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EXECUTIVE SUMMARY

Ethiopia has experienced marked human rights progress since Prime Minister Abiy Ahmed took office in April 2018. The government released prisoners of conscience, initiated reform of repressive laws, shut a prison renowned for torture, and arrested and charged former officials suspected of human rights violations. But the country faces significant challenges ahead of elections slated for 2020, including rising tensions, conflict along ethnic lines, and accountability for past and present human rights violations. To consolidate progress amidst these challenges, the government needs to expedite systemic reform of key institutions.

This briefing outlines recommendations to overhaul one of those institutions – the Ethiopian Human Rights Commission (EHRC or the Commission). Grounded in an analysis of the EHRC’s human rights investigation reports, primarily from 2016 and 2017, it shows how the Commission failed to ensure that human rights are protected, respected and enforced and to take necessary measures when they were violated. Instead, the EHRC whitewashed human rights violations through compromised methodologies, dismissing credible allegations and eschewing a clear stand on human rights violations.

Amnesty International reviewed seven EHRC reports for the briefing – two about the protests in Oromia and Amhara regional states in 2016 and 2017, four into allegations of torture and other ill-treatment to the Federal High Court in 2017, and an earlier submission to the UN Human Rights Council (UNHRC) about prison conditions in 2013. The organization also reviewed relevant Ethiopian legislation, including Proclamation No. 210/2000 establishing the Commission, as well as the UN Paris Principles for the effective operation of national human rights institutions.

This briefing demonstrates that the EHRC has failed to adequately investigate allegations of torture and ill-treatment and publicly report on them. While the Commission has the power to summon parties and analyze evidence, their reports into complaints of torture do not refer to medical or forensic evidence, omit details crucial to establishing the veracity of allegations, and do not include interviews with officials accused of torture.

In their 2016 and 2017 reports into sustained protests in parts of Ethiopia, which they categorized as “disturbances” and “chaos and unrest”, the EHRC did not employ a human rights framework for its research. The 2017 report, for example, found that the use of tear gas on thousands of people attending Irrecha, the annual Oromo thanksgiving event, was proportionate because they were chanting “down down Woyane”, asking for then politically powerful members of the ruling coalition to step down. According to the government, at least 52 people lost their lives due to the stampede triggered by the tear gas.

On 14 May 2019, Amnesty International wrote to the Chief Commissioner of the EHRC and the Speaker of the House of Peoples’ Representatives of the Federal Parliament of Ethiopia summarizing the findings of this briefing and requesting their response. The Office of the Speaker of the House replied on 3 June 2019 outlining the government’s commitment to reform the EHRC to “build rule of law and respect for human dignity”. They confirmed that the Proclamation establishing the EHRC does not require them to have parliamentary approval before publishing findings. At the time of writing, the organization had not received a response from the EHRC’s Chief Commissioner either to this enquiry or earlier correspondence raising concerns cited in this briefing on 10 July 2017.

Amnesty International encourages the Government of Ethiopia to deliver on their commitment to reform the EHRC making it an independent and impartial institution able to foster respect for human rights. Advancing the recommendations outlined below will equip the EHRC to improve its standing before regional and international human rights platforms, including its compliance with the Paris Principles.

The House of Peoples’ Representatives should revise the proclamation establishing the EHRC to ensure a transparent, inclusive and non-partisan appointment process for the Chief Commissioner, Deputy and other Commissioners, to strengthen provisions on enforcement of the Commission’s recommendations and remedies to human rights violations, to provide the Commission with explicit authority to visit all places of detention and deprivation of liberty, and to ensure the financial and administrative independence of the Commission by establishing a funding allocation mechanism outside of government control. They should also take urgent steps to ratify outstanding regional and international human rights treaties.

The Government of Ethiopia should investigate the EHRC's past failures and guarantee non-repetition, issue standing orders to relevant authorities to comply with the EHRC's investigations, facilitate the Commission's unfettered access to places of detention, and promptly and impartially investigate threats against EHRC officials or individuals that have testified to the Commission. By extending standing invitations to all thematic mechanisms and special procedures of the UN and the African Commission on Human and Peoples' Rights (ACHPR), the government can also facilitate the Commission's effective collaboration with regional and international human rights bodies.

To ensure the EHRC can effectively discharge its mandate, the Chief Commissioner should advise the House of Peoples' Representatives and the Government of Ethiopia to implement these recommendations. The Chief Commissioner should also review the EHRC's working methods, strengthen investigatory capacity, publish human rights investigation reports adhering to international standards, address recommendations towards the government, promote legal and policy reforms in line with Ethiopia's international human rights commitments and enhance collaboration with the UN and the ACHPR mechanisms.

