

Examining the Roles of National Human Rights Institutions (NHRIs) in the Implementation of Peace Agreements: The Case of CoHA of Ethiopia

Abreha Mesele ¹⁵

Abstract

Peace agreements and treaties end armed conflicts by bringing parties to negotiate and stop hostilities. The Pretoria Agreement on Cessation of Hostilities (CoHA) entered between the Ethiopian Federal Government and the Tigray People's Liberation Front on 3 November 2022 at Pretoria, the Republic of South Africa ended the Tigray war, creating a Joint Committee for monitoring compliance. National Human Rights Institutions (NHRIs) like the Ethiopian Human Rights Commission (EHRC) are increasingly vital in overseeing peace agreement enforcement. This article highlights NHRIs' role in protecting human rights post-conflict and the benefits of including them in implementation frameworks. It notes challenges such as unclear operational guidelines for NHRIs at various levels, which limits effectiveness. The article calls for coordinated frameworks to strengthen the enforcement of CoHA in Ethiopia, advocating for expanded mandates and institutional reform of the EHRC. It suggests renegotiating CoHA's implementation architecture to formally integrate the EHRC after vetting, enhancing institutional roles and promoting peace agreement success.

Keywords: *peace agreements, implementation mechanisms, human rights, CoHA, human rights institutions, NHRIs, and Ethiopia.*

¹⁵ Abreha Mesele Zinabu: LLM (Addis Ababa University), LLB (Mekelle University), Assistant Professor of Human Rights Law at Mekelle University, School of Law. He can be reached at email: abreha.mesele@mu.edu.et, ORCID: <https://orcid.org/0009-0003-6706-637060>

Introduction

The majority of violent conflicts that happen within the territories of sovereign states have terminated by way of peace agreements (Bell, 2006) made between the warring parties; usually central governments and armed groups. Peace agreements are made by peace processes (ICHRP, 2006) which are aimed at ending conflicts and thereby ensuring lasting peace and the respect of human rights if the implementation of the peace agreements succeed. This is true because a peace agreement is not peace implementation (Hehn, 2011) and for sustainable peace to happen, the roadmap (the peace agreement) should be properly implemented by national actors according to the outline provided by the peace agreement. Peace agreements are incrementally considered to be one of the main ways of trying to move societies away from violent conflicts (Bell, 2006).

The Tigray War which erupted on November 4, 2020, concluded after the signing of the Permanent Cessation of Hostilities Agreement (CoHA) signed between the Federal Government of Ethiopia (hereinafter called FGE) and the TPLF in Pretoria, South Africa on November 3, 2022. The agreement was facilitated by the AU High-Level Panel led by the former president of Nigeria Olusegun Obasanjo, supported by the former president of Kenya Uhuru Kenyatta, and former Deputy President of South Africa Dr. Phumzile Mlambo-Ngeuka, and the Republic of South Africa, which hosted the Peace Talks.

Although TPLF was the political party administering the Tigray region before the war, its status during the war and after the agreement is unclear. On one hand the license of TPLF as a political party was revoked by the National Election Board of Ethiopia and on the other hand the designation of the party as a terrorist organization was de-proscribed by the House of Peoples Representatives after the agreement. Moreover, the CoHA created

an Interim Administration for Tigray region, although the composition of the Interim Administration are dominantly individuals from TPLF, including the president of the Interim Administration. Because of these confusing conditions of TPLF, it is unclear who owes the burden to implement the CoHA (TPLF or Interim Administration). In addition to this, it is also unclear who should negotiate the implementation of the CoHA in the future rounds of negotiations.

The monitoring, verification, and compliance mechanism (MVCM) was to be handled by a Joint Committee of representatives from each party, a representative from the Intergovernmental Authority on Development (IGAD), and chaired by the AU High-Level Panel and then to be assisted by African Experts (one expert from each party to the agreement).

The CoHA aimed to halt the conflict in Tigray to avoid further destructive consequences of the war that affected human lives and livelihood. To create a path to sustainable peace, the CoHA lays the foundation for further dialogue and the promotion and protection of human rights by rejecting violence as a means of solving disputes between the parties and embracing peaceful settlements of disputes. The rejection of violence as a means to settle disputes is connected with the AU Agenda 2030-Silencing the Guns. The agreement underscored the importance of using African solutions for African problems as a framework for resolving conflicts.

Although the AU theoretically advocates for "African solutions to African problems"—a phrase that powerfully reflects the importance of ownership and agency in addressing the Continent's challenges—in practice, this ideal often remains little more than a slogan, with limited real-world application. The overall objective of the Agreement was to restore the constitutional mandates, structures, and constitutional principles to both parties; the FGE and the regional government of Tigray

led by TPLF. The agreement stated that the Ethiopian Peoples' desire to live in peace and dignity, an inclusive democratic society based on justice, equality, respect for *human rights, and the rule of law* are grand principles on which the agreement is anchored. The need to respect, promote and protect human rights is encapsulated under article 2(c) cum article 4(1) of the peace agreements. Beyond this, the peace agreement recognizes the AU's values on democracy, election, and governance coupled with the use of the AU Transitional Justice Policy Framework (AU-TJPF) for the accountability and justice processes in relation to violations committed during the war as a path to resolve the conflict.

