, at para.3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, at paras.1, 7 and 10.

Assembly to serve for a period of three years.<sup>7</sup> This shows that membership to the HRC requires broader political support than the UNCHR. In voting for candidates of the HRC membership, member states are required to 'take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto.'<sup>8</sup> Moreover, based on the power vested in it by the General Assembly, the HRC improved and rationalized the special procedures of the UNCHR to make it more efficient, effective and transparent and established a new Human Rights Council Advisory Committee.<sup>9</sup> The most innovative aspect of the HRC that directly deals with the selectivity and politicization accusation levelled against UNCHR, however, is the Universal Periodic Review (UPR).<sup>10</sup> UPR is a mechanism which mandated the HRC to periodically review 'the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.'<sup>11</sup>

So far, the human rights situation of Ethiopia was reviewed twice by the Working Group on the UPR established in accordance with Human Rights Council Resolution 5/1 of 18 June 2007. While the first review was conducted at the sixth session of the Working Group on 9 December 2009, the second review was held at the 13<sup>th</sup> meeting of the Working Group on May 6, 2014. Both in the first and second cycles of review, Ethiopia received numerous recommendations by the HRC based on the assessment of the overall human rights situation in Ethiopia.

Despite the availability of a plethora of works on UPR in general, there is a dearth of specific research on Ethiopia.<sup>12</sup> This article seeks to critically assess

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<sup>7</sup> *Id.*, at para.7.

<sup>8</sup> *Id.*, at para.8.

<sup>9</sup> See United Nations Human Rights Council: Institution-Building, Resolution 5/1 of 18 June 2007 [HRC Resolution 5/1]. The Advisory Committee replaces the former Sub-Commission on the Promotion and Protection of Human Rights.

<sup>10</sup> Meghna Abraham, *Building the New Human Rights Council: Outcome and Analysis of the Institution-Building Year 34* (Friedrich-Ebert Stiftung, Dialogue in Globalization: Occasional Papers Series No. 33, 2007).

<sup>11</sup> UN General Assembly Resolution 60/251, *supra* note 3, at para. 5(e).

<sup>12</sup> There are only two works on Ethiopia. Magnus Killander, in his research, has devoted a section on Ethiopia. However, the scope of analysis of this author is limited only to analysis of Government departments or other focal persons responsible for the UPR and implementation of UPR recommendations focusing on ratification of treaties, policy and legislative measures

Ethiopia's experience in relation to the UPR mechanism and its implication for promotion and protection of human rights in the country. The article proceeds as follows. Section 1 provides a brief introduction about UPR in general. Sections 2 and 3 analyze, respectively, the institutional architecture for UPR reporting and follow-up and the extent to which Ethiopia has complied with its UPR reporting commitment. Section 4 scrutinizes the level of civil society organizations' (CSOs) participation in Ethiopia's engagement with the UPR mechanism, and Section 5 assesses the propriety of rejected recommendations and the status of implementation of accepted UPR recommendations. Capitalizing on the analysis of the institutional set up and implementation, section 6 is devoted to reviewing the availability or otherwise of strong follow-up mechanism in Ethiopia for the implementation of accepted UPR recommendations. Finally, section 7 concludes the entire discussion.

## 1. What Is UPR and How Does It Work?

As mentioned above, UPR is a new and unique arrangement that enables the HRC to periodically review all UN member states' compliance with their human rights obligations and commitments. Ultimately, UPR aims at improving the human rights situation on the ground.<sup>13</sup> As a matter of principle, UPR should, *inter alia*, be a cooperative mechanism based on objective and reliable information and on interactive dialogue; ensure universal coverage and equal treatment of all States; be state-driven; fully involve the country under review; complement and not duplicate other human rights mechanisms; be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner; and ensure the participation of all relevant stakeholders.<sup>14</sup>

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and civil society. See M. Killander, *The Universal Periodic Review From Recommendations to Implementation: African Region's Experience in Respect of the UPR Process*,

[https://eiuc.org/tl\\_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2013-](https://eiuc.org/tl_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2013-)

[14/1.%20African%20region%E2%80%99s%20experience%20in%20respect%20of%20the%20UPR%20process.pdf](https://eiuc.org/tl_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2013-14/1.%20African%20region%E2%80%99s%20experience%20in%20respect%20of%20the%20UPR%20process.pdf). Ghetnet Metiku, on his part, made a brief analysis of the effectiveness of the UPR mechanism taking Ethiopia as a case study. This work, exclusively written based on the first cycle of review, made about a page long analysis on Ethiopian situation. See Ghetnet Metiku Woldegiorgis, *An Assessment of the Effectiveness of the UPR Mechanism: A Case Study*, <http://www.slideshare.net/gmgiorgis/an-assessment-of-the-effectiveness-of-the-upr-mechanism-final>.

<sup>13</sup> HRC Resolution 5/1, *supra* note 3, at para. 2.

<sup>14</sup> *Id.*, at para.3.

The basis of the review, its periodicity and order, process and modalities and final outcome are provided in institution-building package agreed up on by states in the HRC Resolution 5/1 adopted on 18 June 2007. Drawing lessons from the experience of the first cycle of review, the process and modalities of review set out in Resolution 5/1 were modified by Resolutions 16/21 and 17/119 of 2011 of the HRC .<sup>15</sup>

As UPR aims at reviewing the status of implementation of human rights by states, the instruments that should be used as a basis of review include: the UN Charter, UDHR; the human rights instruments to which a state under review is party, voluntary pledges and commitments made by states and pertinent international humanitarian law.<sup>16</sup> There are also other documents expected to be submitted to serve as a basis for review.<sup>17</sup> The first is a roughly 20 page national state report to be prepared by a state under review (SuR) in consultation with all relevant stakeholders.<sup>18</sup> The second document is a compilation by the Office of the High Commissioner for Human Rights (OHCHR) of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the state concerned, and other relevant official UN documents. The third document is a summary, also prepared by the OHCHR, of credible and reliable information provided by other relevant stakeholders to the UPR. The latter two documents should not exceed 10 pages.

While it took 4 years to complete the review of all states for the first cycle, the HRC decided that the review for the second and subsequent cycles will be completed every 4.5 years.<sup>19</sup> The review stage is a 3 - 3.5 hours interactive dialogue between the delegates of the SuR and other states.<sup>20</sup> Each state review is conducted in one working group composed of 47 member states of the HRC

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<sup>15</sup> Resolution 5/1 itself envisages that the Council, after the conclusion of the first review cycle, may review the modalities and the periodicity of this mechanism, based on best practices and lessons learned.

<sup>16</sup> *Id.*, at para. 1.

<sup>17</sup> *Id.*, at para. 15.

<sup>18</sup> The General Guidelines on how to prepare information that is to be submitted as part of the UPR were adopted by the HRC on 27 September 2007. See Decision 6/102 of 27 September 2007.

<sup>19</sup> HRC Resolution 16/21, at para 3.

<sup>20</sup> The time of review has been extended from 3 to 3.5 hours by HRC Decision 17/119. See para. 3.

and facilitated by a group of three states rapporteurs (troika).<sup>21</sup> While all states including members of the Working Group and other states have the opportunity to participate in the interactive dialogue through raising questions or forwarding comments, other stakeholders can only attend the review.<sup>22</sup>

The outcome of the interactive dialogue is a report consisting of a summary of the proceedings of the review process and recommendations to the SuR.<sup>23</sup> The SuR has to take a stand on the recommendations it accepts or rejects (noted).<sup>24</sup> The outcome of the review shall be adopted by the plenary session of the Council at its regular meeting.<sup>25</sup> During a one hour time earmarked for the approval process, the SuR, members of the Council, observer states and other stakeholders including CSOs are given the opportunity to express their views on the outcome of the report before the endorsement.<sup>26</sup> The SuR, assisted by the international community, has the primary responsibility to implement the recommendations it accepted.<sup>27</sup>

One of the principles of UPR is that it is supposed to complement and not duplicate the existing human rights mechanisms. Thus, the whole exercise could be futile unless the review adds value to the other human rights mechanisms, particularly the works of the treaty bodies.<sup>28</sup> UPR, if properly applied, could complement the works of the treaty bodies and is advantageous in a number of ways. It plays an important reminder role for states to submit their reports to the treaty bodies and implement their recommendations.<sup>29</sup> The fact that the review in the UPR process covers all human rights instead of being confined to human rights enunciated in a single treaty sets it apart from the works of individual

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<sup>21</sup> HRC Resolution 5/1, *supra* note 3, at para. 18(d).

<sup>22</sup> *Id.*, at paras.18(b) and (c).

<sup>23</sup> *Id.*, at para. 26.

<sup>24</sup> *Id.*, at para. 32

<sup>25</sup> *Id.*, at para. 25.

<sup>26</sup> *Id.*, at paras. 30 and 31.

<sup>27</sup> *Id.*, at para.33.

<sup>28</sup> Treaty bodies are committees composed of independent experts, established under each human rights treaty and mandated to monitor the implementation of the treaty in which they are established. To know more about treaty bodies, see OHCHR, *The United Nations Human Rights Treaty System* (Fact Sheet No. 30/Rev.1, 2012).

<sup>29</sup> *Id.*, at 4.

treaty bodies.<sup>30</sup> Unlike treaty bodies, the UPR is also a mechanism that allows the SuR to implement recommendations it accepts, although it can also willingly implement recommendations it rejects. It is believed that the SuR will be more committed to implement the recommendation which it consents to do so. Furthermore, the cooperative spirit among states throughout the UPR process; 'a peer group pressure from within the regional or sub-regional group' as a result of the political nature of the process; and the active technical and financial assistance that the OHCHR extends to states with limited capacities and resources are said to create a conducive atmosphere for states to submit report, come forward for the constructive dialogue, accept recommendation and implement the same.<sup>31</sup> Unlike that of the treaty bodies, all the working group and plenary sessions of UPR are webcast.