BACKGROUND

Last year (2018-19) was a year of progress for human rights in Ethiopia. After more than two years of protests against allegations of human rights violations, there was a change of leadership when Prime Minister Abiy Ahmed took office on 2 April 2018. The new administration has released prisoners of conscience, closed notorious places of detention, including Maekelawi prison where torture was prevalent, embarked on legal reforms, and arrested and charged former officials suspected of human rights violations. These are promising signs of the government's commitment to address structural issues that have enabled human rights violations to persist in the country. However, sustaining these positive measures will require systemic reform of key institutions that protect and promote human rights in the country, including the EHRC.

Established in 2004 to promote and monitor the implementation of human rights guaranteed by the Constitution of the Federal Democratic Republic of Ethiopia (FDRE), the EHRC has had limited practice of reporting human rights violations.¹ That limits the mandate of the Commission to the promotion and monitoring of rights in the FDRE Constitution which effectively restricts the scope of human rights the Commission can monitor and promote.²

The ECHR has built an unenviable track record of dismissing credible allegations of human rights violations, producing questionable investigation reports, and many times, failing to act in clear cases of human rights violations. When it has had the occasion to investigate and report allegations of torture and other ill-treatment in its submissions to the UNHRC and Ethiopia's Federal High Court³, it missed the opportunity to alert the Ethiopian public about human rights violations occurring in Ethiopian prisons and to hold the authorities to account. This briefing shows in detail how the Commission has often attempted to dismiss allegations of human rights violations by the authorities.

Amnesty International previously shared concerns about the thoroughness of the EHRC's investigation methodologies in a private letter dated 10 July 2017. The organization asked the EHRC to revise its investigation reports and bring them in line with international standards. Despite raising these concerns, the EHRC's reports continued to demonstrate lack of methodological thoroughness and impartiality. In the latest review of EHRC in 2013, the Global Alliance of National Human Rights Institutions (GANHRI) accredited the

¹ The Proclamation that established the EHRC was adopted in 2000. However, Parliament appointed the EHRC's first Commissioner in 2004.

² The list of regional and international human rights instruments, Ethiopia is yet to ratify include: The Protocol on the Rights of Women in Africa (Maputo Protocol), Protocol on the Rights of Older Persons in Africa, Protocol on the Rights of Persons with Disabilities in Africa, the Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa; the Optional Protocol to the Convention against Torture (OP-CAT), Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the Abolition of the Death Penalty, Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (ACHPR); and specific individual complaints procedures established by the UN to monitor compliance with the Convention against Torture (CAT), the ICCPR, Convention on Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities.

³ The Federal High Court subpoenaed the EHRC when defendants in four criminal trials complained of torture and ill-treatment.

EHRC with a ‘B’ status, denoting partial compliance with the Paris Principles.⁴ The GANHRI reviews and accredits national human rights institutions against benchmarks provided in the UN Paris Principles.

Amnesty International has analysed seven reports, including the EHRC’s submission to the 19th Session of the UNHRC. This briefing presents some of the glaring flaws Amnesty International has observed in the seven EHRC investigation reports. Amnesty International recommends that the EHRC undergoes comprehensive institutional reform to complement the progress in human rights we are seeing in Ethiopia today.

WHITEWASHING HUMAN RIGHTS VIOLATIONS

The EHRC issued two consecutive human rights investigation reports on the wave of protests that began in 2015. The EHRC also prepared and submitted reports specific to allegations of torture made by detainees during court hearings, following an order to do so by the Federal High Court.

“DISTURBANCES” AND “CHAOS AND UNREST”: EHRC REPORTS ON PROTESTS IN OROMIA AND AMHARA

The EHRC published two investigation reports following sustained protests in Oromia and Amhara regional states. The first report was submitted to the House of Peoples’ Representatives in November 2016 and the second one on 19 April 2017. Amnesty International observed that the bias against the protests starts with the report titles. The November 2016 investigation report refers to the Oromia protests as “disturbances”,⁵ while the April 2017 investigation report⁶ submitted to the House of Peoples’ Representatives spoke of “chaos and unrests” in Oromia, Amhara and Southern Region. The titles suggest that the Commission, by ascribing such labels to the protests, sought to justify the use of lethal and other excessive force by security forces. Despite the title that implies the protests were disturbances, the November 2016 report states that the protesters had exercised their right to freedom of assembly:

“The Commission believes that in the areas investigated the public exercised its constitutional rights to demonstrate publicly to express its dissatisfaction.”⁷

The reports’ main finding was that the use of force by security forces in response to the “disturbances” and “chaos and unrest” was largely proportional. Both reports acknowledged that people had died as a result of the “disturbances” and “chaos and unrests”, but did not mention the circumstances under which they were killed and that they were killed by members of the security forces.⁸ EHRC’s second report also blamed social media, foreign-based Ethiopian media outlets, and opposition parties for fuelling the “chaos and the unrest that started due to lack of good governance including access to goods and services”. According to Amnesty

⁴ Global Alliance of Human Rights Institutions, “Chart of the Status of National Institutions Accredited by the Global Alliance of National Human Rights Institutions”, Accreditation status as of 21 February 2018, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20Chart.pdf>

⁵ EHRC, *Report on the Findings of the Ethiopian Human Rights Commission’s Investigations into the Human Rights Situation during the Disturbances in Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self-Administration Raised by the Qemant Nationality in Amhara Regional State and the Resolution Passed by the Federal Democratic Republic of Ethiopia House of Peoples’ Representatives*, November 2016, Addis Ababa (Official Translation). By not identifying the incidents as protests, the EHRC failed to analyze whether the protesters’ rights to freedom of association and freedom of expression were curtailed when federal security forces used excessive force to disperse the protests.

⁶ EHRC, *Report on the chaos happened from June to October 2016 in some zones of the Oromia, Amhara and Gedio Zone of Southern Nations, Nationalities and People region to the House of Peoples’ Representatives (HoPR) on 18 April 2017*, available at <http://www.ehrc.org.et/web/guest/-/ethiopian-human-rights-commission-discloses-its-investigation-findings>

⁷ EHRC, *Report on the Findings of the Ethiopian Human Rights Commission’s Investigations into the Human Rights Situation during the Disturbances in Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self-Administration Raised by the Qemant Nationality in Amhara Regional State and the Resolution Passed by the Federal Democratic Republic of Ethiopia House of Peoples’ Representatives*, November 2016, Addis Ababa (Official Translation), p. 11.

⁸ The EHRC blamed anti-peace forces for the killing of members of the police and military. ECHR, *Report on the Findings of the Ethiopian Human Rights Commission’s Investigations into the Human Rights Situation during the Disturbances in Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self-Administration Raised by the Qemant Nationality in Amhara Regional State and the Resolution Passed by the Federal Democratic Republic of Ethiopia House of Peoples’ Representatives*, November 2016, Addis Ababa (Official Translation), p. 19, p. 21 and p. 28.

International's investigations, the immediate trigger for the sustained protests in Oromia Region was the "government plans to extend the capital, Addis Ababa, into Oromia".⁹

The reports also provided inaccurate information about the root causes of sustained protests in Oromia and Amhara regional states. Protesters in Oromia were articulate in demanding that the government release political prisoners and other people arrested for expressing dissenting views, and to stop evicting farmers in the region. By asserting lack of good governance as the root cause of the protests, the EHRC was towing the government line to conceal and downplay the cause of the protest.

The November 2016 report blamed unnamed organizers, the Oromo Media Network (OMN) - a media house broadcasting from exile - and the Oromo Liberation Front (OLF) - a political organization the Ethiopian parliament had designated a terrorist group in 2011 - for turning the protests violent to subvert the constitutional order. Even if the report claims to have evidence of OLF "forcing peaceful demonstrators and those who remained at home to take part in the disturbances", it did not reveal any solid and verifiable evidence to support the allegation. Here is an excerpt from the report that tried to link the "disturbances" with the OLF:

"...Oromo Liberation Front (OLF), an organization proscribed as a terrorist group by the FDRE HoPR, as well as other legally registered political parties, attempted to subvert the constitutional order by joining the early demonstrations and scheming to turn the peaceful demonstrations into scenarios that would result in massive loss of human lives and destruction of property [...] there was evidence of forcing peaceful demonstrators and those who remained at home to take part in the disturbances."¹⁰

The EHRC also blamed organizers, social media and broadcast houses in exile:

"The organizers and coordinators of the disturbances used all available means to allow them to inflict significant death and damage to lives and property by carrying out their mission not only during the daytime but also at night. For instance, in the effort to spread the disturbances from one Woreda to the next and to replicate the degree to cruelty, the organizers played the OLF song entitled "Master Plan" through various means such as mobile phones, cars and motorcycle audio players and using media and social media outlets including Oromo Media Network (OMN)."¹¹

However, the report offers little evidence to establish that the quoted song in Oromiffa, a widely spoken local language, contains a message that would incite violence or that the song belongs to the OLF.