The CoHA never mentioned the roles of National Human Rights Institutions (NHRIs) like the Ethiopian Human Rights Commission (EHRC) that could play greater roles in the implementation of the agreement as these institutions are major stakeholders in the process of upholding rule of law and promotion of human rights. However, the roles of these institutions are concealed under the phrase of "restoring the constitutional order" in the sense that when the constitution is restored, the constitutional mandate of these institutions will come into play. The institutional mechanism for implementing the agreement is hidden behind the wall of the restoration of the constitutional order.

This article therefore aims to examine the roles of the NHRIs in the implementation of the CoHA by distilling experiences from other countries that operated within the context of conflict and post-conflict situations. The article determines the nature, content, and legal status of the CoHA in light of peace agreements and peace treaties under the Vienna Convention on Laws of Treaties of 1969 and 1986, the International Court of Justice (ICJ) statute, and human rights instruments. Moreover, the article examines the importance of the use of human rights institutions in peace agreements and situates how the EHRC could play its respective

roles in the implementation process of the CoHA. Concerning this, the article explores the challenges of enforcing the CoHA in the absence of a clear road map as regards the roles of human rights institutions like EHRC in the Pretoria Agreement in the future. Peace agreements need to clearly outline the path of peace implementation by creating new human rights institutions or broadening the mandates of the existing human rights institutions so that the possibility of successfully implementing the peace agreement would increase against the probability of the reversal to war.

The study investigates the roles of NHRIs in the implementation of peace agreements and seeks to answer the following questions: 1) What roles do NHRIs have in implementing peace agreements? 2) What shortcomings exist in the implementation strategy of the CoHA? 3) What lessons can be drawn from other countries' experiences in utilizing NHRIs as mechanisms for implementing peace agreements?

1. Brief Note on Research Methods

The study on the role of NHRIs in the implementation of a peace agreement employed a qualitative method, utilizing a triangulation of approaches and data collection tools for verification of the findings. Document analysis involved reviewing relevant documents such as the CoHA, reports of the African Union's Monitoring, Verification and Compliance Mission (AU-MVCM), statements of TPLF and the federal government, and legal documents to understand the role and mandate of NHRIs in the CoHA context. Additionally, cases from different countries, selected based on the nature of the relevant peace agreement, were examined where NHRIs have been involved in peace agreements, identifying common trends, challenges, and best practices.

The study also utilizes the peace agreement database of the University of Edinburgh¹⁶ to distill experiences from other countries. The triangulated data was analyzed using content, thematic, and document analysis, as well as case analyses, to synthesize available data.

2. The Nature of the Armed Conflict in the Tigray War

The armed conflict is referred to as the "Tigray War" because the parties involved were the Tigray Special Forces, led by the TPLF, and the FGE. The author chose this title to reflect the main actors in the conflict. It is important to distinguish between a war and a battle: while the fighting may have extended to neighboring regions such as Amhara and Afar, the principal warring parties remained the Tigray Special Forces under the leadership of the TPLF and the FGE. This is, however, outside the scope of this article.

Armed conflicts could be either international/internationalized wars or non-international (Cullen, 2010). The non-international armed (usually termed as civil war) is a war within the territory of a sovereign state (Kolb & Hyde, 2008) usually between the central government and armed groups either for more independence from the central government or self-governance and inclusion into the federal power. By contrast, an international armed conflict is a conflict between two or more sovereign states (Kolb & Hyde, 2008).

Sometimes, however, non-international armed conflict can be internationalized if a sovereign state participates in the conflict against the central government which is usually the federal government in states having federalism as state structure. Due to evolving circumstances during a conflict, a war that begins as a civil war may transform into an international armed conflict in its conclusion. For instance, the conflict between Sudan and the

¹⁶ For details see <https://www.peaceagreements.org/>.

Sudan People's Liberation Army (SPLA) started as a civil war but ended with the establishment of a new state, South Sudan. Consequently, the agreement between the parties was a peace treaty rather than a peace agreement.

The Tigray War is hard to characterize on the basis of the aforementioned categories for two reasons. The first reason is the involvement of Eritrean forces which could have made the conflict international armed conflict but the Eritrean government was not fighting with the federal government. The Eritrean forces¹⁷ were invited to support the Ethiopian federal government to fight the TPLF.