Based on the assessment of the first cycle of the UPR completed in 2012, there are signs of the success of the mechanism. First, all 193 UN member states had prepared their reports and participated in a review of their human rights records.<sup>32</sup> This in itself can be taken as an important achievement compared to the treaty bodies where a number of states seek to avoid scrutiny by the treaty bodies.<sup>33</sup> Second, out of more than 21,000 recommendations issued, more than 70 percent were accepted.<sup>34</sup> Third, in terms of implementation, a 2014 study by

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<sup>30</sup> For example, the Human Rights Committee receives state reports, engage in a constructive dialogue with member states and issue concluding observation only in respect of civil and political rights covered in the ICCPR.

<sup>31</sup> Rachel Brett, *A Curate's Egg: UN Human Rights Council* (August 2009), <https://www.upr-info.org/sites/default/files/general-document/pdf/-acuratesegg200908.pdf>.

<sup>32</sup> UPR Info, *Beyond Promises: The Impact of the UPR on the Ground* (2014), [http://www.upr-info.org/sites/default/files/general-document/pdf/2014\\_beyond\\_promises.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/2014_beyond_promises.pdf). UPR Info is a non-profit, non-governmental organization based in Geneva, Switzerland. It aims to raise awareness of the UPR and to provide capacity-building tools to all stakeholders, such as UN Member States, civil society, media, and academics.

<sup>33</sup> A 2010 data indicated that 'only 16 % of the [state] reports due in 2010 and 2011 were submitted in strict accordance with the due dates established in the treaties or by the treaty bodies.' For more information on this data, see Note by the Secretary-General, *United Nations Reform: Measures and Proposals* (2012), [www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening\\_en.doc](http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening_en.doc).

<sup>34</sup> UPR Info, *A Guide for Recommending States at the UPR*, [https://www.upr-info.org/sites/default/files/general-document/pdf/upr\\_info\\_guide\\_for\\_recommending\\_states\\_2015.pdf](https://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_guide_for_recommending_states_2015.pdf). For similar data, see also E. McMahon, *The Universal Periodic Review: A Work in Progress: An Evaluation of the First*

UPR Info disclosed that, 48 percent of the recommendations had triggered actions by the SuR.<sup>35</sup> It is important to note, however, that although these data indicate success in their own right, the ultimate achievement of UPR has to be judged in the light of the improvements that it has brought in terms of the protection and promotion of human rights in the SuR.

There are a number of criticisms labeled against UPR and challenges that hamper its effectiveness as credible forum for open and frank discourse on concrete issues of human rights. To begin with, the performance of states in the realization of human rights is evaluated by other states instead of independent legal experts. Scholars contend that 'political bodies are inappropriate for dealing with legal questions.'<sup>36</sup> Second, many states wrongly view the constructive and cooperative process of UPR 'as a limitation on any criticism of the failure of a state to fulfill its human rights obligations.'<sup>37</sup> The third challenge observed by several CSOs and linked to the second is that 'governments use the UPR as a podium for grandstanding to defend their human rights record' instead of rectifying their deficiencies.<sup>38</sup> In relation to this problem, empirical research covering 55 states including the 47 members of the HRC disclosed that the majority of states (32 out of 55 countries) 'acted as a mutual praise society, misusing the process in order to legitimize human rights abusers, instead of holding them to account.'<sup>39</sup> Fourth, while CSOs have significant role in the UPR

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*Cycle of the New UPR Mechanism of the United Nations Human Rights Council* (2012), <http://library.fes.de/pdf-files/bueros/genf/09297.pdf>.

<sup>35</sup> UPR Info, *supra* note 32, at 5. For similar information, see also Brett, *supra* note 31, at 10.

<sup>36</sup> Olivier de Frouville, *Building a Universal System for the Protection of Human Rights: The Way Forward*, in *NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY* 254 (Cherif Bassiouni and William Schabas, eds., 2011). See also Manfred Nowak, "It's Time for a World Court of Human Rights" in *NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY* 23 (C. Bassiouni and W. Schabas eds., 2011). In case of treaty bodies, the members of each committee are appointed having regard to their recognized competence in human rights issues. See OHCHR, *supra* note 28, at 20.

<sup>37</sup> Abraham, *supra* note 10, at 40.

<sup>38</sup> CIVICUS, *Enhancing the effectiveness of the UN Universal Periodic Review: A Civil Society Perspective* (2015),

[https://www.uprinfo.org/sites/default/files/generaldocument/pdf/civicus\\_enhancing\\_the\\_effectiveness\\_upr\\_2015.pdf](https://www.uprinfo.org/sites/default/files/generaldocument/pdf/civicus_enhancing_the_effectiveness_upr_2015.pdf).

<sup>39</sup> UN Watch, *Mutual Praise Society, Country Scorecard and Evaluation of the Universal Periodic Review System of the U.N. Human Rights Council* (2009), <http://www.unwatch.org/wp-content/uploads/2016/01/Mutual-Praise-Society.pdf>.



process, a number of CSOs reported that their governments ‘employ divisive tactics to limit the impact of civil society engagement in the UPR.’<sup>40</sup> These tactics include: enforcement of restrictive legislation, persecution and imprisonment of human rights defenders and ‘mobilization of government affiliated or supported organizations (Government Organized and Non-governmental Organizations) to undermine the effective participation of independent civil society voices’.<sup>41</sup> Fifth, while lack of specificity of the recommendations to the SuR is raised as a concern,<sup>42</sup> a more debilitating drawback of the UPR mechanism is lack of a meaningful independent follow-up of implementation of recommendations by the SuR. The only mechanisms of follow-up recognized in the UPR resolutions, as mentioned above, are submissions of a non-mandatory mid-term report 2.5 years after the last review and holding the state accountable at the subsequent review. It is not adequately possible to closely and timely identify whether and to what extent states have implemented the recommendations applying these reporting procedures. In default of strong follow-up and enforcement mechanisms, states can simply ignore recommendations without consequences. It seems that it is out of this concern that HRC Resolution A/HRC/RES/5/1 authorizes the HRC to deal with, ‘as appropriate, cases of persistent non-cooperation with the mechanism.’<sup>43</sup> However, what constitutes ‘persistent non-cooperation’ is not defined in the same document. It remains to be seen how the HRC will interpret this phrase and the implication thereof.

## **2. Ethiopia’s Institutional Architecture for UPR Reporting and Follow-up**

Arising from the treaties it ratified, Ethiopia has multiple reporting obligations to global and regional treaty bodies and other mechanisms. Furthermore, the country assumes the responsibility to implement the human rights treaties it ratified and recommendations of various treaty bodies and track and follow-up the status thereof. Undoubtedly, timely submitting reports with the expected quality and effectively following-up implementation requires a strong institutional arrangement.

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<sup>40</sup> CIVICUS, *supra* note 38, at 5.

<sup>41</sup> *Id.*, at 6.

<sup>42</sup> UPR Info and Addis Ababa University, *Post-UPR Conference on Ethiopia Accepted Recommendations* (2015),

[https://www.upr-info.org/sites/default/files/document/ethiopia/session\\_19\\_\\_april\\_2014/aau\\_uprinfo\\_ethiopia\\_post-upr\\_conference\\_proceedings.pdf](https://www.upr-info.org/sites/default/files/document/ethiopia/session_19__april_2014/aau_uprinfo_ethiopia_post-upr_conference_proceedings.pdf).

<sup>43</sup> HRC Resolution 5/1, *supra* note 3, at para. 38.

Consolidating state practices, the OHCHR prepared an important practical guide to national mechanisms for reporting and follow-up.<sup>44</sup> According to this document:

A national mechanism for reporting and follow-up is a national public mechanism or structure that is mandated to coordinate and prepare reports to and engage with international and regional human rights mechanisms (including treaty bodies, the universal periodic review and special procedures), and to coordinate and track national follow-up and implementation of the treaty obligations and the recommendations emanating from these mechanisms.<sup>45</sup>

The guideline further states that the national mechanism, which could be ministerial, inter-ministerial or a separate institution, discharges its activities in coordination and consultation with relevant governmental and non-governmental organizations.<sup>46</sup> The document goes on to pinpoint basic requirements for effective national mechanism. According to the guideline, the national mechanism should preferably be a well-staffed standing (non-*ad hoc*) structure and possess engagement, coordination, consultation and information management capacities.<sup>47</sup>

In Ethiopia, until recently, the Ministry of Foreign Affairs, in consultation with relevant governmental agencies and stakeholders, had the general legal mandate of handling issues of implementation of global and regional human rights treaties.<sup>48</sup> Within this general mandate, the Ministry was also entrusted to prepare and submit national human rights reports to the relevant treaty bodies and other mechanisms.<sup>49</sup> Within the Ministry, it was the International Legal Affairs Directorate that was entrusted with coordination and facilitation of the

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<sup>44</sup> OHCHR, *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms* (2016), [http://www.ohchr.org/Documents/Publications/HR\\_PUB\\_16\\_1\\_NMRF\\_PracticalGuide.pdf](http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf).

<sup>45</sup> *Id.*, at 2.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*, at 12-29.

<sup>48</sup> Foreign Service Proclamation, Proclamation No. 790, *Fed. Neg. Gaz.*, Year 22, No. 52, Art. 3(7), (2013).

<sup>49</sup> *Id.*

preparation of reports and follow-up the implementation of treaties and UPR recommendations.<sup>50</sup>

In practice,<sup>51</sup> national reports used to be prepared by *ad hoc* committees (taskforces) drawn from relevant ministries and other government offices and chaired by the Ministry of Foreign Affairs. The OHCHR East Africa Regional Office also assisted state reporting both to treaty bodies and the UPR, financially and technically. The *ad hoc* committees were organized and convened when the deadline for submission of reports is approaching. This practice had two implications: the reports were prepared without adequately assessing the implementation of previous recommendations and with limited input from all relevant stakeholders. CSOs were basically given the opportunity to express their views on the occasion of the draft report validation workshop.