The EHRC reports on the protests in Oromia and Amhara regional states repeatedly blamed unknown individuals for killing protesters, without presenting any evidence, forensic or other, about how the Commission established that unknown individuals were responsible for shooting and killing the protesters. This casts doubt on the thoroughness of the Commission's methodologies to investigate human rights violations. Here is an example:

"Forty-two individuals (42) were killed in gunfire discharged from guns that were stolen by unknown individuals, during attempts to take weapons from security officers and by gunfire from unknown sources during the disturbances."¹²

The April 2017 EHRC report justified the use of tear gas by government security forces against a crowd thronged in a narrow space that was chanting "down down Woyane"¹³ during Irreecha, an annual

⁹ Amnesty International, *Ethiopia: Draconian State of Emergency Measures*, 10 February 2017, (Index: AFR 25/5669/2017), p. 2.

¹⁰ EHRC, *Report on the Findings of the Ethiopian Human Rights Commission's Investigations into the Human Rights Situation during the Disturbances in Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self-Administration Raised by the Qemant Nationality in Amhara Regional State and the Resolution Passed by the Federal Democratic Republic of Ethiopia House of Peoples' Representatives*, November 2016, Addis Ababa (Official Translation), p. 11 and p. 12.

¹¹ EHRC, *Report on the Findings of the Ethiopian Human Rights Commission's Investigations into the Human Rights Situation during the Disturbances in Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self-Administration Raised by the Qemant Nationality in Amhara Regional State and the Resolution Passed by the Federal Democratic Republic of Ethiopia House of Peoples' Representatives*, November 2016, Addis Ababa (Official Translation), p. 13.

¹² ECHR, *Report on the Findings of the Ethiopian Human Rights Commission's Investigations into the Human Rights Situation during the Disturbances in Parts of Oromia Regional State and Dispute Related to Issues of Identity and Self-Administration Raised by the Qemant Nationality in Amhara Regional State and the Resolution Passed by the Federal Democratic Republic of Ethiopia House of Peoples' Representatives*, November 2016, Addis Ababa (Official Translation), p. 14.

¹³ 'Woyane' is a Tigrinya term commonly used to refer to the Tigray People Liberation Front, one of the parties that constitute the ruling coalition in Ethiopia.

thanksgiving festival of Oromos, at Bishoftu in October 2016. According to the report, about 2.5 million people attended the Irreecha festival. The report said, “during the Irreecha festival on 2nd of October 2016, security forces did not use force against the crowd except firing tear gas and this measure was proportionate”. However, the report does not explain why it was necessary for the security forces to hurl tear gas on a crowd thronged in a narrow space solely for chanting “down down Woyane” or how the EHRC concluded that the use of teargas was proportionate.

The April 2017 EHRC report also justified the killing of at least 30 protesters in Bahir Dar, Amhara Region, in August 2016. According to the report, the protests in Bahir Dar and other cities in the region were violent. Amnesty International interviewed people who witnessed the protest in Bahir Dar. According to the interviewees, some protesters threw stones at buildings. However, the organizers and other protesters controlled them immediately. The interviewees told Amnesty International that the army opened fire on protesters who were marching through the streets in Bahir Dar on 7 August 2016. Amnesty International maintains that the use of live ammunition on a largely peaceful crowd was unnecessary and disproportionate.¹⁴

DISREGARD FOR TORTURE ALLEGATIONS IN SUBMISSIONS TO THE UNHRC

The EHRC failed to report on allegations of human rights violations, including torture, in its report to the UNHRC’s Universal Periodic Review (UPR) in 2013.¹⁵ The report focused on the issue of prison conditions based on the its countrywide assessment, and listed prison overcrowding, low budget, dilapidated prison buildings, and inadequate prison facilities as the main human rights concerns. The report did not raise any concerns about serious allegations of torture in Ethiopian prisons.