Despite the involvement of foreign forces of sovereign states, the nature of the conflict was intrastate conflict, which refers mainly to conflicts within a state's borders as per article -3 common to all the Geneva Convention of 1949 and Additional Protocol II of the 1977 (Bell et al, 2023). Article 1 of Additional Protocol 1977 defines non-international armed conflict as that which; "...takes place in the territory of High Contracting Party between its armed forces and dissident forces or other organized armed groups which under responsible command exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operation."¹⁸

From these points of view, the Tigray War was a civil war -non-international armed conflict which indicates the internal dimension of the war fought between the FGE and TPLF. Therefore, the actors in the peace process will follow the same argument later in deciding the legal status of the peace agreement: the CoHA.

¹⁷ Eritrean forces cannot be considered as mercenaries as the criteria set out under article 47 Additional Protocol II, 1977, 1989 Mercenary Convention, and the 1977 OAU Convention for the Elimination of Mercenarism in Africa define and prohibit such acts.

¹⁸ Additional Protocol II of the 1977 on non-international armed conflict.

Was the Tigray War a territorial conflict or a non-territorial conflict? The Tigray War was a non-territorial conflict because the war was a power struggle between the regional government and its federal counterpart. The *Peace Agreement Access Tool PA-X*¹⁹ characterizes the conflict as both government and territory which indicates that the parties were at dispute due to ideological or political disputes and issues of self-determination including secession elements not at the start of the war but transformed in the course of the war. Be this as it may, the concern of this section is to identify the warring parties because it has a bearing on the peace agreement and its implementation process and the respective obligations of actors in the implementation of the peace agreement: the CoHA.

3. The Nature, Content, and Legal Status of the CoHA

A peace agreement is defined as a formal, publicly available document, produced after discussion with conflict protagonists and *mutually agreed to by some or all of them*, addressing conflict with a view to ending it (Bell, 2017). It is important to know the nature of a conflict to characterize the nature of peace agreements. From this prism, the nature of a conflict can emanate from government (ideological or political dispute), territorial dispute or both government and territory, inter-group, and other causes (Bell, 2017).

More broadly but without determining the legal status of peace agreements, the Centre for Humanitarian Dialogue research defines a peace agreement as: “[A] *formalised legal agreement* between two or more hostile parties – either two states or between *a state and an armed belligerent group (sub-state or nonstate)* – that formally ends a war or armed conflict and sets forth terms that all parties are obliged to obey in the future” (Vinjamuri & Boesenecker, 2007:56).

¹⁹ Available on; www.peaceagreements.org. Accessed on February 10, 2024.

The other definition of peace agreements is given by the Uppsala Conflict Database (UCPD) website in the following manner: “A peace agreement should address the problem of the *incompatibility*, either by settling all or part of it or by clearly outlining a process for how the warring parties plan to regulate the incompatibility.”²⁰

Peace agreements can be classified using stage-function classification such as pre-negotiation, framework/substantive, and implementation/renegotiation agreements (Bell, 2008). The pre-negotiation is an agreement on how to proceed with the negotiation process (the agenda, the participants, security concerns, means of transportation, and venue); it is a talk about talks (Bell, 2008). The framework/substantive agreements (partial or comprehensive) deserve to be labelled as proper peace agreements because such agreements contain basic issues on how to address the root causes of the conflict. Uniquely, implementation agreements involve “new negotiations and in practice often undergo a measure of renegotiation as parties test whether they can claw-back concessions made at an earlier stage” (Bell, 2008).

The nature of the war between the FGE and TPLF was caused by ideological and territorial perspectives. This is why the parties to the CoHA were only determined to be the federal government and TPLF forces with the aim of peace agreements between a state and armed groups do not qualify the requirements of a peace treaty keeping such agreements in a gray area concerning its legal status.

Therefore, the CoHA cannot be characterized as a peace treaty because the Vienna Convention on the Law of Treaties states that a treaty is an agreement concluded between States and

²⁰ Uppsala Conflict Database, Definitions available on ; https://www.pcr.uu.se/research/ucdp/definitions/#tocjump_09027843289922743_38 . Accessed on February 17, 2024

International Organizations or between International Organizations which exclude armed group ending the conflict permanently.

To complement this, The UN has noted that since the 1990s, about 50% of civil wars have ended through peace agreements. Currently, the number of peace agreements is increasing as internal conflicts continue to rise (Caspersen, 2019). And “peace agreements continue to be signed and remain one of the main ways of trying to move societies away from violent conflict” (Bell, 2008).

The major sources of international law, *inter alia*, include treaties as per article- 38 of the ICJ Statute. Of course, there is no clear indication that article- 38 of the ICJ statute is a source of international law (Koivurova, 2014) but from the implicated reading of this article, if the ICJ uses in its adjudication provisions from treaties or others, where states are the only parties in the adjudication process, then treaties and others are sources of binding authoritative decision-making mechanisms under international fora. Treaties in general are regulated by the Vienna Convention on the Laws of Treaties 1969 and 1986. As per article -1 of the Convention, the scope of treaties is either between two or more states, one or more international organizations, or between international organizations.