Because the *ad hoc* national committees organized to prepare reports would become inactive after the completion of preparation of the reports, there was no organ that tracks the implementation of recommendations. There was a glaring problem in Ethiopia in terms of having an effective mechanism for monitoring the implementation of UPR recommendations throughout the implementation period. Once each ministry and other government office is initially informed about the recommendations Ethiopia received at a workshop organized for this purpose, there is no follow up mechanism afterwards to ascertain whether each institution is implementing the recommendations appertaining to its mandate.

Pursuant to the Federal Attorney General Establishment Proclamation of 2016, the mandate of the Ministry of Foreign Affairs regarding international human rights matters is taken over by the Attorney General. The Office of the Attorney General, which replaced the Ministry of Justice, is now in charge of all legal and prosecutorial matters formerly assumed by various ministries and agencies.<sup>52</sup> In

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<sup>50</sup> Killander, *supra* note 12, at 2.

<sup>51</sup> The practice can be discerned from HRC, *Ethiopian National Report under the Universal Periodic Review Mechanism* para.1 (4 August 2009), [Ethiopian First Cycle Report] and HRC, *Universal Periodic Review Report of the Working Group on the Universal Periodic Report Review: Ethiopia* Para. 1 (4 January 2010), [First UPR Working Group Report on Ethiopia] as well as the interview the author conducted with individuals who took part in the preparation of reports.

<sup>52</sup> Federal Attorney General Establishment Proclamation, Proclamation No. 943, *Fed. Neg. Gaz* Year 22, No. 62, Preamble, (2016). The preamble also states that the reason for the establishment of Attorney General is to 'comprehensively protect public and government interest and deliver uniform, effective and efficient service.'

relation to international human rights treaties and commitments, article 6(8)(e) of the establishment proclamation gives the Attorney General three specific powers: following up the implementation of international and regional human rights treaties ratified by Ethiopia, responding to issues and concerns relating to human rights in consultation with appropriate bodies and preparation of national human rights implementation reports in collaboration with appropriate stakeholders. It is not yet clear which department within the Office of the Attorney General will perform these activities. The participants of the roundtable discussion organized by Vision Ethiopia Congress for Democracy (VECOD)<sup>53</sup> and UPR-Info and attended by representatives of government, civil society, the media and other stakeholders to discuss the adoption of a joint UPR recommendations monitoring plan and cooperation between the government of Ethiopia and other stakeholders<sup>54</sup> suggested the establishment of a permanent inter-ministerial UPR implementation committee that includes CSOs. The participants further suggested the Secretariat of the National Human Rights Action Plan operating within the Attorney-General to serve also as a secretariat of the proposed inter-ministerial committee.

### 3. The State Reports and Quality of the Delegation

As earlier noted in section 1, the national report is one of the documents on the basis of which the UPR review takes place. The report, ideally, to be prepared through broad consultation process with all relevant stakeholders, should not exceed 20 pages<sup>55</sup> and be submitted at least 6 weeks before review by the Working group.<sup>56</sup> A state report has to be prepared based on the specific requirements of the General Guidelines for the Preparation of Information under the Universal Periodic Review adopted by the HRC in its Decision 6/102, 27 September 2007. The document states that, content wise, the state report should highlight: the methodology and broad consultation followed for the preparation of the report; overview of the country and normative and institutional framework; the promotion and protection of human rights on the ground; assessment of achievements and difficulties; priorities in order to overcome these difficulties; request for technical assistance; and presentation of the follow-up of the previous review.

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<sup>53</sup> VECOD is a local CSO working on human rights and democratization issues.

<sup>54</sup> UPR Info, *Concept Note, Ethiopia UPR Stakeholders Roundtable*, May 10, 2016, Radisson Blu Hotel, Addis Ababa.

<sup>55</sup> HRC Resolution 5/1, *supra* note 3, at para. 15(a).

<sup>56</sup> *Id.*, para. 17.

These requirements were later modified by the HRC Decision A/HRC/DEC/17/1191 to suit the special features of reports of the second and subsequent cycles. The major change introduced which underlies specific requirements is the need to make sure that the second and subsequent cycles focus on information about implementation of the recommendations received during the previous review and new developments after the previous review.<sup>57</sup> Because the national report should comply with the 20-page limit requirement, the report has to include only basic information with the possibility of attaching more detailed information by way of annex to the report. One of the best practices documented by UPR Info after scrutiny of 84 state reports is states' inclination to use annexure to include additional but important information. Among others, the annexes could contain: a list of ratified international instruments; a list of legislation; training activities for law enforcement officials; jurisprudence; a copy of the provisions of the national action plan on human rights; civil society recommendations, requests and complaints raised during the national consultations; and a table containing the status of implementation of each recommendation.<sup>58</sup>

So far, Ethiopia has submitted two national reports, each 22 page long, without any annex, for the first and second cycles of UPR review. It submitted the first report on 4 August 2009 and the second report on 30 January 2014. These facts show that Ethiopia attempted to submit reports that comply with the page limit and well ahead of the sessions for the reviews.

Both reports state the methodology applied for their preparation. The preparation of the reports was preceded by an awareness creation training and consultation workshop about the UPR mechanism in general and preparation of national reports in particular, jointly organized by the Ministry of Foreign Affairs and the Ethiopian Human Rights Commission (EHRC) with the technical assistance of the East Africa Regional Office of the OHCHR.<sup>59</sup> The reports were then prepared by *ad hoc* drafting committees and the draft reports were presented to relevant stakeholders including CSOs for their enriching

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<sup>57</sup> HRC Decision 17/119, *supra* note 20, at para. 2.

<sup>58</sup> UPR Info, *Identifying Best Practices: An Analysis of National Reports* (2015), [https://www.upr-info.org/sites/default/files/general/document/pdf/upr\\_info\\_identifying\\_best\\_practices\\_in\\_national\\_reports\\_2015.pdf](https://www.upr-info.org/sites/default/files/general/document/pdf/upr_info_identifying_best_practices_in_national_reports_2015.pdf).

<sup>59</sup> Ethiopian First Cycle Report, *supra* note 51, at para. 5; and HRC, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21* para.4 (30 January 2014), [Ethiopian Second Cycle Report].

comments.<sup>60</sup> The reports do not, however, give us information about the CSOs and other stakeholders who participated in the consultation workshop organized to collect feedbacks on the draft reports. The reports also lack information about the concerns, recommendations and questions raised by stakeholders, particularly CSOs and the outcome of the consultation with stakeholders. The incorporation of this information in the report is crucial to clarify the degree to which CSOs were allowed to voice their opinion in the drafting process in view of their allegation that they were not meaningfully involved in the process. These information could have been included using an annex not to exceed the page limit for the national report.

The second report of Ethiopia principally focused on providing information regarding the implementation of the accepted UPR recommendations and the progress achieved since the first report. However, the report also unnecessarily addressed events that took place before the first report or facts that should have been included in the first report, such as protections accorded by the Federal Democratic Republic of Ethiopia Constitution, the Revised Family Code, the Criminal Code and the establishment of children's parliaments.<sup>61</sup> The report provided data about status of implementation of 91 accepted recommendations<sup>62</sup> out of the total of 99 accepted recommendations by Ethiopia in the first review. The lack of update on the status of implementation of the remaining 8 accepted recommendations shows us that either these recommendations have not been implemented at all or data is unavailable. It is important to note that the absence of this information cannot be justified by the page limit requirement for the report. Similar to other countries, an annexed table to the report could have been used to indicate the status of implementation of each accepted recommendation.

Following the submission of the national report, states' human rights situation is reviewed in Geneva by a HRC working group on a date fixed by the Council. The review of Ethiopia in the first and second cycles took place on 9 December 2009 and 6 May 2014, respectively. The delegations of Ethiopia for the first and second cycle of review were headed, respectively, by Ambassador Fisseha Yimer,

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<sup>60</sup> Ethiopian First Cycle Report, *supra* note 51, at paras. 1 and 3; and Ethiopian Second Cycle Report, *supra* note 59, at para. 2.

<sup>61</sup> Ethiopian Second Cycle Report, *supra* note 59, at paras. 5, 74, 75, 79, respectively.

<sup>62</sup> Recommendations 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 and 97.

Special Adviser to the Minister, Ministry of Foreign Affairs<sup>63</sup> and Berhane Gebre-Christos, State Minister of Foreign Affairs<sup>64</sup>. The fact that the delegation is led by high-ranking government officials coupled with the fact that the delegation is representative of diverse government agencies and ministries could be indicative of the special attention Ethiopia paid to the UPR.

To sum up, except the problem associated with the lack of comprehensiveness of the UPR national reports, Ethiopia has done better in terms of timely submission of national reports and actively taking part in the constructive dialogue compared to reporting to treaty bodies. Ethiopia has generally a weak reporting record to treaty bodies. With the exception of fair reporting to the Committee on the Convention on the Rights of the Child and relatively better reporting status to the Committee on the Convention on the Elimination of All Forms of Discrimination against Women, the country is notorious for non-reporting and delay in reporting to other treaty bodies.<sup>65</sup>

At this juncture, a question worth pondering about is: why is this so given that state reporting under the UPR mechanism and before treaty bodies are more or less similar? One explanation for this, at least in relation to the first cycle, could be the benefit the UPR national reporting has gained from a project designed and implemented through the technical and financial assistance of the OHCHR to reduce Ethiopia's reporting backlogs to treaty bodies and an impetus arising from the project. It could also be explained by the fact that the UPR procedure is a live-streamed political exercise and states including Ethiopia worry for their images. However, the most plausible justification for such differential performance espoused by Takele Soboka as applied to all African states, is something related to the fact that the UPR is a state-driven mechanism and thereby fits in to the wishes of African states.<sup>66</sup> Unlike the adversarial nature of the procedure before treaty bodies, the UPR procedure is based on consensus

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<sup>63</sup> First UPR Working Group Report on Ethiopia, *supra* note 51, at para. 1 and Annex.