Before the EHRC’s submission to the second cycle of Ethiopia’s UPR, the UN Committee against Torture in its Concluding Observations in 2010 expressed its concern about the widespread practice of torture in Ethiopian prisons:¹⁶

“The Committee is deeply concerned about numerous, ongoing and consistent allegations concerning the routine use of torture by the police, prison officers and other members of the security forces, as well as the military, in particular against political dissidents and opposition party members, students, alleged terrorist suspects and alleged supporters of insurgent groups such as the Ogaden National Liberation Front (ONLF) and the Oromo Liberation Front (OLF). It is concerned about credible reports that such acts frequently occur with the participation, at the instigation or with the consent of commanding officers in police stations, detention centres, federal prisons, military bases and in unofficial or secret places of detention. The Committee also takes note of consistent reports that torture is commonly used during interrogation to extract confessions when the suspect is deprived of fundamental legal safeguards, in particular, access to legal counsel.”¹⁷

¹⁴ UN Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979, Article 3. The Commentary under the article explains that “this provision emphasizes that the use of force by law enforcement officials should be exceptional”. The ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa para 21.1.2 provides that “the use of force is an exceptional measure. In carrying out their duties, law enforcement officials shall, as far as possible, apply non-violent methods before resorting to the use of force and firearms. Force and firearms may only be used if other means of achieving a legitimate law enforcement objective are ineffective or unlikely to be successful. Law enforcement officials must, as far and for as long as possible, differentiate between peaceful assembly participants and those who engage in violent acts. An assembly should be deemed peaceful if its organisers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful. ‘Peaceful’ shall be interpreted to include conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties. Isolated acts of violence do not render an assembly as a whole non- peaceful.”

¹⁵ EHRC, *Submission for the UPR*, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=881&file=EnglishTranslation> (accessed on 12 April 2019).

¹⁶ UN Committee against Torture, Concluding observations of the Committee against Torture, Ethiopia, Forty-fifth session, 1–19 November 2010, CAT/C/ETH/CO/1, para. 10.

¹⁷ UN Committee against Torture, Concluding observations of the Committee against Torture, Ethiopia, Forty-fifth session, 1–19 November 2010, CAT/C/ETH/CO/1, para. 10.

While the Ethiopian government's widespread practice of torture and other ill-treatment has captured the attention of human rights organizations and media since 2006,¹⁸ the EHRC never publicly reported any incident of torture and other ill-treatment despite claiming to conduct monitoring of all prisons.

INCOMPLETE INVESTIGATIONS OF COMPLAINTS OF TORTURE AND OTHER ILL-TREATMENT

In 2017, the Federal High Court ordered the EHRC to investigate complaints of torture and other ill-treatment brought by a defendant in a criminal trial related to the fire outbreak in Qilinto Prison on the outskirts of Addis Ababa. The complainant Agenany Kassu, alleged that he had been tortured at Shewa Robit Prison after he had been transferred there from Qilinto on 3 September 2016, the same day the fire consumed parts of Qilinto Prison.

The other three investigation reports concerning allegations of torture by defendants in *Lieutenant Masresha Sete et al.*,¹⁹ *Bisrat Abera et al.*,²⁰ and *Yared Hussein et al.*,²¹ stated that investigators spotted scars and other marks on the bodies of the defendants. However, they were inconclusive if the scars and body marks were due to torture or not.

A closer look at these EHRC investigations invites multiple questions about the EHRC's research methodologies and adherence to international standards on investigation and documentation of torture²² that provide authoritative, practical guidelines for investigations into, and documentation of, allegations of torture and other ill-treatment. On 10 July 2017, Amnesty International wrote to the EHRC to share concerns about the Commission's investigation report into allegations of torture and other ill-treatment by Agenany Kassu (አገኖኝ ካሱ), a defendant in *Gebre Nigussie et al.*, and called on the EHRC to bring its investigations in line with international standards. There was no discernible change in the way the EHRC investigated subsequent allegations of torture and other ill-treatment by defendants in the terrorism trial.

FAILURE TO IDENTIFY AND QUESTION OFFICIALS INVOLVED IN ALLEGED TORTURE OR OTHER ILL-TREATMENT

The EHRC's reports to the Federal High Court did not specify the measures the Commission took to identify individuals implicated by complaints of torture and ill-treatment by the defendants. Specifically, the reports are silent about whether EHRC investigators contacted the Ethiopian Federal Police Commission, the agency mandated to investigate the Qilinto Prison fire. The ECHR reports reiterated that the complainants and witnesses testified that a team of detectives tortured or otherwise ill-treated them while they were under investigation for the Qilinto fire. The Proclamation that established the EHRC²³ provides the Commission with the power to summon all interested parties and examine all evidence relevant to investigations.