The Convention defines a treaty as "an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular design" (Vienna Convention, 1969: Art 2). Armed groups are, therefore, outside the scope of the treaty-making process. Moreover, article -2(1)(a) of the Convention stipulates those treaties are international agreements governable by international law. However, article -3 provides a state of exceptions to article-2(1)(a) that must be construed narrowly. Articles- 3(ii & iv) cum

3(a, b & C) of the convention are exceptions to the state-centric provision of article 2(1a); it allows non-states actors other than international organizations to be a party to a peace treaty. Peace from being subjects of international law as per article- 1 and 2 respectively.

Yet the 1986 Second Vienna Convention under its article- 3 headed as *"International agreements not within the scope of the present Convention"* ambiguously states in the following manner:

...to international agreements between subjects of international law other than States or international organizations; shall not affect:

(a) the legal force of such agreements;

(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention.

The above provision is about agreements concluded between subjects of international law *other than* states and international organizations and further elaborates that the Convention will not affect such agreements and their application.

The structure of the CoHA is similar to legal documents; having a preamble, objectives, principles, effective date, and amendment procedure in the agreement. In the preamble of the agreement, commitment to the African Union's Agenda of Silencing the Guns by 2030 was reiterated. Moreover, the efforts of the AU High-Level Panel are recognized in the preamble. Articles- 1 and 2 are on objectives and principles respectively that must be upheld during the implementation of the agreement. Articles -3 to 13 are substantive (partial framework peace agreement provisions) dealing with different issues to be addressed in the implementation phase of the peace agreement.

The CoHA is mainly aimed at addressing Disarmament, Demobilization and Reintegration (DDR), protection of civilians, gender-based violence, and access. The substantive provisions are on children/youth, elderly/age, refugee/IDPs, women, girls and gender issues, DDR, constitutional restoration, and family.

In terms of the content, the CoHA has two big categories of objectives: short-term goals and long-term goals. Some provisions of the agreement are aimed at attaining short-term goals. These goals include immediate and permanent stoppage of hostilities, silencing guns, guaranteeing security, and humanitarian assistance, and rejecting violence as a method of resolving political differences. Some other provisions of the CoHA are aimed at long-term goals including addressing matters arising out of the conflict, ensuring accountability, reconciliation, and rehabilitation, facilitating economic recovery and reconstruction, DDR, and addressing political differences through dialogue. Generally, the CoHA is purely and simply a restoration of the constitutional order.

The CoHA is a peace process without any new substantive provisions created during the agreements. All aspects were subsumed into the already existing constitutional framework; reiterating the constitutional mandate between the federal government and the regional constituent. Therefore, the CoHA is a peace agreement aimed at facilitating a peace process whereas peace treaties are treaties between sovereign states with new substantive provisions (Caspersen, 2019). Peace agreements are peace processes aimed at maintaining constitutional values or inserting certain values into the constitution whereas peace treaties are international law that imposes obligations upon the parties (sovereign states).

The CoHA is a peace agreement and cannot be qualified as a peace treaty. This is not because of the parties that signed the agreement but the substantive provisions stipulated under the

CoHA clearly show that the peace agreement is a domestic law-restoring the constitutional provisions by acknowledging the mandate of the federal government and regional constituent. Moreover, there are no new substantive obligations imposed upon the parties that could upgrade the status of the peace agreement into a peace treaty so that it will be governed by VCLTs 1969 and 1986 for compliance and execution phases. In addition, the CoHA is a peace agreement aimed at establishing a platform for further discussion on the already existing constitutional values without impacting the mandates of each party to the agreement under the Federal Democratic Republic of Ethiopia (hereinafter called FDRE) Constitution. Therefore, the CoHA is an instrument of the peace process, not a new substantive peace treaty. This is said without forgetting that CoHA was signed outside Ethiopia and by third-party mediators (international organizations) who had facilitated the agreement.

For all practical purposes, the CoHA is a domestic law because it has restored the constitutional power of the parties to the agreement. Therefore, the compliance and execution have to follow the domestic law mechanisms of implementation (Bell, 2006) on enforcement and monitoring. The CoHA has accepted all the structures and laws of the already existing frameworks. Therefore, like other domestic laws that oblige either the federal government or regional constituents, the CoHA resumed the existing obligations of the federal government and the government of the regional state of Tigray by restoring the constitutional obligations assumed by the parties before the war. The CoHA could be better implemented in its status as domestic law (like the constitution) than to be a peace treaty that will base itself on the consent of states for its implementation.

Therefore, any noncompliance by either of the parties under the CoHA could be held responsible and accountable by using ordinary courts or any structure under the federal arrangements.