<sup>64</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 1 and Annex.

<sup>65</sup> For more on this, see Mizanie Abate, *A Rights-Based Approach to HIV Prevention, Care, Support and Treatment: A Review of Its Implementation in Ethiopia* (2012), [http://acumen.lib.ua.edu/content/u0015/0000001/0001073/u0015\\_0000001\\_0001073.pdf](http://acumen.lib.ua.edu/content/u0015/0000001/0001073/u0015_0000001_0001073.pdf).

<sup>66</sup> Takele S. Bulto, *Africa's Engagement with the Universal Periodic Review: Commitment or Capitulation?*, in HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 235, 248 (Hilary Charlesworth and Emma Larking eds., 2015).

building.<sup>67</sup> Moreover, while NGOs have active role in the examination of state reports before treaty bodies, states in the UPR procedure 'do not fear questions from NGOs nor the presentation of contradictory data from NGOs during the dialogue, and as a result enjoy a sense of control over the dialogue.'<sup>68</sup>

#### 4. CSOs Involvement in Ethiopia's Engagement with UPR

UPR is not an ideal procedure for CSOs to make optimal contribution. CSOs are not allowed to take floor at the interactive dialogue phase of the UPR process although they can attend the review sessions. This does not, however, mean that the UPR mechanism is totally devoid of space for CSOs to make an impact for its effectiveness. In spite of the fact that UPR is a state-driven exercise, the HRC Resolution 5/1 sets out areas for direct or indirect involvement of CSOs.<sup>69</sup> This resolution and prior experiences make clear that CSOs may contribute to the efficacy of the process, *inter alia*, through participation in national consultations held by the SuR as it prepares its national report; submitting their own report; lobbying participating states to play active role in the interactive dialogue phase; making oral statements at the HRC during the adoption of the report; monitoring the implementation by the SuR of the UPR recommendations it accepted with a cooperation spirit; encouraging recommending states to monitor their own recommendations made to the SuR; and dissemination of the UPR outcome report.<sup>70</sup>

The Ethiopian government, in both of its UPR national reports submitted so far, states that it invited CSOs to comment on the draft reports.<sup>71</sup> Similarly, the head of the Ethiopian delegation in his introductory presentation in the first cycle of review pointed out that the report 'was prepared in a transparent and participatory manner with the participation of all relevant actors and

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*, at 247.

<sup>69</sup> See HRC Resolution 5/1, *supra* note 3, at paras. 15(c), 18(c), 31 and 33.

<sup>70</sup> James Jolley, *An Academic Study of the Universal Periodic Review (UPR) from the Perspective of Children's Rights* (2012), <http://resourcecentre.savethechildren.se/sites/default/files/documents/6982>. For discussions on the roles of CSOs under the UPR mechanisms, see also Lawrence Moss, *Opportunities for Non-governmental Organization Advocacy in the Universal Periodic Review Process at the UN Human Rights Council*, 2/1 *Journal of Human Rights Practice* 122, 130-131 (2010); and UPR Info, *supra* note 32, at 10.

<sup>71</sup> Ethiopian First Cycle Report, *supra* note 51, at paras. 3-4.



stakeholders.’<sup>72</sup> However, the reports do not contain the list of CSOs that participated in the consultation; nor do they contain a detailed account of comments and concerns raised by the CSOs. Contrary to what the government stated in its report, CSOs ‘have raised concerns about their exclusion in the preparations of UPR second cycle report’.<sup>73</sup>

In terms of submission of their own UPR reports, the participation of Ethiopian local CSOs is extremely low. Out of the total of 20 stakeholders’ submissions to the first cycle review of Ethiopia, only four of the reports were submitted by local CSOs.<sup>74</sup> Similarly, out of the total of 22 stakeholders’ submissions to the second cycle review of Ethiopia, only three of the reports were submitted by local CSOs.<sup>75</sup> In both cycles of review, the majority of submissions were made by foreign-based CSOs.

The situation is much worse when we see the role of CSOs in monitoring the implementation of UPR recommendations accepted by Ethiopia. Indeed, various workshops were organized by UPR Info, VECOD and Addis Ababa University School of Law and attended by CSOs and other stakeholders with a view to sharing the outcome of the second cycle of review<sup>76</sup> enhancing the involvement of CSOs in monitoring implementation of UPR recommendations in Ethiopia

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<sup>72</sup> First UPR Working Group Report on Ethiopia, *supra* note 51, at para. 4.

<sup>73</sup> This concern was raised at UPR conference organized by AAU School of Law on the 7<sup>th</sup> of October 2015 in Addis Ababa. As included in the conference report, the theme of the conference was: effective monitoring of UPR recommendations through multi stakeholder engagement and awareness raising on the UPR process in Ethiopia. Representatives of the following CSOs attended the conference: Peace & Development Committee (PDC), VECOD, Ethiopian Centre for Disability Development (ECDD), Ethiopian Women Lawyers Association (EWLA), and Ethiopian Human Rights Council (HRCO).

<sup>74</sup> Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15 (C) of the Annex to Human Rights Resolution 5/1: Ethiopia, 22 September 2009. The local CSOs are: Action Professionals’ Association for the People; Ethiopian Human Rights Council; Ethiopian Women Lawyers’ Association; and Organization for Social Justice in Ethiopia.

<sup>75</sup> Summary prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Ethiopia, 27 January 2014 [the 2014 Compilation of Stakeholders Submission]. The local CSOs are: Human Rights Council (HRCO), VECOD, Ethiopian Human Rights Service (EHRS), and Ye Ethiopia Ye Fiteh Seratoch Ma’ekel (Centre for Legal Pluralism in Ethiopia).

<sup>76</sup> UPR Info and Addis Ababa University, *supra* note 42, at 1.

and establishing cooperation among stakeholders for effective implementation;<sup>77</sup> and discussing the adoption of a joint UPR recommendations monitoring plan.<sup>78</sup> The outcomes of the workshops, however, have been hardly implemented. Thus, the level of participation of CSOs in Ethiopia's engagement with the UPR mechanism is unacceptably low. Given this fact, it is imperative to ask: why is that so?

First and foremost, the 2009 Charities and Societies (CSOs) Proclamation denied CSOs adequate space for their involvement in promotion of human rights in general and their participation at the UPR mechanism in particular. The Proclamation introduced a strange way of classification of CSOs as Ethiopian, Ethiopian resident<sup>79</sup> and foreign CSOs<sup>80</sup> with serious consequences. The Proclamation reserves human rights activism to only Ethiopian CSOs.<sup>81</sup> According to article 2(2) of the Proclamation, a CSO 'formed under the laws of Ethiopia' and 'all of whose members are Ethiopians' is regarded as an Ethiopian CSO provided that it uses not more than ten percent of its funds received from foreign sources. The implication of this stipulation is that foreign and foreign funded CSOs are not legally allowed to carry out promotion of human rights in Ethiopia. These CSOs are legally authorized to carry out only service delivery undertakings and relief activities.<sup>82</sup> Second, the local CSOs that are permitted by the Proclamation to engage in human rights-related activities have limited capacities to take part in the UPR process.<sup>83</sup> Owing to the foreign funding restriction as well as lack of domestic source of finance, these CSOs have serious financial problems. Third, because reports are prepared at the time when the deadline for submission is closing, the government does not have enough time to

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<sup>77</sup> *Effective Monitoring and Follow-up on Implementation of the UPR Recommendations*, Workshop Report Prepared by the School of Law, Addis Ababa University. The Workshop was held on October 7, 2015.

<sup>78</sup> UPR Info, *supra* note 54, at 1.

<sup>79</sup> CSOs are categorized as Ethiopia resident CSOs if they 'are formed under the laws of Ethiopia and consist of members dwelling in Ethiopia, and...receive more than 10 percent of their funds from foreign sources.' See Charities and Societies Proclamation, Proclamation No. 621, *Fed. Neg. Gaz.* Year 15, no. 25, Art. 2(3), (2009) [the CSOs Proclamation].

<sup>80</sup> CSO are categorized as foreign CSOs if they 'are formed under the laws of foreign countries or consist of members who are foreign nationals or are controlled by foreign nationals or receive funds from foreign sources.' See CSOs Proclamation, *supra* note 79, Art.2(4).

<sup>81</sup> *Id.*, Art. 14 (5) cum (2) (j-n).

<sup>82</sup> *Id.*, Art. 14 (2) (a-i).

<sup>83</sup> UPR Info, *supra* note 42, at 2.

undertake adequate consultation with stakeholders. This prevents NGOs from providing inputs on the report prepared by the government.

## 5. Implementation of UPR Recommendations by Ethiopia

### 5.1 UPR Recommendations to Ethiopia

The most important outcome of the UPR review is recommendations by states which they believe, if implemented, will improve human rights in the SuR. Ethiopia has received a bunch of recommendations in both cycles of review. It received 142 recommendations in the first cycle of UPR of which it noted/rejected 43 recommendations. It also received 252 recommendations in the second cycle of review of which it rejected 64 recommendations.