Similarly, the EHRC reported that the complainants and eyewitnesses told the EHRC that the alleged torture occurred at Shewa Robit Federal Prison. The reports do not state whether EHRC investigators conducted interviews with the officials from Shewa Robit Federal Prison and neither do they provide any explanation for that oversight. Rather, the EHRC reproduced the oral reply of the Qilinto Prison officials that "[they] are not aware of the circumstances under which the investigation team conducted the interrogations"²⁴ in Shewa Robit Federal Prison.

¹⁸ Amnesty International, *Ethiopia Prisoners of conscience on trial for treason: opposition party leaders, human rights defenders and journalists*, May 2006, (Index: AFR 25/013/2006), pp. 12-14 and Medicine for Peace, *Cruelty and Denial, Medical Evidence for State-Sponsored Torture in Ethiopia*, 1 August 2012, available at www.medicineforpeace.org/2012/08/01/mfp-releases-report-on-torture-in-ethiopia/; *The Star*, "Ethiopia accused of torture", May 4, 2007, available at www.thestar.com/news/2007/05/04/ethiopia_accused_of_torture.html

¹⁹ EHRC, *Report on 38 defendants in Masresha Sete et al., as per the Order of the Court*, 30 October 2017, p. 2.

²⁰ EHRC, *Report on Allegations of Torture by 20 defendants in Bisrat Abera et al.*, 30 October 2017, p. 5.

²¹ EHRC, *Report on 25 defendants in Yared Hussein et al., as per the Order of the Court*, p. 2.

²² UN, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter: Istanbul Protocol), 2004.

²³ Ethiopian Human Rights Commission Establishment Proclamation No. 210, Article 25.

²⁴ EHRC, *Report on Allegations of Torture by Agenany Kassu in Gebre Nigussie et al.*, 22 March 2017, p. 2 and p. 4.

In the report on the complaints of the 20 defendants in *Bisrat Abera et al.*, the EHRC quoted the Chief Warden of Qilinto Prison who denied the allegations of torture and other ill-treatment in Shewa Robit and Zway prisons²⁵ given he was not in charge of the two prisons. This contravenes international human rights standards in the Istanbul Protocol, which requires the investigating authority to “oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify.”²⁶

The EHRC’s report on complaints of torture and other ill-treatments by Agenany Kassu stated that the EHRC was unable to identify and contact the team of police detectives that committed the alleged torture in Shewa Robit Federal Prison yet listed individuals and public bodies that furnished information for the investigation. However, it failed to specify efforts taken by investigators to identify and contact officials that interrogated the prisoners or to state the reasons why it was unable to do so.

Similarly, the reports on *Lieutenant Masresha Sete et al.*, and *Bisrat Abera et al.*, cases do not state whether the EHRC tried to contact the interrogators of prisoners while they were in Shewa Robit Federal Prison. It is not clear in the reports whether the EHRC attempted to ascertain the identity of the interrogation team by tracing correspondence between the police and the prosecutor handling the case. The EHRC did not identify or question the alleged torturers and investigators in any of its reports to the Federal High Court.

FAILURE TO INDEPENDENTLY COLLECT AND PRESENT RELEVANT FORENSIC EVIDENCE

The EHRC’s reports largely relied on oral testimonies from complainants, witnesses and prison officials. Although the methodology sections of their reports refer to on-site visits as an investigative tool, the report does not detail specific sites visited, or the evidence collected through these visits.

Contrary to guidance provided in paragraphs 88-106 of the Istanbul Protocol, the EHRC’s investigations did not appear to include collection of medical, forensic or psychological evidence. Furthermore, none of the reports explain the reason for not collecting this evidence. Instead, the EHRC’s report on the complaints of Agenany Kassu, a defendant in *Bisrat Abera et al.*, questioned the credibility of witnesses and complainants’ testimonies because they could not provide medical evidence to corroborate their statements alleging torture and other ill-treatment. The report does not establish whether the investigators sought to obtain independent medical examinations from independent professionals willing to provide such evidence. Instead, the EHRC’s investigations required the complainant, Agenany Kassu²⁷ and the 20 complainants in *Bisrat Abera et al.*,²⁸ to name their torturers and bear the burden to prove allegations of torture through medical evidence.