The restoration of the constitutional order by the CoHA will enable NHRIs like the EHRC to engage in supporting the peace process for a better peace-building process in the country and thereby assist the parties in the accountability processes for the violations of human rights during the conflict. When peace agreements embrace human rights provisions, human rights institutions have to look backward (for abuses of the past) and forward (for better protection and promotion of human rights) (Bell, 2006). Human rights responses to past abuses including transitional justice under the CoHA reinforce better peace building and thereby ensure better protection and promotion of human rights in the future.

4. The Need to Institutionalize Peace Agreements: CoHA in Focus

Reaching an agreement on conflicts by the warring parties was considered as an end in itself in the early 1990s but research suggests that: “a significant number of peace agreements break down within five years (the United Nations uses a figure as high as 50%), more within a ten-year period, with many of the remainder entering ‘no war no peace’ limbo whose evaluation is difficult” (United Nations, 2005:114).

For the successful implementation of peace agreements, human rights institutions play an indispensable role (Bell, 2003). These human rights institutions could be international, regional, or national human rights institutions. Some peace agreements recognize human rights institutions in peace agreements and integrate them as one component of the peace agreement. Moreover, human rights institutions, particularly at the national level, could catalyze the process of constitutionalism and democratization process into the future (Bell, 2003).

Peace agreements create an opportunity for human rights institutions to take deep root and ensure the protection and respect of human rights thereby ensuring lasting peace to

prevail. In addition to these, some peace agreements create new institutions and structures that could further boost the promotion and protection of human rights nationally. For example, the Lomé Agreement, which aimed to resolve the conflict in Sierra Leone, established a Human Rights Commission empowered to seek technical and material support from the UN High Commissioner for Human Rights, the African Commission on Human and Peoples' Rights, and other relevant international organizations (Lacatus & Nash, 2019). Additionally, in Uganda, Sierra Leone, and Burundi, the mandates of their respective national human rights institutions were expanded to address post-conflict situations following peace agreements (Sean, 2021).

When peace agreements are reached, third parties either beginning from pre-negotiation or during the substantive peace agreement, participate as signatories, witnesses, or observers. Concerning this, Bell explained in the following manner: "the majority of peace agreements employ third-party states and *international organizations* as signatories to agreements, either through direct signature or signature in the capacity of 'witnesses,' 'guarantors,' or 'observers'" (Bell, 2006).

In the CoHA, the third parties directly signed the peace agreement next to the parties to the conflict in the capacity of witnesses. However, when we look into the details of the content of the CoHA, its provisions reveal that AU has influenced some provisions and can be considered as normative negotiators or normative influencers. This is because articles such as 2 (e & f), 10, and 11 and the preamble provide that the CoHA has to be interpreted in light of the principles of the AU. Moreover, the AU and IGAD were made to be regional organizations that could assist in the monitoring, verification, and compliance process of the peace agreement entered by the parties. Moreover, Kenya, the Republic of South Africa, and Nigeria are third parties in the CoHA by their representatives Uhuru Kenyatta,

Dr. Phumzile Mlambo-Ngeuka, and Olusegun Obasanjo respectively.

a. International Institutions

International institutions like the UN could participate as mediators²¹ in the process of pre-negotiation to help parties reach a deal called peace agreements or treaties. Moreover, international institutions like the UN could participate in the monitoring, verification, and compliance of the peace agreement as a guarantor (Arbour, 2006) when the peace process is between sovereign states. Beyond this, such organizations may put pressure on the parties, especially in peace treaties between states to recognize international human rights and international law²² standards in the peace treaty-normative promotion/normative influencer.

Coming to the CoHA, the UN participated by sending a representative to observe the peace process held in Pretoria, South Africa. Therefore, it can be said that the UN had no substantive engagement in the peace process as the peace process was between the FGE and TPLF (TPLF combatants (article 6(b, e and f) of the CoHA).

b. Regional Institutions

Regional institutions are mentioned in a small number of cases and are rarely used to implement human rights commitments found in peace agreements (Lacatus & Nash, 2019). However, negotiating parties in peace agreements prioritize the creation of NHRIs over other forms of institutionalization of human rights

²¹ Assistant Secretary-General for Human Rights, Ilze Brands Kehris remark available on; <https://www.ohchr.org/en/speeches/2022/06/role-human-rights-peace-and-mediation-processes> Accessed on 3 November, 2023.

²² Article 1(1) of the UN Charter which states that ... to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which may lead to a breach of the peace.

protection (Lacatus & Nash, 2019).

As reiterated and recognized under the CoHA preamble, the African Union, which is a regional organization on the African Continent, had played a very essential role in helping the parties reach an agreement. The peace process was even facilitated by the AU High-Level Panel led by Olusegun Obasanjo. Unlike the UN, the AU together with the IGAD was given the mandate to monitor, verify, and put in place compliance mechanisms for the effective implementation of the CoHA under Article 11. However, there is no mention of the roles that could be played by regional human rights institutions like the African Commission in the CoHA.