While there is no restriction on the number and type of recommendations states may reject and the state will not be accountable for lack of implementation of recommendations it rejected, this author contends that this discretion of states should not go to the extent of making the entire UPR exercise fruitless and should not defeat the ultimate aim of UPR which is improving the human rights situation on the ground in the SuR. With respect to Ethiopia, there are several rejected recommendations which, if accepted and implemented, could significantly contribute to fostering the level of protection of human rights in the country. These recommendations include: amendment of the laws governing CSOs, Anti-Terrorism and Freedom of the Mass Media and Access to Information;<sup>84</sup> issuing an open-ended and standing invitation to all special procedures;<sup>85</sup> undertaking credible and independent investigations of alleged human rights violations;<sup>86</sup> and ratification of optional protocols which enable individuals to lodge complaints in the event of infringement of their rights by the Ethiopian Government.<sup>87</sup> The amendment of the above three laws have been recommended unanimously by all treaty bodies<sup>88</sup> as well as a host of states during

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<sup>84</sup> First UPR Working Group Report on Ethiopia, *supra* note 51, Recommendations 23-27 and 32. HRC, *Report of the Working Group on the Universal Periodic Review: Ethiopia* (7 July 2014), Recommendations 158.34-47 and 158.49-53 [Second UPR Working Group Report on Ethiopia].

<sup>85</sup> *Id.*, Recommendations 6-12. See also Second UPR Working Group Report on Ethiopia, *supra* note 84, Recommendations 158.18-22 and 158.31.

<sup>86</sup> *Id.*, Recommendations 18-19.

<sup>87</sup> Second UPR Working Group Report on Ethiopia, *supra* note 84, Recommendations 158.3, and 158.8-158.9.

<sup>88</sup> This can be seen from the concluding observations they have issued to Ethiopia.

the constructive dialogue in both cycles of review of Ethiopia. This author believes that this widely shared recommendation is legitimate in the light of the threat they pose to the enjoyment of a host of human rights.<sup>89</sup> The latter three recommendations complement the level of protection of human rights by Ethiopian national institutions, such as courts and the EHRC by allowing independent investigation of human rights violations and providing redress for victims of human rights violations. At this point, it is important to note that being a party to a mother treaty which guarantees rights is less helpful unless the country also ratifies optional protocols and makes declaration that enables individuals to take human rights violations to treaty bodies. What Ethiopia has consistently done, however, is that it ratifies the mother treaties which set out rights without ratifying or accepting the procedures which give international quasi-judicial institutions the opportunity to provide redress for human rights infringements.<sup>90</sup>

Another worrisome issue in relation to UPR recommendations rejected by Ethiopia is the reason the government invoked to justify its stance. In response to the recommendations of several states to amend or repeal provisions of the media, CSOs and anti-terrorism laws that contravene human rights treaties to which Ethiopia is a party, the Government of Ethiopia contended that '[t]hese recommendations stem from disrespect to sovereign rights of states to design legislations and policies that are consistent with international human rights

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<sup>89</sup> See studies undertaken in this area: Hiruy Wubie, *Some Points on the Ethiopian Anti-Terrorism Law from Human Rights Perspective*, 25/2 Journal of Ethiopian Law 24 (2012); Wondwossen Demissie, *Criminalization and Punishment of Inchoate Conducts and Criminal Participation: The Case of Ethiopian Anti-Terrorism Law*, 24/1 Journal of Ethiopian Law 24 (2010); Debebe Hailegebriel, *Restrictions on Foreign Funding of Civil Society*, <https://chilot.files.wordpress.com/2011/08/restrictions-on-foreign-funding-of-civil-society.pdf>; Mizanie Abate, *The Implications of 2009 Ethiopian CSOs Law on the Right to Freedom of Association*, 27/1 Journal of Ethiopian Law (2015), Mesenbet A. Tadeg, *Freedom of Expression and the Media Landscape in Ethiopia: Contemporary Challenges*, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2763600](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2763600); and Tracy Ross, *A Test of Democracy: Ethiopia's Mass Media and Freedom of Information Proclamation*, 114 Penn State Law Review (2010).

<sup>90</sup> With the exception of the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child, Ethiopia did not accept the competence of any treaty body to receive communications against it.

laws.<sup>91</sup> A close reading of these recommendations, however, reveals that they are framed in specific manner indicating the rights these laws may infringe. Hence, the position of the Government of Ethiopia to reject recommendations based on sovereignty to make laws and policies is flawed. It arises from a misunderstanding of the obligation of Ethiopia to make sure that the laws and policies it makes should conform to human rights treaties it ratified.

The Ethiopian Government also rejected a number of recommendations on the ground that 'their implementation would contravene the Ethiopian Constitution and undermine the culture and societal assets of the various nations, nationalities and peoples of the country.'<sup>92</sup> The Government did not, however, specify which recommendations have this effect. The author of this article opines that these kinds of blanket justifications open a Pandora's Box for not accepting and thereby implementing recommendations that can improve the level of protection of human rights in Ethiopia. Moreover, the author believes that the merit and significance of recommendations should be weighted in the light of the UDHR and treaties ratified by Ethiopia, instead of national laws and cultures.

It is important to note that the UPR recommendations are not new to Ethiopia. Albeit with slight modifications in formulations, they were made by various treaty bodies in their concluding observations to Ethiopia.<sup>93</sup> The difference is that while states are given the opportunity to choose which recommendations they may accept or reject in the case of UPR recommendations, there is no formal procedure to make such election before the treaty bodies.

## 5.2 Preparation of Implementation Plan/Matrix

The SuR is primarily responsible for implementation of accepted recommendations and to facilitate the implementation, it is encouraged to

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<sup>91</sup> HRC, *Report of the Working Group on the Universal Periodic Review: Ethiopia Addendum Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review* Para. 8 (18 March 2010).

<sup>92</sup> *Id.*, para. 11.

<sup>93</sup> See, for example, concluding observations issued by the CRC, CEDAW, HRC and ACHPR on Ethiopia. See also Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to the Human Rights Council Resolution 5/1: Ethiopia, 18 September 2009; and Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to the Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to the Council Resolution 16/21: Ethiopia, 12 February 2014 [the 2014 Compilation of Information of UN Bodies].

undertake broad consultation with all relevant stakeholders.<sup>94</sup> The international community is also expected to provide financial and technical assistance to the SuR in its endeavor to implement recommendations.<sup>95</sup>

The implementation of accepted recommendations should commence after the adoption of the outcome report by the HRC and will last until the next UPR. It means that the implementation is supposed to be completed within four years for the first cycle of review and four and half years for the second cycle review recommendations. With respect to Ethiopia, the implementation period for the first cycle of UPR is over. What is an issue currently is the implementation of the recommendations of the second cycle of review. The HRC adopted the outcome of the UPR review on 19 September 2014. Thus, the implementation period will last from this date to March, 2019.

Although it is not required in the relevant HRC resolutions pertaining to UPR, countries' best practices show the instrumentality of developing UPR recommendations implementation plan/matrix.<sup>96</sup> The implementation plan, preferably to be developed in a consultative process involving all relevant stakeholders, is believed to facilitate follow-up of implementation of the recommendations. Taking Kenya's experience as an example, the implementation matrix can be prepared in a table containing recommendations (clustered based on substance, order of priority etc.), specific action areas, indicators to track progress, government body responsible, potential partners and timetable for the implementation of each recommendation.<sup>97</sup>

While the implementation of the first cycle of UPR recommendations in Ethiopia was not guided by a timely prepared implementation matrix, there are some attempts to prepare the plan for the second cycle. In January 2015, UPR-Info and Addis Ababa University School of Law organized a UPR dialogue forum attended by representatives of the government and CSOs and the participants, *inter alia*, discussed clustered recommendations accepted by

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<sup>94</sup> HRC Resolution 16/21, *supra* note 19, para. 17.

<sup>95</sup> HRC Resolution 5/1, *supra* note 3, at para. 36.

<sup>96</sup> In this regard, one can mention Kenya's experience. See Office of the Attorney General and Department of Justice, *Universal periodic review 2<sup>nd</sup> cycle implementation matrix 2015-2019*, [https://www.upr-info.org/sites/default/files/general-document/pdf/kenya\\_2nd\\_cycle\\_final\\_matrix\\_2016.pdf](https://www.upr-info.org/sites/default/files/general-document/pdf/kenya_2nd_cycle_final_matrix_2016.pdf).

<sup>97</sup> *Id.*

Ethiopia and identified implementation modalities.<sup>98</sup> Several months later, in May 2016, VECOD and UPR-Info organized a one day roundtable discussion attended by representatives of government, civil society, the media and other stakeholders to deliberate on the possibility of laying down ‘a joint UPR recommendations monitoring plan/tool’.<sup>99</sup> The meeting, however, did not result in monitoring plan as much of the time was devoted to awareness raising about the UPR mechanism and discussion on institutional arrangement for implementation of UPR recommendations in Ethiopia.

Generally, two years after the adoption of the outcome of Ethiopian UPR review, the country has not yet developed UPR recommendations action plan. Lack of action plan seriously has affected coordinated, efficient and effective implementation of the recommendations. In relation to this, UPR Info observed implementation challenges ‘that are already glaring with the implementation of the 2014 recommendations including lack of proper coordination or knowledge of who is doing what, among others.’<sup>100</sup>

### 5.3 Implementation Status of Accepted Recommendations

As mentioned above, Ethiopia received 142 recommendations in the first cycle of UPR review, of which it accepted 99 recommendations. It also received 252 recommendations in the second cycle of review, of which it accepted 188 recommendations. This section attempts to analyze the implementation status of UPR first cycle accepted recommendations. The implementation status of UPR second cycle accepted recommendations is not discussed in this article for its period of implementation has not yet expired. The article does not attempt to analyze the implementation status of each and every recommendation accepted during the first cycle of review. Instead, it only focuses on recommendations calling for relatively specific action/s,<sup>101</sup> whose implementation has wider implication for protection of a set of human rights and that can be realistically implemented within the 4 year implementation period. The author made a broad assessment of the implementation status of more than 78 of the 99 accepted

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<sup>98</sup> UPR Info and Addis Ababa University, *supra* note 42, at 1.