The EHRC reports on *Lieutenant Yared Hussein et al.*, *Masresha Sete et al.*, and *Bisrat Abera et al.*, list the names of complainants with scars and other marks on their bodies and recommended that the police undertake necessary forensic analysis. According to the reports, the scars and marks observed by investigators did not appear in the bio-profile registry of Qilinto Prison, which routinely captures scars and body marks on detainees at the time of admission. The EHRC concluded that it was not clear what caused the scars and body marks after the complainants’ admission to Qilinto Prison. The EHRC reports recommended that the police should undertake necessary forensic investigations into the allegations of torture by the police, instead of engaging independent medical experts to investigate the causes of scars and body marks on complainants - a function firmly within the EHRC’s mandate.²⁹ This contradicts Article 12 and 13 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that require impartial investigations into complaints and other reports of torture.

Lastly, the EHRC reports only provided summaries of the complainants and witnesses’ testimonies. The Commission did not annex the full testimonies to the report. The summaries in the reports omit crucial details of the allegations such as the methods of torture, the duration and number of times the complainants were tortured, the physical and psychological effects the torture had on victims, dates and times, or descriptions of the locations. These details are important for the court to determine the veracity of the

²⁵ EHRC, *Report on Allegations of Torture by 20 defendants in Bisrat Abera et al.*, 30 October 2017, p. 3. This is also similar in the Ethiopian Human Rights Commission, *Report on 25 defendants in Yared Hussein et al., as per the Order of the Court*, p. 1.

²⁶ Istanbul Protocol, para. 80, p. 17.

²⁷ EHRC, *Report on Allegations of Torture by Agenany Kassu in Gebre Nigussie et al.*, 22 March 2017, p. 4.

²⁸ EHRC, *Report on Allegations of Torture by 20 defendants in Bisrat Abera et al.*, 30 October 2017, p. 5.

²⁹ Article 39 of the Proclamation allows the Commission “to issue an official report as may be necessary” and encourages the “transparency in respect of its mode of operations, including issuance of regular reports”.

complaints. The Istanbul Protocol requires torture investigation reports to include, among others, “the specific events that occurred and the evidence upon which such findings are based.”³⁰

EXTERNALISING RESPONSIBILITY

National state broadcaster, Ethiopian TV (ETV), aired an interview with Dr. Addisu Gebre Egziabher, Chief Commissioner of the EHRC, on 21 November 2018. In the interview, he blamed parliament for the failure to act on reports of torture in Ethiopian prisons. He displayed copies of reports he said the Commission had shared with parliament in 2016 and 2017.

According to the Chief Commissioner, the torture practice that permeated Ethiopian prisons was not a secret to the EHRC and the Commission repeatedly alerted the federal government and parliament on the use of torture. The Chief Commissioner claimed the EHRC was unable to make their reports public because the findings had not been endorsed by parliament. However, the law that established the EHRC, Proclamation 210/2000, is clear that parliamentary approval is not needed to publish reports. On the contrary, Article 39 of the Proclamation allows the Commission to “issue an official report as may be necessary” and encourages “transparency in respect of its mode of operations, including issuance of regular reports.”³¹

In response to Amnesty International’s written request for feedback about the requirement of prior approval from the HoPR, the Office of the Speaker of the House affirmed that the EHRC Establishment Proclamation does not require the Commission to secure prior approval from the HoPR to publish human rights violations. Instead, they reiterated that “the practice (of asking approval from the HoPR) was not according to the Constitution of the country as well as the relevant laws.”³²

The Commission has not taken responsibility for its failure to expose the widespread practice of torture and other ill-treatment in Ethiopia. Instead, the ECHR was intent on whitewashing complaints of torture and ill-treatment by blaming parliament. The flaws identified in this briefing suggest the Commission fell short of its mission to promote human rights and underscore the need for comprehensive reform of the EHRC.

³⁰ Istanbul Protocol, para. 118(f).

³¹ Ethiopian Human Rights Commission Establishment Proclamation No. 210 /2000., Article 39.

³² Email from the Office of the Speaker of the House of Peoples’ Representatives of the Federal Parliament to Amnesty International, 3 June 2019.