The AU had also the opportunity to influence the peace agreement substantively. For example, article 10(3) of the CoHA obliges the FDRE government to implement a comprehensive national transitional justice policy that is aimed at ensuring accountability, truth-seeking, reparation, reconciliation, and healing. This national transitional justice policy however has to be consistent with AU Transitional Justice Policy Framework. In addition to this, the African Charter on Democracy, Elections, and Governance is recognized as a grand principle underpinning the CoHA to guide during implementation and further peace process into the future. The African Charter on Democracy, Election, and Governance is a framework that has to be applied to the political dialogue sought to be made between the Federal Government and the regional government in Tigray for the power-sharing between them.

The broad engagement and influence of the AU were for two reasons: 1) African solutions to African problems which is reiterated under the CoHA preamble paragraph three, and 2) the conflict had happened in a country that is a founding member and seat of the African Union that creates sort of belongingness by the parties.

Even though the CoHA entrusted monitoring, verification, and compliance to AU and IGAD, such organizations were inappropriate organs due to their inherent participation in the war supporting the federal government (Mulugeta, 2022). Monitoring and verification mechanisms help conflict actors overcome commitment problems and information asymmetries through the reporting of *credible* information in the post-agreement setting (Madhav et al, 2015). However, the act of monitoring and reporting on levels of compliance can promote either peace or conflict depending on what is being reported (Madhav et al, 2015). Taking these risks into account, the reports of compliance by the two intergovernmental organizations will have a negative impact on the peace process and may compel parties to return to war. This holds true as there is no trust towards such institutions by the TPLF.

C. The Roles of NHRIs in the Implementation of Peace Agreements

Depending on an array of factors, NHRIs may either promote or hamper the implementation of peace agreements in post-conflict settings, and thereby make the transition smooth or difficult. The factors include the “*institutional design of an NHRI, the degree of autonomy from the government, and the level of expertise needed to navigate the post-conflict landscape*” (Sean, 2021).

In many peace agreements, the inclusion of human rights institutions into peace agreements are believed to contribute positively to the successful implementation of peace agreements (Sean, 2021). Moreover, the inclusion of NHRIs is seen as key contributors to democratization processes, the promotion of respect for the rule of law, and the transition to durable peace (Lacatus & Nash, 2019). Most peace agreements that excluded human rights institutions from their substantive provisions have failed in the implementation phase and reverted to war (ICHRP, 2006). The inclusion and exclusion of human rights institutions

into the peace agreement is part of the political bargaining (Kolb & Hyde, 2008).

For instance, in Nepal, the National Human Rights Commission (NHRC) had previously exposed the brutality of the conflict and prepared the ground for international interest in resolving the human rights crisis there. Moreover, a UNDP/Office of the High Commissioner for Human Rights Toolkit (UNDP and OHCHR 2010) outlines how in Burundi the National Human Rights Commission played a cooperative role in reviewing transitional justice-related processes on an ongoing basis, including attending and preparing reports on human rights aspects of many of these processes. Similarly, Sajjad explains how in Morocco, following pressure from victims and human rights organizations, the Human Rights Consultative Council (CCDH) issued a report on 112 disappearance cases and proposed the establishment of a mechanism to provide financial compensation for victims (Sajjad, 2009).

Moreover, in post conflict situations, a number of NHRIs have been established as part of peace agreements, for example in El Salvador in 1992. The peace agreements of Guatemala, Bosnia-Herzegovina, Sierra Leone, Northern Ireland, South Africa, Rwanda, and Afghanistan also included provisions relating to NHRIs (Andrea & Anna, 2017).

For NHRIs to be effective in the implementation of peace agreements, they need to be *independent, have a plural composition, transparent, and mandates that enable them to carry out a wide range of functions* (Arbour, 2006). Both the 2015 Kyiv Declaration and the 2010 Toolkit for NHRIs of the United Nations Development Programme (UNDP) and OHCHR underscored the importance of NHRIs in the implementation of peace agreements in post-conflict contexts. The Kyiv Declaration for example states in the following: “[I]n conflict and post-conflict situations the actions required of a National Human Rights Institution differ from

usual activities of human rights promotion and protection in peacetime.

The Paris Principles do not provide sufficient guidance on National Human Rights Institutions' role in conflict or post-conflict situations."²³ In a similar vein, the 2010 Toolkit for NHRIs of the UNDP and OHCHR states that, NHRIs can *monitor* and *record violations* during both conflict and authoritarian rule and transitional periods. These efforts can support future prosecution initiatives, truth-seeking and truth-telling bodies, reparations measures, and vetting processes. It also notes that NHRIs can assist victims by ensuring that they have equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. NHRIs can also assist victims and witnesses with measures such as relocation and resettlement.²⁴

On top of these guidelines, the 2009 Rabat Declaration on the Network of African National Human Rights Institutions (NANHRI) stated that NHRIs could assist peacebuilding and transitional justice efforts and implementation of peace agreements by navigating post-conflict terrains.