<sup>99</sup> UPR Info, *supra* note 54, at 3.

<sup>100</sup> *Id.*

<sup>101</sup> Most of the recommendations accepted by Ethiopia are general whereas recommendations rejected by the country are overwhelmingly specific. Consequently, it is difficult to ascertain the implementation of accepted but vague recommendations.

recommendations. The recommendations are thematically clustered for the purpose of analysis.

An attempt to evaluate the status of implementation or the actual impact of recommendations has to show whether the implementation of the recommendations has improved the human rights situation on the ground. However, doing so requires field research which needs more resource and time. This article limits itself to assessing the specific action/s that the government has taken to implement accepted recommendations. The assessment is made based on the personal observation of the author, implementation report submitted by Ethiopia in its second cycle UPR report, stakeholders' submissions to the HRC, information contained in the reports of different UN bodies as compiled by the OHCHR for Ethiopia's second cycle review, and states' views on the status of implementation of accepted recommendations during the second cycle of review. The author of this article does not take the position that the various measures the government of Ethiopia has taken as described in this Section are exclusively attributable to UPR recommendations.

There are times when states may implement rejected recommendations. An Assessment made by UPR Info in this regard disclosed that "an average of 19% of 'noted' recommendations do trigger action from governments."<sup>102</sup> The author has tried to investigate whether Ethiopia has implemented any of the recommendations it rejected but found none.

### ***5.3.1 Ratification of Human Rights Treaties***

The first cycle UPR recommendations for Ethiopia called for the signing and ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention on the Rights of Persons with Disabilities (CRPD), both of which were accepted by Ethiopia. The recommendation for the signature and ratification of the optional protocols to the CRC was also accepted without indicating which optional Protocol was accepted. Ethiopia has ratified CRPD on 7 July 2010, Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography on 25 March 2014 and the Optional Protocol to CRC on the Involvement of Children in Armed Conflict on 14 May 2014.

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<sup>102</sup> UPR Info and Addis Ababa University, *supra* note 42, at 3.



### ***5.3.2 Reporting to Treaty Bodies***

Ethiopia received a recommendation calling for timely reporting to the treaty bodies. Within the period of implementation of the recommendations of the first cycle of review, Ethiopia has submitted reports in 2009 in respect of the following treaties: the International Convention on the Elimination of all forms of Racial Discrimination (CERD); CEDAW; the International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); CRPD; the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); CRC, African Charter on Human and Peoples' Rights (ACHPR); and African Charter on the Rights and Welfare of the Child (ACRWC).<sup>103</sup>

However, Ethiopia failed to submit the seventeenth to nineteenth reports overdue since July 2013 under CERD, second report due in July 2014 under the ICCPR, eighth report due in 2015 under CEDAW and second report due in December 2014 under CAT.

### ***5.3.3 Establishing an Effective and Inclusive UPR Follow-up Mechanism***

In its report to the HRC on the implementation of a recommendation calling for the establishment of 'an effective and inclusive process to follow-up on recommendations emerging' from the UPR, the only thing Ethiopia stated is that it organized a national consultative workshop aimed at awareness raising and implementation of the accepted recommendations in December 2010.<sup>104</sup> The author, as discussed in Sections 2 and 6 of this article, found out that the country has not yet put in place effective UPR recommendations follow-up mechanism.

### ***5.3.4 Taking Legal and Policy Measures***

States made several recommendations, both general and specific, on the need to make legal and policy measures to strengthen the level of protection of human rights in Ethiopia. Although Ethiopia succeeded in adopting laws,<sup>105</sup> some of the

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<sup>103</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 21.

<sup>104</sup> *Id.*, para. 2.

<sup>105</sup> The laws enacted within the first cycle implementation period include: Anti-Terrorism Proclamation No. 652/2009; A Proclamation to Provide for the Electoral Code of Conduct for Political Parties No. 662/2009; Proclamation to Ratify the Convention on the Rights of Persons with Disability No. 676/2010; Federal Judicial Administration Council Establishment Proclamation (as Amended) No. 684/2010; Social Health Insurance Proclamation No. 690/2010; Proclamation to Ratify Protocol to Prevent, Suppress and Punish Trafficking in

legislation introduced pose a threat instead of fostering protection of human rights. A case in point in this regard is the Anti-Terrorism Proclamation which, as mentioned above, is widely criticized for its inconsistency with international human rights standards.

The recommendation for the formulation of a national plan of action on human rights has been given effect. Ethiopia launched a National Human Rights Action Plan (NHRAP) for 2013-15 in June 2013. However, in their joint submission to the second cycle of Ethiopian review before the UPR, local and foreign CSOs stated that the NHRAP, prepared without the participation of CSOs, did not: 'provide for specific modalities for participation of CSOs during its implementation and monitoring'; 'spell out specific implementation measures or timeframe'; and 'address mechanisms and official policies that violated citizens' human rights'.<sup>106</sup> The period of implementation of the NHRAP expired in 2015 and the Government has recently adopted the second NHRAP which is expected to be implemented in the next five years.<sup>107</sup>

While the specific recommendation to put in place a policy dedicated to assisting and protecting internally displaced persons and refugees was not implemented, Ethiopia has adopted a Criminal Justice Policy.<sup>108</sup>

### ***5.3.5 Building Institutional Capacity***

An important area where Ethiopia received and accepted several recommendations is regarding institution building in general and strengthening the EHRC in particular. In relation to the EHRC, Ethiopia was recommended to open more branch offices, give the Commission access to detention centers and ensure that the Commission complies with relevant international standards and the Paris Principles. Accordingly, the EHRC opened six more regional branch offices and monitored detention centers.<sup>109</sup> However, there are still concerns over the EHRC's compliance with relevant international standards and the Paris Principles and human capacities and competencies.<sup>110</sup>

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Persons Especially Women and Children Ratification No. 737/2012; and Registration of Vital Events and National Identity Card Proclamation No. 760/2012.

<sup>106</sup> 2014 Compilation of Stakeholders Submission, *supra* note 93, at para. 6.

<sup>107</sup> The Federal Parliament approved the second NHRAP in December 2016.

<sup>108</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 9.

<sup>109</sup> *Id.*, paras. 14 and 28.

<sup>110</sup> 2014 Compilation of Information of UN Bodies, *supra* note 93, at paras.26-29.

Another important development in relation to institution building is the establishment of a National Committee on the Elimination of Harmful Traditional Practices mandated to oversee the implementation of the National Action Plan to Eliminate Forced Marriage, Arranged Marriage and Early Marriage.

### ***5.3.6 Engagement with and Giving Space to CSOs***

States forwarded a host of recommendations to Ethiopia pertaining to CSOs in general and human rights defenders in particular, including: furthering constructive engagement with CSOs in its human rights activities; guarantying that all CSOs operate freely; and ensuring full respect for the rights of association and assembly of CSOs in line with Ethiopia's Constitution and its international obligations. In its implementation report, the Ethiopian Government pointed out that the CSOs Proclamation created conducive environment for the operation of CSOs; that its senior officials held discussions with various CSOs to respond to their concerns; and the EHRC collaborated with CSOs in the protection and promotion of human rights.<sup>111</sup> It is important to note, however, that the CSOs Proclamation which the Government claimed to have created an enabling atmosphere for the functioning of CSOs has been identified by several states in the interactive dialogue and all treaty bodies in their respective concluding observations to Ethiopia as a law that limits the space for operation of foreign and foreign funded human rights CSOs. The human rights CSOs, on their part, also submitted that this law has actually hindered them from making contribution and there is limited engagement of the government with CSOs.<sup>112</sup>

### ***5.3.7 Technical Assistance and Cooperation***

During the interactive dialogue of the first cycle, Ethiopia received and accepted recommendations on the need to request necessary technical assistance and cooperation from international community to build its capacity, address challenges to the implementation of various human rights and put in place follow-up mechanism for the implementation of UPR recommendations.

In line with these recommendations, Ethiopia reported that it: organized a national consultative workshop in December 2010 on implementation UPR

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<sup>111</sup> Ethiopian Second Cycle Report, *supra* note 59, at paras. 27 and 31.

<sup>112</sup> See 2014 Compilation of Stakeholders Submission, *supra* note 93, at paras. 6, 9, 29 and 53-58.

accepted recommendations with the technical assistance of the OHCHR; benefiting from the technical assistance and in collaboration with various international organizations, partner states, NGOs, it has implemented programs aimed at the realization of various rights; invited the Special Rapporteur of the African Commission on Human and Peoples Rights on Freedom of Expression and Access to information in Africa; permitted country visits by the Special Rapporteur on Freedom of Association and Assembly and the Special Rapporteur on Torture in 2011 and 2013 respectively; became a member of the International Ombudsman Institution and the African Ombudsman and Mediators Association; and requested technical assistance for institutional capacity building and implementation of human rights.<sup>113</sup>

### ***5.3.8 Realizing the Rights of Specific Groups***

The recommendations on the realization of human rights of specific groups include the rights of women, children, and internally displaced persons (IDPs). Regarding the rights of women, Ethiopia was recommended, *inter alia*, to eradicate violence against women (VAW), take additional measures to reduce maternal mortality, and address the gender disparity in accessing education and resources, women's limited political representation and participation in decision-making. In report detailing implementation progress, Ethiopia highlighted the various measures it took to reduce gender disparity in terms of ensuring women's and girls' access to education at all levels.<sup>114</sup> It also gave a detailed account of the strategies it implemented to eradicate VAW in terms of awareness creation, organizing capacity building workshops to law enforcement officials, putting in place the National Strategy on Elimination of Harmful Traditional Practices in 2012, investigation and prosecution of violence against children and provision of psychological and legal advice for victims of VAW;<sup>115</sup> improved maternal health as a result of improved access to medical facilities, antenatal care, post-natal service, skilled health personnel attendance of births; and the results achieved.<sup>116</sup> To deal with gender disparity in all aspects of women's public life, Ethiopia reported, it has mainstreamed gender issues in all sectors, implemented women empowerment strategies and established the necessary institutions.<sup>117</sup> While

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<sup>113</sup> Ethiopian Second Cycle Report, *supra* note 59, at paras. 2, 101-05 and 109.