RECOMMENDATIONS

Amnesty International recommends that the Government of Ethiopia, the House of Peoples' Representatives and the Chief Commissioner of the EHRC consider the findings contained in this briefing and ensure holistic reform of the EHRC for it to be a genuine and independent national human rights body operating with accepted international standards. These recommendations outline some critical steps for an enabling legislative framework for the EHRC and to enhance its independence and effectiveness. They will also equip the EHRC to improve its standing before regional and international human rights platforms, including its compliance with the Paris Principles for the effective operation of national human rights institutions. Specific recommendations include:

To the House of Peoples' Representatives:

- Amend relevant provisions of the EHRC Establishment Proclamation No. 210/2000 to enhance the Commission's independence, effectiveness and efficiency in fulfilling its mandate including by:
 - ensuring all necessary guarantees are in place for a transparent, inclusive and non-partisan appointment of the Chief Commissioner, the Deputy and other Commissioners, specifically by revising the composition of the Nomination Committee (Article 8) and the Special Inquiry Tribunal (Article 17) to include representation of independent civil society organisations (CSOs);
 - strengthening provisions on enforcement of recommendations and remedies to human rights violations (Article 6 & Article 26), specifically by explicitly empowering the Commission with authority to compel authorities to respond to its recommendations, to recommend reparation for victims of human rights violations and the authority to take recommendations to court for enforcement;
 - providing the Commission with explicit authority to visit all places of detention and deprivation of liberty, as regularly as necessary, at times of their choosing and with minimal notice;
 - ensuring the financial and administrative independence of the Commission, specifically by changing the public funds allocation mechanism provided in the law (Article 36(1)a) and establishing a mechanism that is not under direct or indirect government control.
- Take urgent steps to ratify all outstanding regional and international human rights treaties, specifically:
 - all outstanding human rights treaties adopted by the African Union (AU), including the Protocol on the Rights of Women in Africa (Maputo Protocol), Protocol on the Rights of Older Persons in Africa, Protocol on the Rights of Persons with Disabilities in Africa, and the Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa.
 - all outstanding human rights treaties adopted by United Nations (UN), including the Optional Protocol to the Convention against Torture (OP-CAT), Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the Abolition of the Death Penalty, Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
 - the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (ACHPR). At the time of ratifying the Protocol, the House should, pursuant to Article 34(6) of the Protocol, make a declaration allowing direct access for individuals and NGOs to the ACHPR.
 - accept the specific individual complaints procedures established by the UN to monitor compliance with the Convention against Torture (CAT), the ICCPR, Convention on Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities.

To the Government of Ethiopia:

- Investigate the EHRC's past failures and guarantee non-repetition including through accountability and public admission;
- Issue standing orders to all relevant authorities to cooperate and comply with the EHRC's investigations and requests;
- Facilitate the independent exercise of Commission's mandate by ensuring that they have unfettered access to visit all places of detention and deprivation of liberty, as regularly as necessary, at times of their choosing and with minimal notice;
- Facilitate the Commission to work effectively with regional and international human rights bodies, including by extending standing invitations and access to all thematic mechanisms and special procedures of the UN and the ACHPR;
- Ensure independent, impartial, prompt and thorough investigation of cases of attacks or threats against officials and staff of the EHRC or against individuals that provide testimony or evidence to the EHRC and prosecute suspected perpetrators.

To the Chief Commissioner:

- Advise and urge the House of Peoples' Representatives and the Ethiopian government to implement the above recommendations addressed to them;
- Review the rules, procedures and processes for conducting independent human rights investigations with the view to identifying and addressing issues that previously inhibited the EHRC from fulfilling its mandate;
- Revise its investigative standards and processes based on internationally accepted principles and practices, including the UN 10 Principles for the Proper Management of Assemblies - Implementation Checklist; the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment);
- Enhance the capacity of EHRC staff on human rights investigation tools, processes and standards through trainings and skills shares with other regional and international organizations;
- Enhance cooperation with regional and international human rights institutions and mechanisms;
- Promote legal, policy and procedural reforms in Ethiopia, including the harmonization of national laws and practices with the international human rights instruments to which Ethiopia is a party, and promote their effective implementation;
- Produce and publish human rights investigation and situation reports that comply with international standards and practices to enhance government attention to human rights violations and advance recommendations to address them.

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SKIRTING HUMAN RIGHTS VIOLATIONS

RECOMMENDATIONS FOR REFORM OF THE ETHIOPIAN HUMAN RIGHTS COMMISSION

This briefing recommends an overhaul of the Ethiopian Human Rights Commission (EHRC), as part of the Ethiopian government's systemic reform of key institutions. Grounded in analysis of the EHRC's human rights investigation reports, primarily from 2016 and 2017, it shows how the Commission failed to ensure that human rights are protected, respected and enforced and to take necessary measures when they were violated. Instead, the EHRC whitewashed human rights violations through compromised methodologies, dismissing credible allegations and eschewing a clear stand on human rights violations.