To substantiate the importance of using NHRIs in peace agreements for better implementation, we can see peace agreements that assign NHRIs a role in helping to implement aspects of a peace agreement. For instance, in South Sudan, the 2005 Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Army/Sudan People's Liberation Movement

²³ The Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations Kyiv, Ukraine, 21-22 October 2015

²⁴ UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, December 2010

provides that the Human Rights Commission shall monitor the human rights and fundamental freedoms contained in the agreement (Naivasha Agreement, 2005: 31). The 1996 Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (Abidjan Accord, 1996: 8), and the 2006 Comprehensive Agreement concluded between the Government of Nepal and the Communist Party of Nepal do the same.

In Uganda, the parties to a June 2007 agreement between the government and the Lord's Resistance Army consider that the Ugandan Human Rights Commission and the Uganda Amnesty Commission are capable of implementing relevant aspects of the agreement (Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, 2007: 7). In Nepal, according to the 23-Point Agreement between the Top Leaders of the Seven-Party Alliance (2007), the National Human Rights Commission was tasked with monitoring aspects of the agreement.

In summary, involving NHRIs in the implementation phase of peace agreements is crucial for their success and for preventing a relapse into conflict. Moreover, NHRIs help ensure local ownership of the peace process by contextualizing the agreement throughout its implementation. This is especially relevant when the peace agreement is negotiated between a central government and insurgent groups.

5. The Potential Roles of EHRC in the Implementation of the CoHA

NHRIs like the EHRC are the most prevalent formal bodies with human rights mandates in peace agreements (Lacatus & Nash, 2019). As a result of this, most peace agreements rely primarily on NHRIs and to a lesser extent on international human rights institutions as part of peace implementation processes (Lacatus

& Nash, 2019). The reason that peace agreements rely primarily on NHRIs is due to the fact that such institutions could localize and facilitate the implementation of the peace agreements. In addition to this, NHRIs' geographical proximity enables them to monitor the national implementation of human rights obligations more closely than regional and international institutions (Kolb & Hyde, 2008). NHRIs are thus positioned between civil society and the state and between the national, regional and international level.

Although the CoHA does not include provisions regarding NHRIs as implementing bodies, the agreement contains several clauses addressing human rights issues, including the rights of children and youth, women and girls, the elderly, equality, democracy, and transitional justice. However, this section aims to highlight the gap in the CoHA's implementation strategy, specifically its failure to incorporate human rights institutions such as the EHRC. The EHRC was established by proclamations enacted under the authority of the Ethiopian House of People's Representatives (HPR), in accordance with Article 55(14) of the FDRE Constitution. Based on this constitutional provision, the EHRC was originally founded by a proclamation in 2000, with an amendment introduced in 2020.

The EHRC was established under Proclamation No. 210/2000 and later amended by Proclamation No. 1224/2020, with Articles 5 and 6 outlining its core mandate to promote, protect, and ensure the full enforcement of human rights in Ethiopia. The Commission is empowered to take necessary actions when human rights violations occur, including conducting investigations based on complaints or on its own initiative. It also provides opinions on human rights reports submitted to international bodies, contributing to Ethiopia's compliance with global human rights standards. The 2020 amendment further expanded the EHRC's responsibilities, explicitly including monitoring of elections and overseeing situations involving

states of emergency.

Additionally, Article 6(14) of the amendment allows for the possibility of broadening the Commission's mandate if such expansion would better serve the protection and promotion of human rights. The EHRC operates independently, with a nationwide presence, and plays a vital role in educating the public about human rights, reviewing laws for constitutional compliance, making policy recommendations, and engaging with international human rights mechanisms. Its work is recognized as essential in addressing human rights abuses and fostering accountability in Ethiopia.

In accordance with its foundational purpose, the EHRC could potentially support the implementation of the CoHA, even though the agreement itself does not specify any role for the institution in enforcing its provisions. Regarding the EHRC's involvement in enforcing the CoHA, two main arguments emerge. First, since the EHRC is not explicitly designated as an implementing body within the CoHA, some argue that its involvement is unnecessary. Second, critics—including some officials from Tigray—contend that the EHRC was complicit in the conflict by supporting the federal government, one of the parties to the war, which raises concerns about its perceived independence from the perspective of the TPLF, a negotiating party.