<sup>114</sup> *Id.*, para. 50.

<sup>115</sup> *Id.*, paras. 64-69.

<sup>116</sup> *Id.*, para. 53.

<sup>117</sup> *Id.*, paras.59 and 60.

Ethiopia is appreciated for the various measures it has taken, there are still concerns in respect of, among others, the high maternal mortality rate of 470 per 100,000 live births.<sup>118</sup>

As regards the rights of children, the recommendations basically focused on taking measures to realize rights of children to food, timely registration of all births and reduce infant mortality. Although the recommendation on birth registration has not been implemented within the implementation period, the law that requires birth registration, Registration of Vital Events and National Identity Cards, came into force on August 6, 2016. In terms of the realization of the right to food, the country reported the specific measures it has taken, such as providing street children with skills and vocational trainings and adoption of a community-based Revised National Nutrition Program and the International Code of Marketing on Breast-Milk Substitutes.<sup>119</sup> Also included in Ethiopia's implementation report is the achievement in reducing infant mortality.<sup>120</sup>

Referring to the recommendation to continue its efforts to protect IDPs, Ethiopia reported that it has signed, but not ratified, the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa and implemented a Disaster Risk Management System.<sup>121</sup> Unsatisfied with the measures taken, UNHCR and the Human Rights Committee continued to express their concerns over the lack of national strategic framework and a designated government institution for the protection and assistance of IDPs.<sup>122</sup>

### ***5.3.9 Realization of Specific Human Rights***

The rights to education and freedom of expression are the two rights in relation to which Ethiopia received frequent recommendations. With regard to the right to education, Ethiopia was recommended to progressively enhance the quality of education, make primary and general secondary education and related training free of charge, further develop the education system and increase education sector public expenditure. Ethiopia, with a view to implementing the recommendations, has 'allocated ever-increasing resources' to education, ensured the equitability of

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<sup>118</sup> 2014 Compilation of Information of UN Bodies, *supra* note 93, at para.65.

<sup>119</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 86.

<sup>120</sup> *Id.*, para.54.

<sup>121</sup> *Id.* Para.92.

<sup>122</sup> 2014 Compilation of Information of UN Bodies, *supra* note 93, at paras.80-81.

access to education at all levels and made primary education free to all citizens.<sup>123</sup> Despite the progress Ethiopia has achieved, treaty bodies continue to express their concern over Ethiopia's failure to make primary education free and compulsory.<sup>124</sup> There is also a concern over quality of education at various levels.

The recommendations on freedom of expression were forwarded with reference to legal bottlenecks in the operation of the media and political parties. In its implementation report, Ethiopia stated that it took a position that the Proclamation to Provide for Freedom of the Mass Media and Access to Information No. 590/2008 enabled the media to operate freely and citizens to establish and run media services.<sup>125</sup> Ethiopia also mentioned that it opened additional TV channels, licensed more public and private media organizations and community-based radio stations to ensure 'that citizens would enjoy the plurality of opinions'.<sup>126</sup> Contrary to the claim of the Ethiopian Government, the Human Rights Committee opined that the aforementioned Proclamation undermines the right to freedom of expression through exorbitant 'registration requirements for newspapers, the severe penalties for criminal defamation and the inappropriate application of that law in the combat against terrorism.'<sup>127</sup> Unsatisfied by the measures taken, states also recommended Ethiopia to take steps to guarantee freedom of expression, particularly to journalists and media workers.<sup>128</sup>

### ***5.3.10 Addressing Factors that Hamper the Enjoyment of Rights***

Ethiopia received and accepted a host of recommendations on counter-terrorism, HIV/AIDS, unemployment, human trafficking, female genital mutilation (FGM) and human rights illiteracy.

In relation to the fight against terrorism, Ethiopia accepted recommendations on the necessity of taking measures to ensure that counter-terrorism actions are undertaken without undermining the country's human rights obligations. Ethiopia, in its implementation report, contended that the Anti-Terrorism

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<sup>123</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 48.

<sup>124</sup> 2014 Compilation of Information of UN Bodies, *supra* note 93, at para.66.

<sup>125</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 24.

<sup>126</sup> *Id.*, para. 25.

<sup>127</sup> 2014 Compilation of Information of UN Bodies, *supra* note 93, at para.44.

<sup>128</sup> Second UPR Working Group Report on Ethiopia, *supra* note 84, Recommendations 155.104-05.

Proclamation mandated the parliament to proscribe and de-proscribe a group as a terrorist organization upon ascertainment of whether ‘a particular group will pose a threat to the safety and security of the country and the population’ and reported the educational campaign it undertook to law enforcement officials on the various principles of due process.<sup>129</sup> Given that the federal parliament is currently 100% controlled by the ruling party and its allies, there is little guarantee that the enlisting of groups as terrorists will be done based on legal than political considerations. Due to the incompatibility of provisions of the Anti-Terrorism Proclamation with Ethiopia’s human rights obligations, the amendment of the Anti-terrorism Proclamation has been recommended by a number of states, which Ethiopia has rejected.

Ethiopia also accepted a recommendation calling for fighting HIV/AIDS. In its report on the implementation of this recommendation, Ethiopia stated that it has adopted and implemented the health sector development plan which ‘focuses on prevention and mitigation of health problems such as HIV/AIDS, tuberculosis and malaria’ and has significantly expanded comprehensive HIV/AIDS services.<sup>130</sup> Ethiopia has been one of the countries praised for putting HIV/AIDS under control. However, there are still concerns regarding the pervasiveness of stigma and discrimination against people living with HIV.<sup>131</sup>

In another recommendation, Ethiopia was requested to continue the efforts to tackle unemployment in urban areas. The Ethiopian Government reported that it, applying different employment generation mechanisms, was able to reduce unemployment by more than 2.6 million in the years 2010/11-2012/13.<sup>132</sup> This is a good progress; but, the situation requires more concerted and sustained efforts given that Ethiopia is still a country with high urban unemployment rate.<sup>133</sup>

Ethiopia was also requested to take all the necessary measures to prevent trafficking in persons, especially of children. Taking this recommendation

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<sup>129</sup> Ethiopian Second Cycle Report, *supra* note 59, at paras. 29-30.

<sup>130</sup> *Id.*, para.56.

<sup>131</sup> 2014 Compilation of Information of UN Bodies, *supra* note 93, at para.21.

<sup>132</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 41.

<sup>133</sup> Urban unemployment rate in Ethiopia is above 18%. See Horn Affairs-English, *Urban Unemployment Hits Two Decades Low: Ethiopia*, <http://hornaffairs.com/en/2011/04/27/urban-unemployment-hits-two-decades-low-ethiopia/>.

positively, the country has established a National Council to Combat Trafficking in Persons in 2011; organized a series of awareness creation forums on trafficking and its consequences; set up human trafficking control centres; 'established Reception Centres around border posts for victims of trafficking'; implemented an action plan on reducing illegal migration and human trafficking; and brought perpetrators of this crime to justice.<sup>134</sup> Appreciating the measures taken, several treaty bodies and UNHCR, however, continue to express their concern over the prevalence of trafficking in women and children and requested Ethiopia to continue to put the situation under control, prosecute and punish perpetrators and assist victims.<sup>135</sup>

Cognizant of the prevalence of deep-rooted traditional harmful practices in the country, Ethiopia was requested to exert every possible effort to eradicate FGM. As a follow-up report to this recommendation, the Government reported that, with a view to eliminating FGM, it has earmarked the necessary budget to fight FGM; endorsed a national strategy and action plan on the elimination of harmful traditional practices including FGM; and designed programs aimed at dissemination of information and experience sharing among regional states and their law enforcement officials.<sup>136</sup> Even after the expiry of the period for the implementation of recommendations of the UPR first cycle, a number of treaty bodies kept on urging the country to eradicate FGM and other harmful traditional practices and CEDAW urged Ethiopia to amend the Criminal Code to increase penalties for FGM.<sup>137</sup>

As regards human rights literacy, Ethiopia was requested to double its effort in raising human rights awareness and, as part of this effort, translate international human rights instruments into local vernaculars. In its implementation progress report, Ethiopia mentioned the activities undertaken including the translation of human rights instruments into Amharic, Affan Oromo, Tigrigna, Somali and Afar languages<sup>138</sup> and human rights awareness creation to prosecutors, the police, prison administrators and members of the military.<sup>139</sup>

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<sup>134</sup> Ethiopian Second Cycle Report, *supra* note 59, at paras. 76-77.

<sup>135</sup> 2014 Compilation of Information of UN Bodies, *supra* note 93, at para.36.

<sup>136</sup> Ethiopian Second Cycle Report, *supra* note 59, at paras. 71-73.

<sup>137</sup> 2014 Compilation of Information of UN Bodies, *supra* note 93, at para.32;

<sup>138</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 14.

<sup>139</sup> *Id.*, para. 92.