The first argument, however, could be contested by referencing the CoHA's commitment to constitutional restoration and the amended proclamation, specifically article 6(14), which may expand the EHRC's mandate and enable its involvement in the process. If the constitutional order is to be restored, even though such institutions are not explicitly named in the CoHA, this would imply the reinstatement of their mandates. Since the majority of the substantive provisions of the CoHA fall within the responsibilities of this institution, expanding their mandates

and properly vetting them could significantly enhance the implementation process, especially regarding the long-term goals of the agreement. Regarding the second argument, while the position is faced by counter-arguments and needs a thorough substantiation, some argue that the EHRC did not act independently and was instead complicit with the federal government in investigating and documenting human rights violations during the Tigray war (Abadir, 2023). Even so, with thorough vetting and further institutional reform, the EHRC could assume a constructive role in supporting the CoHA's implementation moving forward.

While the EHRC has been actively monitoring, investigating, documenting, reporting human rights violations across the country, including in the Tigray region, its findings have often been challenged and disputed. Notably, the EHRC collaborated with the Office of the United Nations High Commissioner for Human Rights (OHCHR) to produce a joint investigation report detailing violations of human rights and humanitarian law during the conflict, which some media outlets from the federal government have referred to as the “Northern Ethiopia” war. This partnership demonstrates the EHRC's ability to work with international organizations and contribute to the investigation and documentation of human rights abuses—an essential element for ensuring accountability within the transitional justice process outlined in the CoHA. Additionally, in February 2024, the EHRC released a monitoring report on the situation in Tigray following the signing of the CoHA, offering an evaluation of the progress made in implementing the agreement's provisions.

Given these engagements, it is strongly recommended that institutions such as the EHRC be actively integrated into the ongoing implementation of the CoHA. This integration should be supported by comprehensive institutional reforms and an expansion of the EHRC's mandate to better equip it for this

critical role. Moreover, to enhance the effectiveness and legitimacy of the peace process, the EHRC should be formally recognized and included as an implementing body in any future negotiations related to the CoHA. Such formal inclusion would align with Article 15 of the agreement, which emphasizes the importance of robust enforcement mechanisms.

By strengthening the EHRC's institutional capacity and formally involving it in the peace process, Ethiopia can ensure more effective monitoring, enforcement, and promotion of human rights throughout the implementation of the CoHA. This approach would not only support accountability and transparency but also contribute to building lasting peace and reconciliation in the country.

In summary, although the CoHA does not explicitly designate the EHRC as an implementing institution, its foundational purpose and expanded mandate provide a strong basis for its involvement in the peace process. Addressing concerns about independence and ensuring institutional reform could enable the EHRC to play a vital role in advancing the agreement's goals and supporting sustainable peace in Ethiopia.

6. Conclusion

Most peace agreements incorporate NHRIs, either by establishing new ones or by expanding the mandates of existing institutions as a key mechanism for implementing peace agreements. The involvement of NHRIs in peace processes can have both positive and negative impacts. To maximize their positive contributions, NHRIs must be independent, pluralistic in composition, transparent, and empowered with broad mandates that enable them to perform a wide range of functions. For example, NHRIs have played constructive roles in the peace agreements of South Sudan (2005), Sierra Leone (1996), Nepal (2006), and Uganda (2007). Conversely, these institutions can have detrimental effects if they lack independence and are

aligned with government interests. In such cases, they may undermine peace efforts by presenting distorted accounts of the progress in implementing peace agreements, potentially contributing to a resurgence of conflict.

From this perspective, the CoHA lacks a dedicated institutional enforcement mechanism, assigning the responsibility for overseeing implementation—such as monitoring, verification, and compliance—to the African Union (AU) and the Intergovernmental Authority on Development (IGAD). This approach is problematic for two main reasons: first, these institutions have been accused, particularly by the TPLF, of complicity in the conflict and have never condemned the federal government's actions; second, they lack experience in monitoring, verifying, and ensuring compliance in peace agreement implementation, making them ill-suited for this role.

As a result, the CoHA's implementation framework is fundamentally flawed. Therefore, it is essential for the parties to negotiate an additional agreement specifically addressing the mechanisms for implementation. This new agreement should include key stakeholders, notably NHRIs such as the EHRC, with an expanded mandate and strengthened structure. Incorporating these institutions will help ensure effective monitoring of the parties' obligations under the CoHA, thereby promoting sustainable peace, advancing democratization, upholding human rights, and reinforcing the rule of law in the country's future.

Including NHRIs as implementing institutions will bolster the transitional justice initiatives agreed upon by the parties to effectively address human rights violations committed during the war. Additionally, expanding the mandates of the EHRC could enhance the implementation process, as this body is primarily tasked with monitoring government actions related to human rights protection and promotion in general. This

institution also serves as a vital platform for upholding the rule of law.

The responsibility for monitoring, verification, and compliance should be entrusted to national institutions such as the EHRC. Granting this mandate to NHRIs like the EHRC will significantly strengthen the implementation of the CoHA, particularly in achieving its long-term objectives.

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