#### 5.4 Challenges to Implementation of UPR Recommendations

The analysis in Section 5.3 above, although it does not give us a full picture of the level of implementation of UPR accepted recommendations of the first cycle, throws some light on what has been accomplished and what has not be accomplished within the four years implementation period. In as much as there are implemented recommendations, there are also recommendations either partially or totally unimplemented. An important indication of lack of full or partial implementation of most accepted recommendations in the first cycle is the fact that most of the recommendations Ethiopia received in the second cycle were similar to the recommendations it received in the first cycle of review.<sup>140</sup>

At this point, figuring out the challenges that hindered the full implementation of accepted recommendations is crucial. Ethiopia, in its report, indicated that the main challenges 'include poverty, resource constraints, lack of capacity, and climate change impacts' as well as 'the diverse and complex nature of the nation [which] makes it difficult to create uniform strategies and programs for the promotion and protection of human rights in all regions.'<sup>141</sup> Given that human rights instruments guide how national laws, policies and strategies have to be formulated and implemented, it makes less sense to contend that the diversity in Ethiopia is a challenge for implementation of human rights in Ethiopia. UPR Info agreed with the challenges that the Government pointed out except that it did not consider the diversity issue as a challenge and added that 'lack of proper coordination or knowledge of who is doing what' is also another problem.<sup>142</sup>

The author of this article agrees with most of the challenges identified; but, argues that the underlying cause for the problem is lack of adequate focus on the part of the Government stemming from its developmental state ideological orientation. I contend that the developmental state ideological disposition somehow detracts the focus of the Government from doing more within available resources. The lack of UPR implementation plan and follow up mechanism that contributes to the unsatisfactory level of implementation are themselves partly the result of limited attention that the Government paid for the protection and promotion of human rights. Characteristically, a developmental state like Ethiopia tends to prioritize economic development over protection of human

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<sup>140</sup> UPR Info, *supra* note 54, at 1.

<sup>141</sup> Ethiopian Second Cycle Report, *supra* note 59, at para. 108.

<sup>142</sup> UPR Info, *supra* note 54, at 2.

rights on the unacceptable belief that this will enable the state to secure rapid economic growth.<sup>143</sup>

## 6. Follow-Up Mechanisms of Implementation of Accepted Recommendations

To ensure that UPR recommendations are timely and adequately implemented by the SuR, there has to be a follow up system. Strangely, however, UPR shares the problem of lack of tough follow-up mechanism with treaty bodies albeit it is supposed to introduce improvement over the existing procedures. It heavily relies on periodic reporting as a means of holding the SuR accountable for implementation of accepted recommendations. The SuR should report the status of implementation or progress made in terms of implementation of accepted recommendations at the next cycle of review. The HRC Resolution specifically states that the subsequent cycle of the review should, among others, focus on implementation of recommendations received in previous cycle.<sup>144</sup> Thus, according to the initial arrangement, it takes 4-4.5 years for the SuR to report the progress it made regarding implementation of recommendations and for the HRC and recommending states to express their views on the status of implementation of accepted recommendations. Cognizant of the inadequacy of this follow-up mechanism, the HRC, in its Resolution 16/21 of 2011, encouraged states 'to provide the Council, on a voluntary basis, with a mid-term update on follow-up to accepted recommendations.'<sup>145</sup> If states enthusiastically act according to this encouragement, they are expected to submit mid-term progress report to the HRC. The submission of the mid-term report enables the HRC to monitor progress roughly every two years.

The loose follow-up system of the HRC could be reinforced by putting in place a strong internal monitoring system by each state. The states' general duty to realize human rights at domestic level includes the obligation to design and apply an effective domestic system for monitoring their implementation. Experiences have demonstrated that the states' internal follow-up system for implementation of UPR recommendations could be effective where they set up well-organized

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<sup>143</sup> For detailed discussion on this issue, see Assefa Fiseha Yeibyio, *Ethiopia: Development with or without Freedom? in HUMAN RIGHTS AND DEVELOPMENT: LEGAL PERSPECTIVES FROM AND FOR ETHIOPIA* 101-138 (E. Brems, C. Van der Beken and Solomon Abay eds., 2015).

<sup>144</sup> HRC Resolution 5/1, *supra* note 3, at para. 34.

<sup>145</sup> HRC Resolution 16/21, *supra* note 19, at para.18.

coordinating machinery and develop well thought out implementation plan.<sup>146</sup> While there is no single model on how the coordination mechanism should be structured, Section 2 of this article has outlined basic requirements for its effectiveness. Section 5.2 of this article has also discussed how a national UPR implementation plan can be prepared.

Turning our attention to the Ethiopian situation, again, Sections 2 and 5.2 of this article have uncovered the absence of a well-organized coordination mechanism and implementation plan, respectively. From this, it logically follows that the country cannot have an effective follow-up system. This is supported by the reality on the ground which shows a glaring lack of follow-up of the progress made in the implementation of UPR recommendations accepted by Ethiopia.<sup>147</sup>

## 7. Conclusions

The UPR mechanism of the HRC, put in place in 2006 as part of the UN human rights system reform, is envisioned to periodically review the compliance of each and every member state of the UN with its human rights obligations and to ultimately improve the situation of human rights in the SuR. So far, the human rights situation of Ethiopia was reviewed twice under this mechanism. Both in the first and second cycles of review, the country received and accepted numerous recommendations by the HRC based on the assessment of the overall human rights situation in Ethiopia. It is the implementation of these recommendations and resultant improvement in the situation of human rights on the ground that makes the UPR a fruitful exercise.

Ensuring the effectiveness of UPR, as a state-driven arrangement, requires states, among others, to set up the necessary institutions, prepare quality national UPR report and submit the same timely, allow the active and meaningful involvement

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<sup>146</sup> See The Danish Institute for Human Rights, *Universal Periodic Review – First Cycle Reporting Methodologies from the Position of the State, Civil Society and National Human Rights Institutions* (2011), [http://www.humanrights.dk/files/media/dokumenter/udgivelser/upr-first\\_cycle-reporting\\_methodologies.pdf](http://www.humanrights.dk/files/media/dokumenter/udgivelser/upr-first_cycle-reporting_methodologies.pdf); and International Organization of La Francophonie, *Universal Periodic Review: Implementation plan of recommendations and pledges* (2013), [https://www.upr-info.org/sites/default/files/general-document/pdf/oif\\_guide\\_upr\\_implementation.30.04.2013\\_e.pdf](https://www.upr-info.org/sites/default/files/general-document/pdf/oif_guide_upr_implementation.30.04.2013_e.pdf).

<sup>147</sup> This fact was confirmed by government officials. See presentation by Mr. Mitiku Mekonnen, former Human Rights Protection & Monitoring Directorate Director, EHRC, entitled 'Reflection of the Two-Cycle UPR Process: Ethiopian Human Rights Commission.' at UPR Info and Addis Ababa University, *supra* note 42, at 6.

of CSOs at different phases of UPR, make a responsible decision in determining which recommendations to accept or reject, implement accepted recommendations, and design a strong follow-up system.

Institutionally, it was the Ministry of Foreign Affairs which had the general legal mandate of preparation of reports and follow-up until the mandate is handed over to the Federal Attorney General as of 2 May 2016. In practice, national reports used to be prepared by *ad hoc* committees drawn from relevant ministries and other government offices with the Ministry of Foreign Affairs serving as the chair. For lack of adequate time for report preparation by the committees, the reports were prepared without adequately assessing the implementation of previous recommendations and with limited input from all relevant stakeholders. The practice also shows us that the country is devoid of UPR implementation follow-up mechanism. It is not yet clear which department within the Attorney General will perform these activities.

So far, Ethiopia has submitted two national reports in the UPR exercise. Save the problem associated with the lack of comprehensiveness of the UPR national reports, Ethiopia has done better in terms of timely submission of national reports and actively taking part in the constructive dialogue compared to reporting to treaty bodies. CSOs had limited involvement in Ethiopia's engagement in the preparation of reports, submission of their own UPR reports, and monitoring the implementation of UPR recommendations accepted by Ethiopia. This is attributable to the limited legal space created by the CSOs Proclamation for their operation; weak capacity of local CSOs; and the reluctance of the Government of Ethiopia to engage CSOs.

Although Ethiopia has received a bunch of recommendation in both cycles of UPR, it rejected several of them. While there is no specific limit to a country's power to reject recommendations, it does not make sense to reject recommendations from the perspective of strengthening the level of protection of human rights in Ethiopia, such as recommendations calling for amendment of laws that are widely believed to be inconsistent with Ethiopia's human rights obligations, granting permission for UN independent investigations of alleged human rights violations and acceptance of individual complaint procedures. Rejecting UPR recommendations relying on sovereignty of the country and inconsistency of recommendations with national laws and culture would defeat the very purpose of the UPR exercise.

An analysis of the implementation status of UPR first cycle accepted recommendations disclosed that in as much as there are recommendations that have been fully or partially implemented, there are several recommendations not implemented within the four years' implementation period. The lack of satisfactory implementation can be gleaned from the similarity of most of the recommendations the Government of Ethiopia received in the second cycle review with the recommendations received during the first round. The absence of UPR implementation matrix and follow-up mechanism partly explains why several accepted recommendations have not been implemented. Overall, while resource constraints and lack of capacity can be mentioned as well founded challenges, the underlying reason for Ethiopia's inadequate exploitation of the UPR mechanism within the available resources is lack of adequate attention paid to human rights by the Government stemming from its developmental state ideological orientation. The insufficient attention paid by the Government for UPR in particular and human rights in general can be discerned from lack of permanent body dedicated to UPR reporting and follow-up, the indispensability of rejected recommendations, lack of full implementation of accepted recommendations and the limited space it afforded CSOs in its engagement with UPR. Thus, unless Ethiopia establishes a permanent organ responsible for UPR reporting and follow-up, allow the active participation of CSOs in its UPR process, reconsiders and accepts the widely shared recommendations it rejected whose implementation will strengthen human rights protection and fully implement the recommendations it accepted, the UPR's avowed purpose of improving human rights situation on the ground will remain a distant dream for this country.

